



**Strathmore University**  

---

**Law School**

**SECTION 3 OF THE REFUGEE ACT: NON-RECOGNITION OF GENDER  
AS A CLAIM FOR REFUGEE STATUS IN KENYA**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore  
University Law School

By

**Mitchelle Kobia**

113018

Prepared under the supervision of

**Janet Njambi**

February 2024

Word count:24155

## Contents

CHAPTER ONE	1
1.0 INTRODUCTION	1
1.1 BACKGROUND	1
1.2 STATEMENT OF PROBLEM	4
1.3 RESEARCH OBJECTIVES	4
1.4 RESEARCH QUESTIONS	4
1.5 HYPOTHESIS	5
1.6 JUSTIFICATION	5
1.7 THEORETICAL FRAMEWORK	6
1.8 LITERATURE REVIEW	8
1.9 METHODOLOGY	11
2.0 CHAPTER BREAKDOWN	11
CHAPTER 2	13
THE REGULATORY FRAMEWORK GOVERNING REFUGEE STATUS AND ITS SIGNIFICANCE TO SAFEGUARDING VICTIMS OF GENDER- BASED VIOLENCE	13
1.0 INTRODUCTION	13
1.1 INTERNATIONAL LAW	13
A. THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS PROTOCOL	13
B. UNHCR 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	15
C. UNHCR HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING THE STATUS OF REFUGEES	17
1.2 DOMESTIC LAWS	19
THE REFUGEES ACT	19
1.3 THE REGULATORY FRAMEWORK UNDERPINNING GENDER-BASED VIOLENCE	20
1.4 KENYAN LEGISLATION	21
1.4.1 Challenges that may arise while granting refugee status to GBV survivors	22
1.4.2 How the inclusion of gender in the refugee definition provided in Section 3 of the Refugees Act 2021 solves the challenges	25
1.5 CONCLUSION	27

CHAPTER 3	28
ENSURING FAIR AND CONSISTENT ASSESSMENT OF GENDER BASED VIOLENCE CLAIMS IN REFUGEE STATUS DETERMINATION	28
1.0 INTRODUCTION	28
1.1 GENDER-BASED ASYLUM	28
1.2 PERSECUTION BASED ON GENDER	29
1.3 IDENTIFYING A WELL-FOUNDED FEAR OF PERSECUTION	30
1.4 GENDER-BASED VIOLENCE AND ASYLUM IN KENYA: REFUGEES INSIGHT	31
1.5 APPLYING FOR ASYLUM IN KENYA	34
1.6 ADDRESSING THE COMPLEXITIES OF GBV IN REFUGEE-STATUS DETERMINATION	35
1.7 RECOMMENDATIONS	36
1. Improving Gender-Sensitiveness of the Asylum System	36
2. Promoting a Victim-Centered Criminal Justice Process	37
3. Enhancing Access to Services for Refugee Women Victims	37
1.8 CONCLUSION	37
CHAPTER 4.	38
UNVEILING THE IMPACT OF GENDER EXCLUSION IN REFUGEE STATUS DETERMINATION	38
1.0 INTRODUCTION	38
1.1 THE SYSTEMIC IMPACT OF GENDER EXCLUSION IN REFUGEE SETTLEMENTS	38
1.2 ADDRESSING THE SYSTEMIC GAPS IN PROTECTING WOMEN FLEEING GENDER-BASED VIOLENCE	40
1.3 THE DIFFICULTY OF MEASURING THE UNSEEN	41
1.4 ESSENTIAL SERVICES	43
1.5 HEALTH CARE	43
1.6 LABOUR MARKETS	44
1.7 HOUSING AND LIVING CONDITIONS	45
1.8 PSYCHOLOGICAL SUPPORT	46
1.9 EDUCATION AND TRAINING	46
2. THE IMPACT OF GENDER-INCLUSIVE REFUGEE STATUS DETERMINATION.	47
3. GENDER CONSIDERATION IN REFUGEE STATUS DETERMINATION: IMPACT ON ACCESS TO SERVICES AND PROTECTION FOR WOMEN	48
4. CONCLUSION	49

CHAPTER 5	50
BIBLIOGRAPHY	52

## ACKNOWLEDGMENTS

I would like to thank the **Almighty God** for seeing me through this dissertation and to extend my heartfelt gratitude to my supervisor, **Janet Njambi** for the unending support and guidance she has accorded me. Words cannot describe her impact on this journey. A special tribute goes to my **family and friends** including **Johny Kitheka** who has been of monumental importance to me as I crafted this research.

DECLARATION

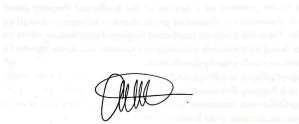
I, **MITCHELLE KOBIA**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.



Signed: .....

Date: .....12/03/2024.....

This dissertation has been submitted for examination with my approval as University Supervisor.



Signed: .

**Janet Njambi**

## ABSTRACT

Gender-based violence (GBV) remains a pervasive societal issue, influenced by various factors including patriarchal structures, gender disparities, cultural norms, and lack of awareness. Despite its severity as a human rights violation, the 1951 Refugee Convention does not explicitly address GBV as a protected ground. However, the UNHCR's guidelines recognize GBV as a distinct form of persecution, calling for gender-sensitive approaches to refugee status determination. This dissertation examines the impact of the exclusion of gender as a basis for seeking asylum under Kenya's Refugees Act 2021 on GBV survivors' rights and protection.

Through a feminist theoretical framework, the study investigates the interconnectedness of GBV, refugee law, and gender dynamics, highlighting the need for a gender-sensitive approach in refugee status determination. It also analyzes international and domestic legal frameworks, exploring the gaps in recognizing GBV as a valid claim for refugee status. Utilizing literature reviews and legal analysis, the study aims to shed light on the challenges faced by GBV survivors seeking asylum and advocate for the explicit inclusion of gender in Kenya's Refugee Act.

The research objectives focus on examining the relationship between refugee law and GBV, investigating the human rights implications of excluding gender as a basis for asylum, analyzing the impact of this exclusion on systemic disparities, and assessing the effects on Refugee Status Determination processes. By proposing the inclusion of gender-based violence as a valid basis for seeking refugee status in Kenya, this study seeks to rectify systemic injustices faced by GBV survivors and contribute to a more inclusive and protective refugee law framework.

## **LIST OF CASES**

Kenya National Commission on Human Rights & another v Attorney General & 3 others [2017]  
eKLR.

## **LIST OF LEGAL INSTRUMENTS**

### **Conventions and Declarations**

1967 Protocol relating to the Status of Refugees.

Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249.

International Covenant on Civil and Political Rights, 16 December 1966, 2200A (XXI).

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993.

United Nations Convention Relating to the Status of Refugees, 28 July 1951.

Universal Declaration of Human Rights, 10 December 1948, 217 IIIA.

### **National Legislation**

Refugees Act No. 10 of 2021.

Sexual Offences Act, Act No. 3 of 2006.

The Anti FGM Act of 2011.

### **Soft Law**

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1979.

UNHCR Guidelines on International Protection: Gender-Related Persecution, On 7 May 2002.

UNHCR, The 1951 Refugee Convention: Travaux Préparatoires Analyzed with a Commentary by Dr Paul Weis <[THE REFUGEE CONVENTION, 1951](#)>.

United Nations General Assembly resolution 429(V) of 14 December 1950, available at <<http://www.unhcr.org/refworld/docid/3b00f08a27.html>>.

## **LIST OF ABBREVIATIONS**

DRS - Department of Refugee Services

EU - European Union

FGM - female genital mutilation

GBV - Gender-based violence

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social, and Cultural Rights

ILO - International Labor Organization

ODI - The Overseas Development Institute

RCK - Refugee Consortium of Kenya

RSD - refugee status determination

SGBV - sexual and gender-based violence

SOA - Sexual Offenses Act

SOPs - standard operating procedures

StopVaw - Stop Violence Against Women

UDHR - Universal Declaration of Human Rights, 10 December 1948, 217 IIIA

UNHCR - United Nations High Commissioner for Refugees

WHO - World Health Organization

# **SECTION 3 OF THE REFUGEE ACT: NON-RECOGNITION OF GENDER AS A CLAIM FOR REFUGEE STATUS IN KENYA**

## **CHAPTER ONE**

### **1.0 INTRODUCTION**

#### **1.1 BACKGROUND**

Gender-based violence (GBV) continues to be a persistent societal concern, stemming from multiple factors, though these factors are influenced by common underlying causes.<sup>1</sup> These enduring catalysts encompass patriarchal social structures, gender disparities, entrenched traditional values and norms, and deficiencies in education and awareness levels.<sup>2</sup> Additionally, numerous societies worldwide, spanning diverse cultural contexts, tend to regard violence against women as an ostensibly private matter that should be confined to familial discourse. Consequently, this prevailing perspective contributes to the underreporting of incidents involving violence perpetrated against women.<sup>3</sup>

Even though gender-based violence (GBV) is a serious human rights violation, it is not explicitly mentioned in the 1951 Convention's definition of a refugee since gender is not clearly defined as a protected ground.<sup>4</sup> However, through Executive Committee Conclusion 73 in 1993, the United Nations High Commissioner for Refugees (UNHCR) campaigned for the establishment of pertinent regulations for female asylum claimants by nations signatories to the Refugee Convention or Protocol.<sup>5</sup>

This recommendation was rooted in the recognition that female refugees frequently endure persecution in a manner distinct from their male counterparts due to their gender.<sup>6</sup> It is worth noting that, to date, a mere 22 countries have instituted these guidelines, with Romania emerging as the solitary nation to have enshrined gender as an explicit additional basis for asylum within its legislative framework.<sup>7</sup>

For women who endure experiences of violence, the realization of their rightful entitlements becomes a formidable challenge, primarily because the violation of their rights and the

---

<sup>1</sup> Ellesburg M, *What Is Gender-Based Violence, Ending violence against women*, Issues in World Health 11, 1999, 1-44.

<sup>2</sup> Sudarso S, Phillipus K, and Mas'udah S, 'Gender, religion and patriarchy: The educational discrimination of coastal Madurese women, East Java.' *Journal of International Women's Studies*, 20.9, 2019, 2-12.

<sup>3</sup> Marian M, *News coverage of violence against women: Engendering blame*, Sage Publications, 1996.

<sup>4</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*, 2021.

<sup>5</sup> UNHCR Guidelines on International Protection: Gender-Related Persecution, On 7 May 2002.

<sup>6</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26, 1993, 625.

<sup>7</sup> European Parliament, *Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States France, Belgium, Hungary, Italy, Malta, Romania, Spain, Sweden and the United Kingdom*, On November 2012, 18.

perpetration of violence often occur within the confines of the domestic sphere.<sup>8</sup> Notably, violence against women stands as the principal contributor to mortality and incapacitation among women, constituting a paramount global public health issue.<sup>9</sup> In light of this, it becomes imperative to extend protection measures to these women through the conferment of refugee and asylum status. The explicit acknowledgment of gender-based violence as a valid basis for seeking refugee status assumes profound significance in the pursuit of justice and the steadfast protection of the rights of these vulnerable individuals.

The nexus between Gender-Based Violence (GBV) and refugee status represents a pivotal and intricate concern, bearing profound implications for human rights, international legal frameworks, and social justice.<sup>10</sup> Guidelines for the protection of women and girls have been established by the UNHCR, which acknowledges gender-based violence (GBV) as a valid justification for granting asylum.<sup>11</sup> These guidelines have been adopted with a view of incorporating the claims of women and homosexuals, which have historically been unrecognized.<sup>12</sup> They take into account fresh viewpoints like the idea that a person's gender might sometimes determine the kind of persecution they experience, the suffering they suffer, and the reasons behind it.<sup>13</sup>

These recommendations emphasize how crucial it is to use a gender-sensitive approach when determining a person's status as a refugee.<sup>14</sup> The guidelines do not adopt an absolute interpretation of gender sensitivity as a ground for determining refugee status. They propose that while it does not guarantee absolute and automatic refugee status, the claimant can be accorded such status upon proving a legitimate fear of being persecuted because of one's color, religion, nationality, affiliation with a specific social group, or political beliefs.<sup>15</sup>

Reading this with Section 3 (2) of Kenya's Refugees Act 2021, it is possible to infer, at best, that women can fall into this category of 'a particular social group'. However, of key importance is the subjective nature of Section 3 (2). This possibly inclusionary provision is also plagued with a caveat and as a result, it is worded as follows: "...if the Cabinet Secretary, on recommendation from the Committee, considers..."<sup>16</sup> This caveat further heightens the void between Kenya's refugee laws and inclusion of a gender-sensitive approach or basis.

---

<sup>8</sup> Dahal P, Joshi S, and Swahnberg K, 'A qualitative study on gender inequality and gender-based violence in Nepal' *BMC Public Health* ,22, 2005.

<sup>9</sup> UNIFEM. Facts and figures: Violence against women <https://asiapacific.unwomen.org/en/focus-areas/end-violence-against-women/evaw-facts-and-figures>,2007.

<sup>10</sup> Mary H, 'International Human Rights, Gender-Based Violence, and Local Discourses of Abuse in Post Conflict Liberia: A Problem of 'Culture'' *African Studies Review*, 55, 2, 2012, 119–146.

<sup>11</sup> UNHCR Guidelines on International Protection: Gender-Related Persecution, On 7 May 2002.

<sup>12</sup> UNHCR Guidelines on International Protection, paragraph 5.

<sup>13</sup> UNHCR Guidelines on International Protection, paragraph 6.

<sup>14</sup> Monica B, 'Gender, refugee status, and permanent settlement: Immigrant women' *Routledge*, 2018,103-124.

<sup>15</sup> UNHCR Guidelines on International Protection, paragraph 4.

<sup>16</sup> Section 3(2) Refugees act 2021

In addition to the directives set forth by the UNHCR, Convention Relating to the Status of Refugees, Article 1 establishes a long-standing principle that affords individuals the opportunity to pursue refugee status when they possess a credible fear of persecution.<sup>17</sup> GBV takes on the characteristics of persecution when it demonstrates a pervasive, severe, and deliberate nature, with gender being a defining factor.<sup>18</sup>As a result, women who have endured GBV within their countries of origin may seek refuge in foreign nations as a means of averting impending harm.<sup>19</sup>

Gender-based violence is still an issue. in Kenya and in many other countries despite its criminalization. Regulations in Kenya such as the Penal Code, Sexual Offences Act, Protection Against Domestic Violence Act and the Children's Act all condemn GBV. Despite the comprehensiveness and focus of these regulations in protecting victims, the law has not done enough to address the root cause of GBV, which fuels it to become a prevailing issue. Even with the imprisonment of perpetrators, GBV continues to happen. This cannot therefore be an indicator of termination of refugee status. The best indicator would be the availability of support and services for rehabilitation in the victim's home country.

Despite the stance taken by International Refugee Law, a significant number of GBV survivors opt to endure these hostile circumstances due to the prevailing refugee status framework's infrequent recognition of GBV as a valid basis for seeking asylum. Gender-based violence is not included in the 1951 Convention Relating to the Status of Refugees as a valid reason for protection,<sup>20</sup>which is the cornerstone of international refugee law, nonetheless has a negative impact on asylum requests based on concerns about gender-based and sexual violence.<sup>21</sup> However, the UNHCR Guidelines discussed earlier bridge this gap somewhat. This is on an international level, at least, in Kenya, the deficiency in a robust and comprehensive protective framework for survivors of SGBV within refugee law and policy significantly complicates the asylum-seeking process.<sup>22</sup>

My proposal posits that a decisive inclusion of gender-based violence within the ambit of Kenya's Refugee Act would substantively fortify the claims of these victims in their pursuit of refugee status, thereby rectifying this systemic issue. It first provides clarity on the position of women who've been subject to GBV with regard to the acquisition of refugee status instead of leaving it to the realm of a vague and ambiguous provision.

---

<sup>17</sup> United Nations Convention Relating to the Status of Refugees, 28 July 1951.

<sup>18</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26 ,1993, 625.

<sup>19</sup> Macklin A, 'Refugee Women and the Imperative of Categories' *Human Rights Quarterly*, 17, 2, 1995,213–277. JSTOR, <http://www.jstor.org/stable/762517> , Accessed 20 Feb. 2024.

<sup>20</sup> Tastsoglou E, and Shiva N, '(Re) Producing Gender: Refugee Advocacy and Sexual and Gender-Based Violence in Refugee Narratives' *Canadian Ethnic Studies*, 51,3,2019, 37-56.

<sup>21</sup> United Nations Convention Relating to the Status of Refugees, 28 July 1951.

<sup>22</sup> Tastsoglou E, and Shiva N, '(Re) Producing Gender: Refugee Advocacy and Sexual and Gender-Based Violence in Refugee Narratives' *Canadian Ethnic Studies*, 51,3,2019, 37-56.

## 1.2 STATEMENT OF PROBLEM

This dissertation will show how the explicit exclusion of gender as a reason for requesting refugee status under Section 3 of the Refugees Act 2021 puts gender-based violence victims at a higher risk of being denied refugee status in Kenya. Gender as a legal ground for asylum applications remains woefully inadequate in Kenya and is left to an ambiguous interpretation of Section 3 above, as a ‘class of persons who are prima facie refugees’.<sup>23</sup> Consequently, the problem of gender-based violence is not given enough consideration as a justification for refugee status or asylum despite GBV plaguing a third of the women’s population.<sup>24</sup> Rather, the more urgent necessity is to ensure that gender is clearly included within the provision itself.

## 1.3 RESEARCH OBJECTIVES

- a) Explore the relationship between gender-based violence and refugee legislation.
- b) Examine the international legal instruments guiding refugee protection and gender-based violence.
- c) Investigate the assessment of gender-based-violence claims in refugee status determination.
- d) Investigate the impact of the explicit gender exclusion to gender-based-violence victims in refugee status determination after being granted refugee status.

## 1.4 RESEARCH QUESTIONS

- a) What is the connection between refugee law and gender-based violence?
- b) What are the international legal instruments guiding refugee protection and violence against women?
- c) What is the impact of having a fair and consistent assessment of violence against women claims in refugee status determination?
- d) What is the relationship between gender-based violence and explicit gender exclusion victims in refugee status determination after being granted refugee status?

---

<sup>23</sup> Section 3 (2) Refugees Act 2021.

<sup>24</sup> Alys M and Crystal C, ‘Sexual and Gender-Based Violence : What is the World Bank Doing and What Have We Learned, A Strategic Review’ *World Bank Publications - Reports* 16733, The World Bank Group, <https://ideas.repec.org/p/wbk/wboper/16733.html>, accessed on 20 February 2024.

## 1.5 HYPOTHESIS

Gender-based abuse is not expressly recognized under the framework set by domestic law as a grounds for requesting asylum or refugee status. Because of this, even though the country admits members of a particular social group and recognizes them as refugees, many victims of gender-based violence suffer the negative consequences of having their asylum claims denied because decision-makers fail to acknowledge that the violence they have experienced is a result of their gender.<sup>25</sup> Gender-based asylum claims are strengthened when victims of gender-based violence are recognized explicitly because it creates a solid foundation for protection from persecution.<sup>26</sup>

## 1.6 JUSTIFICATION

Despite the obvious absence of gender persecution as a basis for protection under the 1951 Convention Relating to the Status of Refugees, fear of sexual and gender-based violence continues to impact modern refugee claims. There are striking parallels between this treaty and Section 3 of Kenya's Refugee Act of 2021. Kenya consequently encounters similar consequences.

Several incidents and studies have demonstrated the inequality resulting from GBV victims' non-recognition as grounds for applying for asylum or refugee status. This has an impact on allegations made by victims when requesting asylum or refugee status. This article discusses the significance of adding gender-based violence as a claim under Section 3 of the Refugees Act 2021, in an effort to contribute to the corpus of information currently available regarding the rules governing refugee and asylum claims.

## 1.7 THEORETICAL FRAMEWORK

A feminist viewpoint on GBV offers an interpretative lens by scrutinizing its entrenchment within patriarchal power structures.<sup>27</sup> Violence inherently correlates with power dynamics, and one could contend that almost every instance of violence intersects with the concept of gender.<sup>28</sup> The hypothesis that applies to our investigation is consistent with feminist viewpoints, asserting that gender-based issues are the fundamental source of violence against women. This theoretical

---

<sup>25</sup> Erfe F, 'How Do the Courts See Sexual and Gender-Based Violence in the US Asylum Context: Issues of Judicial Ethics in the Fact-Finding and Decision-Making Process' Published, Doctoral dissertation, Yale University, New Heaven, 2023.

<sup>26</sup> Sahar H, 'Recognizing Sexual and Gender-Based Violence as Persecution Grounds for Women Seeking Refugee Status and Asylum' Published, Doctoral dissertation, Columbia University, New York, 2017.

<sup>27</sup> Cockburn C, 'The Continuum of Violence: A Gender Perspective on War and Peace', In Giles W and Hyndman J, Sites of Violence: Gender and Conflict Zones, *University of California Press Los Angeles*, 2004, 30.

<sup>28</sup> Cockburn C, 'The Continuum of Violence: A Gender Perspective on War and Peace', In Giles W and Hyndman J, Sites of Violence: Gender and Conflict Zones, *University of California Press Los Angeles*, 2004, 30.

framework did not come into its own until the 1970s, when it was revived during the second wave of the feminist movement.<sup>29</sup>

The primary thesis posited by the feminist theory asserts that violence against women arises from the inherent power imbalances between the genders, particularly in terms of physical strength.<sup>30</sup> The variance in socialization commences within the family unit, where gender roles are formulated.<sup>31</sup> This enduringly reinforces the validation of deeply ingrained beliefs in sexism, male privilege, and gender-based socialization.<sup>32</sup> The transmission of these belief systems serves as the conduit through which instances of domestic violence can be seen as a manifestation of the patriarchal structure of society, wherein the male partner imposes coercive dominance over the female partner.<sup>33</sup>

Reports issued by Human Rights Watch<sup>34</sup> and Amnesty International<sup>35</sup> compellingly demonstrate that women and girls are subjected to multifaceted forms of gender-based violence, spanning a spectrum of severity. These victimizations encompass, domestic abuse and severe constraints imposed on women and girls in Afghanistan;<sup>36</sup> the harrowing practice of stoning women to death for alleged adultery in Pakistan;<sup>37</sup> the widespread problem of female genital mutilation in the Middle East and Africa;<sup>38</sup> the egregious trafficking in females forced into prostitution industry in Eastern Europe.<sup>39</sup> Lastly, the horrifying act of immolating women in India when they fail to meet the anticipated dowry amount sought by the groom's family.<sup>40</sup>

Many nations have faced challenges in adequately safeguarding victims of gender-based violence (GBV), compelling many of these individuals to seek refuge in foreign countries. It is also pertinent to highlight that a developed country such as Russia has decriminalized instances of

---

<sup>29</sup> Russell D, 'Report on the International Tribunal on Crimes against Women, *A Journal of Women Studies*, 2, (1), 1977, 1-6.

<sup>30</sup> Janice D, and Arnold S, 'Toward a feminist understanding of women and power', *Psychology of women quarterly* 16, 4, 1992, 381-388.

<sup>31</sup> Fan P, and Margaret M, 'Influences on gender-role attitudes during the transition to adulthood', *Social Science Research*, 29, 2, 2000, 258-283.

<sup>32</sup> Healey K and Sullivan C, 'Batterer Intervention: Program Approaches and Criminal Justice Strategies', *U.S Department of Justice*, 1998, 18.

<sup>33</sup> Sunstein R, 'Feminism and Legal Theory', *Harvard Law Review*, 101, 4, 1988, 828

<sup>34</sup> Human Rights Watch is an international non-governmental organization that conducts research and advocacy on human rights.

<sup>35</sup> Amnesty International is a global movement of more than 10 million people in over 150 countries and territories who campaign to end abuses of human rights.

<sup>36</sup> Wimplemann T, *Good Women Have No Need for This Law: The Battles over the Law on Elimination of Violence against Women*, in Wimplemann T, (eds), *In The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan*, University of California Press, California, 2017, 53-55.

<sup>37</sup> Sidahmed A, 'Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women', 2, *British Journal of Middle Eastern Studies*, 28, 2001, 188.

<sup>38</sup> World Health Organization, 'Female Genital Mutilation—What It Is and Why It Continues', *Eliminating Female Genital Mutilation: An Interagency Statement*, World Health Organization, 2008, 4-7.

<sup>39</sup> Petrunov G, 'Human Trafficking in Eastern Europe: The Case of Bulgaria', 653, *The Annals of the American Academy of Political and Social Science*, 2014, 162-182.

<sup>40</sup> Teays W, 'The Burning Bride: The Dowry Problem in India', *Journal of Feminist Studies in Religion*, 7, 2, 1991, 42-45.

violence against spouses or children in certain instances. This is, for example, where such violence has been occurring less frequently (less than twice a year), resulting in observable signs of physical harm such as bleeding or bruising, yet without causing any bone fractures.<sup>41</sup> This means that the situation in developing countries is actually much worse in matters to do with GBV and how the state has more or less failed to protect the victims.

The foundational principle that informs the framework of refugee and asylum law revolves around the provision of safeguarding people when their countries of origin have demonstrably failed to guarantee their safety.<sup>42</sup> Nevertheless, this protection has not uniformly extended to all, particularly in the context of female asylum seekers fleeing their homelands due to gender-based violence. Interestingly, even within developed nations like Canada, the approval rates for claims grounded in gender considerations remain notably low.<sup>43</sup>

Statistical data reveals that, on the whole, female asylum seekers experience a slightly higher likelihood of having their claims approved when compared to their male counterparts.<sup>44</sup> However, a noteworthy distinction emerges among these female asylum seekers, as those who cite gender persecution as the basis for their claims tend to encounter a lower likelihood of success when juxtaposed with refugees seeking asylum on political or religious grounds.<sup>45</sup>

The main justification for refusing asylum to female applicants and refugees is that many nations do not formally recognize persecution based on a person's gender as a legitimate reason to request asylum.<sup>46</sup> Moreover, the acknowledgment that such persecution primarily emanates from gender-related factors underscores the imperative of incorporating it as a legitimate claim.<sup>47</sup> Decision-makers have historically exhibited considerable reluctance in endorsing these claims, particularly those arising from incidents of domestic violence.<sup>48</sup>

The feminist theory plays a pivotal role in unraveling the complex dynamics and systemic inequalities that underpin Gender-Based Violence (GBV). In parallel, International and Domestic Refugee Law can play a constructive role in safeguarding the interests of GBV victims by

---

<sup>41</sup>Russian women are being forced to pay their abusers' domestic violence fines, advocates say Social Sharing, [Russian women are being forced to pay their abusers' domestic violence fines, advocates say | CBC Radio](#) 20 December 2017.

<sup>42</sup>McAdam J, 'Refugees: Why seeking asylum is legal and Australia's policies are not' UNSW Press, 2014.

<sup>43</sup> Millbank J, 'The ring of truth: a case study of credibility assessment in particular social group refugee determinations' *International Journal of Refugee Law* 21,1,2009, 1-33.

<sup>44</sup> Peter J, and Charles W, 'Refugees and asylum seekers: a review from an equality and human rights perspective' Research Report 52, Equality and Human Rights Commission, 2010.

<sup>45</sup>Carman T and Alash A, 'Gender persecution the top reason women seek asylum in Canada' CBC, [Gender persecution the top reason women seek asylum in Canada | CBC News](#), On 7 February 2018.

<sup>46</sup> Freedman J, 'Women's right to asylum: Protecting the rights of female asylum seekers in Europe?' *Human Rights Review* 9.4,2008,413-433.

<sup>47</sup> Randall M, 'Particularized Social Groups and Categorical Imperatives in Refugee Law: State Failures to Recognize Gender and the Legal Reception of Gender Persecution Claims in Canada, the United Kingdom, and the United States'4, Am. UJ Gender Soc. Pol'y & L. 23 ,2014, 529.

<sup>48</sup> Kneebone S, 'Women within the refugee construct: exclusionary inclusion in policy and practice—the Australian experience' *International Journal of Refugee Law*,17.1 ,2005, 7-42.

acknowledging GBV as a manifestation of persecution, offering comprehensive guidelines for conducting gender-sensitive evaluations, and extending asylum provisions to individuals who have endured GBV in their countries of origin. The synergy of these frameworks collectively serves as a formidable force in preserving the rights and overall welfare of GBV survivors who seek refuge.

Therefore, explicit inclusion of gender as a recognized category within the legislative framework governing refugee law for each sovereign state represents a stride toward eliminating the arbitrary nature of the treatment meted out to women who have already endured violations of their fundamental human rights.

## 1.8 LITERATURE REVIEW

*“After Ms. P, a native of Kenya gave birth to their third son, her husband began to control all aspects of her life, forcing her to quit her job and inflicting severe and routine physical and sexual abuse. He beat her in public and at home, leaving scars and, on at least one occasion, permanent injuries. When Ms. P’s husband became involved with another woman, the beatings intensified, and he infected Ms. P with syphilis and gonorrhea. The medication Ms. P took to cure the infections caused a miscarriage of their fourth child. Ms. P’s husband also threatened to kill her. When Ms. P went to her parents’ town, her husband came looking for her. Although the police became involved on more than one occasion during her marriage, they did little to protect Ms. P. Finally, made the heart-wrenching decision to leave her children in the care of her brother, and she fled Kenya to the United States in desperation.”<sup>49</sup>*

The presiding judge in the aforementioned case expressed skepticism regarding the connection between the maltreatment endured by Ms. P and any established protected grounds.<sup>50</sup> In essence, the judge implied that domestic violence, a subset of Gender-Based Violence (GBV), does not inherently constitute a valid basis for seeking asylum or refugee status. In light of this judgment, Blain Bookey underscores the pressing necessity for comprehensive guidance to aid adjudicators in navigating the multifaceted spectrum of GBV-related asylum claims, particularly as domestic violence is predominantly rooted in gender-based factors and lacks alternative explanations.<sup>51</sup>

Jessica Marsden posits that Gender-Based Violence (GBV) encompasses instances where a woman faces persecution attributable to her gender.<sup>52</sup> Gender-specific violence entails acts like

---

<sup>49</sup> CGRS Database Case #8491,2011.

<sup>50</sup> United Nations Convention Relating to the Status of Refugees, 28 July 1951. The protected grounds include race, nationality, religion, membership to a particular social group or political opinion.

<sup>51</sup> Bookey B, ‘Domestic violence as a basis for asylum: An analysis of 206 case outcomes in the United States from 1994 to 2012’, *Hastings Women’s LJ*, 24, 2013, 107.

<sup>52</sup> Marsden J, ‘Domestic Violence Asylum After Matter of L-R’ 123, *Yale Law Journal*, 7, 2014, 2116.

rape, sexual violence, and forced abortion.<sup>53</sup> Historically, legal authorities and courts have typically acknowledged gender-specific harm stemming from protected grounds as a legitimate foundation for a successful asylum or refugee application.<sup>54</sup> Conversely, according to David and Neal, the legal apparatus has manifested a conspicuous reluctance in recognizing domestic violence as an occurrence rooted in gender-related factors, thereby dismissing it as a justification for requesting asylum or refugee status.<sup>55</sup>

However, Karen Musalo thinks that there are others who contend that the Refugee Convention and Protocol have anything to do with the status of refugees.<sup>56</sup> were not originally designed to encompass protection for women escaping Gender-Based Violence (GBV) assert their position by pointing to the challenge of these claims meeting the requirements<sup>57</sup> outlined in the Convention's five recognized grounds of persecution, none of which explicitly encompasses gender as a standalone category.<sup>58</sup> The resistance encountered by claims related to domestic violence largely emanates from a misconception that such violence can have causes unrelated to gender.<sup>59</sup> This misapprehension gives rise to a flawed rationale, resulting in the denial of refugee status to some individuals seeking protection in certain instances.

According to a thorough World Bank study, gender-based violence (GBV) is a serious worldwide problem that affects one in three women's lives at some point in their lives.<sup>60</sup> The numbers that follow are really alarming: Physical or sexual abuse in intimate relationships, as well as non-partner sexual assault, has affected 35% of women globally.<sup>61</sup> Seven percent of women worldwide report having been sexually assaulted by someone who wasn't a close partner. In addition, it is a startling fact that 38% of women's homicides are carried out by their intimate partners. Finally, the horrifying practice of female genital mutilation has been experienced by up to 200 million women.<sup>62</sup>

---

<sup>53</sup> Binaifer A, 'Rethinking Gender-Related Persecution, Sexual Violence, and Women's Rights: A New Conceptual Framework for Political Asylum and International Human Rights Law' *Tex. J. Women & L.* 6, 1996, 24

<sup>54</sup> Edwards A, 'Transitioning gender: Feminist engagement with international refugee law and policy 1950–2010' *Refugee Survey Quarterly*, 29, 2 2010, 21–45.

<sup>55</sup> David L, 'Women as a social group: Recognizing sex-based persecution as grounds for asylum.' *Columbia Human Rights Law Review*, 20, 1988, 203.

<sup>56</sup> Protocol relating to the Status of Refugees, 16 December 1966.

<sup>57</sup> Musalo K, 'Protecting Victims of Gendered Persecution', 14, *Virginia Journal of Social Policy and the Law*, 2007, 1

<sup>58</sup> United Nations Convention Relating to the Status of Refugees, 28 July 1951

<sup>59</sup> Michael P, 'Gender and types of intimate partner violence: A response to an anti-feminist literature review Aggression and violent behavior', 16, 4, 2011, 289–296.

<sup>60</sup> Willman M, and Crystal C. 'Sexual and gender-based violence: what is the world bank doing and what have we learned, a strategic review,' 2013.

<sup>61</sup> Adhena, G 'Magnitude of intimate partner violence and associated factors among pregnant women in Ethiopia' *Advances in Public Health* 2020, 1–9.

<sup>62</sup> World Health Organization Report, 9 March 2021.

An increasing number of women are being compelled to leave their home countries in order to escape the pervasive violence they experience as protracted violent wars exacerbate Africa's refugee crisis.<sup>63</sup> It is also significant that one specific aspect of gender-based violence (GBV) is sexual violence. <sup>64</sup>disproportionately affects early adolescents, specifically those aged 15 and below, in conflict-ridden and post-conflict nations.<sup>65</sup>The Democratic Republic of the Congo (DRC), Mozambique, Uganda, and Zimbabwe are notable instances..<sup>66</sup>

For instance, a considerable number of refugees—primarily women and children—have entered Tanzania through Kigoma since December 2016 in an attempt to escape the violence that has overtaken the Democratic Republic of the Congo.<sup>67</sup> Recent statistical data, as of December 31, 2021, underscores the scope of this humanitarian challenge, with Kenya presently hosting half a million refugees and asylum seekers, with a noteworthy half of this population comprising women.<sup>68</sup> These refugees predominantly originate from neighboring countries ensnared in political turmoil and protracted armed conflicts.

The acknowledgment of gender as a valid basis for asylum claims remains notably deficient in many countries, including Kenya. Consequently, the challenge of domestic violence not being accorded due gravity as a legitimate foundation for refugee or asylum claims cannot be adequately resolved by presuming that the current interpretation of the definition of a refugee as stated in Refugee Act of 2021, Section 3 in Kenya inherently encompasses gender. Rather, the more immediate imperative lies in ensuring the unambiguous inclusion of gender within the provision itself.

## 1.9 METHODOLOGY

This study will make use of the substantial corpus of academic literature in the subject of refugee studies in order to effectively answer the research questions and achieve the research objectives. The sources that will be employed will be a wide variety of scholarly publications, such as books, journal articles, UNHCR reports, dissertations, theses, working papers, and credible newspaper stories.

These sources will be leveraged to investigate the imperative of recognizing Gender-Based Violence (GBV) as a legitimate basis for seeking refugee status and advocating for its explicit inclusion within the Refugee Act Kenya 2021.

---

<sup>63</sup> Crisp J, 'No solutions in sight: the problem of protracted refugee situations in Africa' *Refugee Survey Quarterly* 22,4,2003, 114-150.

<sup>64</sup> European Commission, Gender-Based Violence, [What is gender-based violence?](#) 18 February 2022.

<sup>65</sup> Torrisi O 'Armed conflict and family outcomes: the consequences of exposure to war on fertility, teen marriage and intimate partner violence' published dissertation, London School of Economics and Political Science, London,2022.

<sup>66</sup> United Nations Population Fund, [Gender-based violence](#).

<sup>67</sup> Mtambalike K, Congolese refugees pour into Tanzania On 17 December 2018

<sup>68</sup> UNHCR, Kenya Statistics Package, [KENYA STATISTICS PACKAGE](#) 31 December 2021.

This study will also take into account pertinent international treaties relating to refugees, including the 1951 Convention on the Status of Refugees, and pertinent Kenyan statutes, such as the Refugee Act. This inquiry aims to analyze the disparities in the handling of cases involving discrimination against women and to define Kenya's legal obligations under both national and international law for protecting victims of gender-based violence.

## **2.0 CHAPTER BREAKDOWN**

We shall investigate the relationship between gender-based violence and refugee legislation in the first chapter of this paper. This introduction will examine the institutional framework in Kenya that is in charge of managing the process of determining a person's status as a refugee. Moreover, it will elaborate on Kenya's responsibilities concerning International Refugee Law, which are highlighted by the country's acceptance of multiple treaties and protocols intended to tackle refugee-related issues.

The international legal frameworks governing refugee protection and gender-based violence will be examined in the second chapter, with an emphasis on its applicability to Kenya. In addition, I will assess how these principles have been incorporated into Kenyan domestic law and investigate the institutional and legal frameworks put in place to address gender-based violence in the nation. The chapter's ultimate goal is to add to the current conversation about improving protection for victims and refugees of gender-based violence by offering a comprehensive understanding of the relationship between gender-based violence and refugee status in Kenya.

I will discuss the creation of thorough guidelines and standard operating procedures (SOPs) to direct personnel handling cases involving the determination of refugee status (RSD) in my third chapter. I will list the precise actions that must be done to put gender into the definition of a refugee when I wrap up this chapter.

The fourth chapter will discuss how denying women refugees access to basic services increases their vulnerability to additional harm as a result of gender being excluded as a factor in determining their status as refugees. I will also give instances of how, in reality, women refugees' access to basic services has been hampered by the removal of gender as a factor in determining refugee status. To wrap up, I'll give an example of how the removal of gender from the criteria for determining refugee status affects the attempts of female refugees to start over.

Chapter 5 will be my conclusion. This will be a summary of my arguments that human rights are violated and structural injustices are made worse by the removal of gender from the criteria for assessing refugee status in the Refugee Act 2021, which ignores gender-based violence (GBV) as a serious issue. To protect victims of gender-based violence, the term "gender" should be included in the description of a refugee under Section 3 of the Refugee Act 2021. By doing this, systematic injustices would be eliminated, GBV victims would have access to the necessary

protection, and it would be made abundantly evident that GBV is a serious kind of persecution. I will also provide recommendations on how the Refugee Act's gender inclusivity should be put into practice.

## **CHAPTER 2**

### **THE REGULATORY FRAMEWORK GOVERNING REFUGEE STATUS AND ITS SIGNIFICANCE TO SAFEGUARDING VICTIMS OF GENDER-BASED VIOLENCE**

#### **1.0 INTRODUCTION**

The chapter looks at the international legal frameworks that govern gender-based violence and refugee protection, as well as how relevant they are to Kenya. It examines the ways in which Kenyan domestic law has adopted these ideas. The chapter also examines the institutional and legal frameworks put in place in Kenya to combat gender-based violence, including a review of the programs for assistance and legal protection that are now in place. The chapter's overall goal is to contribute to the continuing discussion on strengthening protection for refugees and

survivors of gender-based violence while offering a thorough grasp of the process of giving GBV victims refugee status in Kenya.

## 1.1 INTERNATIONAL LAW

### A. THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS PROTOCOL

The 1951 United Nations Convention relating to the Status of Refugees, which is based on Article 14 of the 1948 Universal Declaration of Human Rights, which upholds the right of individuals to apply for asylum in other nations in order to avoid persecution, is the cornerstone of current international refugee protection.<sup>69</sup> A post-World War II document, the 1951 Convention was initially restricted to individuals fleeing inside Europe and events that took place before January 1, 1951. However, these restrictions were removed by the 1967 Protocol, granting the Convention universal applicability.<sup>70</sup>

By merging previous international accords pertaining to refugees, the 1951 Convention provides the most complete international statement of refugee rights.<sup>71</sup> Unlike earlier international accords on refugees, which covered many categories of refugees, Article 1 of the 1951 Convention adopts a single meaning of the term "refugee."<sup>72</sup> Protecting individuals from political or other forms of persecution is the main goal of this concept. A person is considered to be a refugee under the Convention if they are unable or unwilling to return to their home country due to a sincere fear of persecution due to their race, religion, nationality, membership in a specific social group, or political convictions.<sup>73</sup>

On the other hand, an international document known as the 1967 Protocol Relating to the Status of Refugees extended upon the legal framework established by the 1951 Convention Relating to the Status of Refugees. It did away with time and place constraints, broadened the definition of a refugee, reiterated the anti-discrimination law, presented the idea of non-refoulement, and emphasized cooperation between governments. The agreement has improved refugees' legal protection and been widely ratified, yet there are still problems and gaps..<sup>74</sup>

---

<sup>69</sup> United Nations General Assembly resolution 429(V) of 14 December 1950, available at <http://www.unhcr.org/refworld/docid/3b00f08a27.html>.

<sup>70</sup> United Nations General Assembly resolution 2198 (XXI) of 16 December 1967, available at <http://www.unhcr.org/refworld/docid/3b00f1cc50.html>.

<sup>71</sup> Zimmermann A, Dörschner J, and Machts, F, *the 1951 Convention relating to the status of refugees and its 1967 protocol: A commentary*. Oxford University Press, USA,2011.

<sup>72</sup> Walker K, 'Defending the 1951 Convention Definition of Refugee' *Geo. Immigr. LJ*, 17,2002 583.

<sup>73</sup> Fullerton M, 'A comparative look at refugee status based on persecution due to membership in a particular social group' *Cornell International Law Journal*, 26, 505,1993.

<sup>74</sup> Zimmermann A, Dörschner J, and Machts, F, *the 1951 Convention relating to the status of refugees and its 1967 protocol: A commentary*. Oxford University Press, USA,2011.

### **1.1.1 Definition of a refugee pursuant the 1951 Convention Relating to the Status of Refugees**

The term of refugee under the 1951 Convention inherently excludes the experiences of women. Women's claims have encountered superfluous conceptual barriers because gender has not been covered in the terminology itself. It is now commonly accepted that the 1951 Convention's definition of a refugee should be interpreted holistically, taking prospective gender traits into consideration, seventy years after it was formed. This offers a gender-sensitive reading, but it doesn't address the real problem.<sup>75</sup>

This indicates that the subject of women's gender-based rights under the 1951 Convention grounds of "particular social group" and "political opinion" is fraught with uncertainty and limitations. The absence of clear definitions surrounding the term "particular social group" has drawn criticism, resulting in differing interpretations and protection gaps. Adjudicators who do not consider women's experiences to be political have also frequently opposed the claims made by women under the category of "political opinion." Their claims are therefore assessed under other headings, such as "particular social group."<sup>76</sup>

To guarantee the applicability of the 1951 Convention to evolving circumstances, the framers deliberately incorporated a level of flexibility in defining persecution.<sup>77</sup> Nevertheless, despite this adaptable definition, numerous claims made by women have gone unrecognized due to the predominance of a male-oriented framework in the conceptualization of refugees.<sup>78</sup> Women's claims are burdened further because gender is not included in the Convention grounds; instead, they must fit their experiences of violence into the male-defined grounds and criteria that are now in place.<sup>79</sup> As a result of this International Law inadequacy it becomes imperative to explicitly incorporate the term "gender" within the refugee definition in the Section 3 of Refugees Act 2021 Kenya to address this issue.

Adding gender as a category would give women who are persecuted because of their gender or simply for being women a chance to have their stories acknowledged in the refugee discourse.. This would prevent the claims made by women who are not politically active from being classified as "political opinion" or "particular social group."<sup>80</sup> Rather than depending only on the

---

<sup>75</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*,2021.

<sup>76</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*,2021

<sup>77</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*,2021

<sup>78</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*,2021.

<sup>79</sup>Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*,2021.

<sup>80</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*,2021.

insufficiency of State protection, decision makers could recognize women's claims for refugee status owing to gender-related persecution by doing a second analysis.

**B. UNHCR 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<sup>81</sup>**

The UNHCR implemented the "UNHCR Guidelines on International Protection" in response to the global refugee crisis.<sup>82</sup> The primary objective was to protect the rights and well-being of refugees who are forced to flee their homes due to conflict, persecution, or human rights violations. These guidelines offer a comprehensive framework for the interpretation and application of international refugee and human rights laws, ensuring that refugees are not subjected to further harm or discrimination.<sup>83</sup> Given its membership in the UNHCR, Kenya ought to heed the legal interpretation guidelines provided by the UNHCR Guidelines on International Protection, even though they are not legally binding.

These Guidelines specifically address how to interpret the 1951 Convention's Article 1A (2) definition of refugee from a gender perspective. Additionally, they recommend a few procedural steps to ensure that female applicants are given the proper weight during the refugee status determination process and that the range of gender-related claims are recognized as such.<sup>84</sup> It is a well-established notion that in order to accurately decide claims to refugee status, the refugee definition should be read in light of any potential gender characteristics.<sup>85</sup>

While gender isn't specifically addressed in the definition of a refugee, these guidelines recognize that it can have an impact on the kind of harm or persecution endured as well as the need for medical attention.<sup>86</sup> The refugee definition, properly interpreted, therefore covers gender-related claims. However, this interpretation only goes a long way in ensuring that survivors of GBV are acknowledged and their claims are given consideration.

The shortcomings of these guidelines are far more extensive than we realize. The UNHCR Guidelines on International Protection are not legally binding, meaning states are not obligated to comply with them and can deviate from the guidance without facing legal consequences. This

---

<sup>81</sup> UNHCR Guidelines on International Protection

<sup>82</sup> Simeon, J. .The UNHCR and the supervision of international refugee law. *Cambridge University Press, 2013.*

<sup>83</sup> UNHCR Guidelines on International Protection: Gender-Related Persecution, On 7 May 2002,

<sup>84</sup> UNHCR Guidelines on International Protection: Gender-Related Persecution, On 7 May 2002, para 9-13

<sup>85</sup> Executive Committee Conclusions: No.39, Refugee Women and International Protection, 1985; No.73, Refugee Protection and Sexual Violence, 1993; No.77(g), General Conclusion on International Protection, 1995; No.79(o), General Conclusion on International Protection, 1996; and No.81(t), General Conclusion on International Protection, 1997.

<sup>86</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26 ,1993, 625.

lack of enforceability leads to limited accountability for states that fail to comply, as affected individuals and the UNHCR have no recourse to take legal action or hold the state accountable.<sup>87</sup>

Additionally, the non-binding nature allows for varying interpretations and understanding by different states, resulting in inconsistency and potentially unequal treatment of refugees across countries. This inconsistency and unpredictability in the treatment of refugees creates difficulties for stakeholders in understanding and anticipating how different states will interpret and apply international protection standards.

Furthermore, the non-binding nature of the guidelines can also lead to governments prioritizing political considerations over their obligations. National security concerns, economic factors, and domestic political dynamics can influence a state's approach to refugee protection, potentially resulting in policies that deviate from international standards established by the UNHCR. Overall, the lack of legal enforceability and binding obligations of the UNHCR guidelines undermine consistency, predictability, and responsibility in the global refugee protection.

Apart from the lack of enforceability, the Guidelines' lack of specificity on the steps to be taken during the process of determining the refugee status of the GBV survivors makes it possible that they won't offer clear, helpful guidance on how to recognize and assist them. For instance, there might not be explicit guidelines on how to interview survivors in a respectful and trauma-informed manner, evaluate the veracity of their accounts, or make the right referrals for health, mental health, or legal assistance.<sup>88</sup>

Due to these constraints, personnel tasked with assessing refugee status may respond inconsistently or inadequately since they may not know exactly how to proceed when interacting with survivors of gender-based violence.<sup>89</sup> This may make it more difficult to give survivors the proper care and protection, putting them at risk for more trauma and injury.

For the reasons aforementioned, I argue that evaluating GBV claims requires more consideration than what the Guidelines prescribe. Kenya ought to proceed with incorporating gender into the definition of a refugee, as mandated by Section 3 of the Refugee Act 2021.

---

<sup>87</sup>Steiner N, Gibney M, and Loescher G, *Problems of protection: the UNHCR, refugees, and human rights*, Psychology Press, 2003.

<sup>88</sup>Muuo S, Muthuri, K, and Mutua, K, et al, 'Barriers and facilitators to care-seeking among survivors of gender-based violence in the Dadaab refugee complex' *Sexual and reproductive health matters*, 28(1), 2020.

<sup>89</sup>Muuo S, Muthuri, K, and Mutua, K, et al, 'Barriers and facilitators to care-seeking among survivors of gender-based violence in the Dadaab refugee complex' *Sexual and reproductive health matters*, 28(1), 2020.

### **C. UNHCR HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING THE STATUS OF REFUGEES <sup>90</sup>**

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status is a thorough manual designed to support governments, asylum officials, and attorneys handling refugee claims. It offers comprehensive instructions for interpreting and putting into practice the legal definitions and standards outlined in the 1967 Protocol to the 1951 Refugee Convention.

The handbook covers a wide range of topics, including the definition of a refugee, the non-refoulement principle, exclusion clauses, and the procedure for assessing refugee status. Along with procedural safeguards to guarantee a fair procedure, it also establishes international human rights and humanitarian law principles that ought to be taken into account. The manual places a strong emphasis on the value of coordination and cooperation between the various parties involved in refugee assistance.

#### **1.1.2 Well-Founded Fear of Persecution**

Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, a key component in determining a person's refugee status is the idea of a "well-founded fear of persecution". States can use the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status as a guide when interpreting and implementing the terms of these international agreements.

The UNHCR Handbook defines a well-founded fear of persecution as a substantial risk of serious harm or threat to life, freedom, or fundamental human rights in an individual's country of origin, based on factors like political opinion, religion, nationality, ethnicity, or social group membership. This fear must be subjective and objective.

Decision-makers should evaluate the consistency, coherence, and plausibility of the applicant's narrative in addition to the presence of corroborating evidence when determining the applicant's claim's credibility. This indicates that the petitioner bears the burden of proof. To assess the veracity of the fear of persecution, one should also consider the individual's unique circumstances, including prior experiences, social background, and national environment.<sup>91</sup>

I find it problematic that this is being compared to GBV. My worries stem from the fact that the person asserting a legitimate fear of persecution bears the burden of evidence. In this instance, the victim would be a GBV survivor who has already gone through a great deal and still needs to demonstrate that they fear additional persecution. According to the UNHCR handbook, the

---

<sup>90</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1979.

<sup>91</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*, 2021.

claimant has the burden of evidence when making a refugee claim, although both the claimant and the examiner have an obligation to gather and evaluate all pertinent information. In such situations, the examiner might have to use every resource at their disposal to gather the proof required to bolster the application.<sup>92</sup>

However, independent study might not always produce fruitful outcomes, and certain claims might not be verifiable. In these situations, the applicant should be given the benefit of the doubt unless there are compelling reasons to suspect their authenticity. A stringent implementation of the proof criterion must be avoided, given the difficulties in proving refugee status.<sup>93</sup>

Concerns are raised when asylum seekers—especially marginalized groups like GBV survivors—are expected to bear the weight of proof. Trauma can impair memory, evidence may be lost or destroyed, and voices may be silenced due to fear of retaliation. We need to take a sophisticated approach to this. First of all, admit the challenge. Acknowledge the particular difficulties GBV sufferers have when presenting proof.<sup>94</sup>

Secondly, shift the focus. Emphasize the shared responsibility of both applicant and decision-maker in gathering evidence. Encourage active evidence-seeking from the examiner, utilizing country reports, expert testimonies, and available resources. When evidence is limited due to justifiable reasons, the benefit of the doubt should be given. Additionally, consider trauma-informed interview techniques to create a safe space for disclosure.

The UNHCR Handbook already suggests this shared responsibility. Examiners have a duty to collect all relevant facts, even if it requires extra effort. Additionally, the benefit of the doubt should be applied when evidence is lacking due to justifiable reasons. Beyond this, explore alternative forms of evidence, like witness testimonies or community reports, and tailor the process to individual needs. Remember, it's crucial to provide support and resources throughout this process.

For many women, establishing their refugee status comes with substantial additional obstacles because the burden of proof lies with the claimant. These women might not be able to read or write since they are from nations where education has been denied to them. Their inability to engage in meaningful social interactions may hinder their ability to express oneself clearly. Furthermore, a number of women live in seclusion, which makes it challenging to learn about their situations and medical care. Additionally, it's questionable if they can get sufficient state protection.<sup>95</sup>

---

<sup>92</sup> [Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees | UNHCR France](#)

<sup>93</sup> [Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees | UNHCR France](#)

<sup>94</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*, 2021.

<sup>95</sup> Fehrmann T, *Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol*, 2021

Consequently, I have deduced that the handbook aggravates the existing difficulty for victims of gender-based violence (GBV) in obtaining refugee status. The fact that gender is considered a distinct basis for persecution necessitates certain provisions, e.g. burden of proof as mentioned previously, to be specifically designed to address the needs of GBV survivors, who predominantly consist of women and girls.

## 1.2 DOMESTIC LAWS

### THE REFUGEES ACT<sup>96</sup>

In Kenya, the scope of refugee status is governed by the definitions under section 3 of the Refugees Act 2021. The 2021 Refugees Act has brought about a significant change in Kenya's refugee situation. <sup>97</sup>The Act's primary goal is to provide greater legal protection. By complying with the 1951 Refugee Convention and other relevant treaties, the Act broadens the concept of "refugee" and streamlines asylum procedures, assuring fairer and faster rulings. The Refugees Act 2021 however has a gender-exclusive definition of a refugee in Section 3. Consequently, GBV survivors face serious dangers and problems due to the omission of gender from the category.<sup>98</sup>

The Kenyan Refugee Act 2021 was enacted to align with international refugee law principles, including those outlined in the UNHCR Handbook and the Guidelines for Protection of Refugees. The Act was developed with the intention of ensuring that Kenya's legal framework for refugee protection is in line with international standards set by UNHCR.<sup>99</sup>

In particular, many of the fundamental ideas and clauses found in the UNHCR Handbook and Guidelines—such as the principle of non-refoulement, the right to apply for asylum, the availability of essential services, the prohibition against discrimination, and the rights of refugees to employment and education—are incorporated into the Kenyan Refugee Act 2021.

While there may be minor differences between the Kenyan Refugee Act 2021 and the UNHCR Handbook and Guidelines for Protection of Refugees due to the specific context and legal framework of Kenya, the general objective of both documents is to provide adequate protection and support for refugees in line with international standards.

The Refugees Act 2021 however has a gender-exclusive definition of a refugee in Section 3. Consequently, GBV survivors face serious dangers and problems due to the omission of gender

---

<sup>96</sup> Refugees Act No. 10 of 2021.

<sup>97</sup> Refugees Act No. 10 of 2021

<sup>98</sup> Njoku C, Humanitarian Protection in International Refugee Law, Sexism and Exclusion: Case for Human Rights Assessment, 2023.

<sup>99</sup> Hyndman J, & Nylund B, 'UNHCR and the status of prima facie refugees in Kenya' International Journal of Refugee Law, 10, 1998,30.

from the category. The Act has yet to address the prevalent issue of inadequate protection of GBV survivors and my suggestion is that, by including gender in the definition, GBV survivors will have an easier time seeking refugee status.<sup>100</sup>

### **1.3 THE REGULATORY FRAMEWORK UNDERPINNING GENDER-BASED VIOLENCE**

Violence against women was not considered a legitimate topic for international human rights law until quite recently. As a result, a number of regional and global tools are in place to safeguard women and girls from gender-based violence. One of the most important international law ideas is the concept of due diligence. A standard of care is established by the due diligence principle to assess whether a state has fulfilled its international obligations.<sup>101</sup>

Many international agreements and treaties now specifically acknowledge the state as being responsible for human rights breaches committed by private actors in both the public and private spheres. A state owes its citizens both positive and negative duties. One of one's responsibilities is to refrain from acts of violence against women as well as to prevent and protect them from violence. In a similar vein, the state has an obligation to prosecute offenders and compensate victims of violence. There may be legal repercussions under international law if the state fails to take reasonable and effective action to prevent or rectify violations of women's rights. For instance, DEVAW gives nations explicit guidelines to "not invoke any custom, tradition, or religious consideration to avoid their obligations with regard to its removal".<sup>102</sup>

### **1.4 KENYAN LEGISLATION**

#### **I. Sexual Offences Act<sup>103</sup>**

In reaction to the increasing incidence of sexual violence, the Sexual Offences Act was passed, with the main goal being to protect victims' rights by outlining sexual offenses, prohibiting them, and setting minimum penalties. In addition to addressing topics like child trafficking, prostitution, and sex tourism, it covers a wide range of acts, such as defilement, rape, sexual harassment, and exploitation.

Notably, it marks the first recognition of sexual harassment as a crime in Kenya's legal history. Despite its implementation, challenges persist, such as inadequate training for law enforcement

---

<sup>100</sup> Njoku C, Humanitarian Protection in International Refugee Law, Sexism and Exclusion: Case for Human Rights Assessment, 2023.

<sup>101</sup> Black's Law dictionary defines due diligence as diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. BA Garner Black's Law Dictionary 9, 2009, 488.

<sup>102</sup> Article 4 of DEVAW.

<sup>103</sup> Act No. 3 of 2006

and limited public awareness, mainly addressed by Civil Society Organizations. The Act does not make marital rape a crime, and inadequate casework leads to a low conviction rate, depriving survivors of justice. The Anti FGM Act of 2011 eventually closed the first loophole that prevented female genital mutilation (FGM) for women beyond the age of 18.<sup>104</sup>

One major limitation of the Act is that it mainly addresses individual acts of violence and fails to address the systemic and cultural factors that perpetuate GBV. It also neglects certain forms of GBV, such as marital rape and sexual harassment, leaving some victims without legal recourse. This limitation highlights a significant gap in the current legal framework regarding GBV. By failing to address the systemic and cultural factors that perpetuate GBV, and neglecting certain forms of GBV such as marital rape and sexual harassment, the legislation leaves victims without adequate legal recourse. This gap is particularly concerning because GBV continues to perpetuate, putting individuals at risk of ongoing harm.

By including gender in the refugee definition of section 3 of the Kenyan Refugee Act, the Act can address the limitations mentioned regarding the failure to address systemic and cultural factors perpetuating gender-based violence (GBV) and neglecting certain forms of GBV such as marital rape and sexual harassment.

Including gender in the refugee definition allows for a more comprehensive understanding of the experiences of individuals who are seeking refugee status due to GBV.<sup>105</sup> It acknowledges that GBV encompasses not only specific violent acts but also more general structural problems and cultural elements that support the continuation of violence against particular genders.<sup>106</sup> The Act can address the underlying causes of gender-based violence and offer protection to those who are vulnerable because of their gender identity by acknowledging gender-based persecution as a basis for refugee status.

Moreover, including gender in the definition of refugee allows for a more nuanced assessment of asylum seekers' cases.<sup>107</sup> It enables the Kenyan government to consider gender-specific forms of persecution, such as sexual violence, enforced marriage, or discrimination based on gender identity, when determining refugee status. This approach ensures that individuals who are at risk of GBV, including forms such as marital rape and sexual harassment, are not left without legal recourse.

---

<sup>104</sup> The Anti FGM Act

<sup>105</sup> Jensen, M, 'Gender-based violence in refugee camps: Understanding and addressing the role of gender in the experiences of refugees' *Inquiries Journal*, 11,2,2019.

<sup>106</sup> Russo N, & Pirlott A, 'Gender-based violence: concepts, methods, and findings' *Annals of the New York academy of sciences*, 2006,178-205.

<sup>107</sup> Aberman, T, Gendered Perspectives on Refugee Determination in Canada. *Refuge: Canada's Journal on Refugees*, 30(2),2014, 57-66. <https://www.jstor.org/stable/48648752>

The Kenyan Refugee Act can more effectively handle the intricacies of GBV and offer sufficient protection to those who are persecuted because of their gender by incorporating gender into the category of refugee. This is a critical step in ensuring that victims of gender-based persecution have access to the protections and legal remedies they so desperately need, as well as in filling the large gap in the legal framework regarding GBV. It also shows a dedication to protecting human rights and advancing gender parity when it comes to refugee protection.

#### **1.4.1 Challenges that may arise while granting refugee status to GBV survivors**

A number of issues need to be resolved before granting victims of gender-based abuse refugee status. First of all, it can be challenging to characterize the persecution that these victims have endured. It is important to set precise standards and rules since different jurisdictions may have different ideas about what qualifies as persecution, which can cause differences in refugee decisions.<sup>108</sup>

The 1951 Refugee Convention, which established the international definition of refugees, is a vital instrument for defending those who are escaping persecution. But different jurisdictions interpret this definition differently, which results in inconsistent decisions about refugees and gaps in protection for those who need it.

One of the key differences in interpretation lies in the severity and imminence of the threat required to qualify as a refugee.<sup>109</sup> Some countries require concrete evidence of harm or imminent fear, while others take into account the broader context of discrimination and vulnerability. Additionally, the definition of persecution can vary depending on whether it pertains to individuals or groups, with some jurisdictions focusing on individual targeting and others recognizing systemic discrimination against entire groups.

Another point of contention is the distinction between persecution by state and non-state actors. While some countries only consider persecution by state actors, others acknowledge the role of non-state actors such as militias or criminal gangs, particularly when the state is unable or unwilling to protect individuals. Furthermore, the internal flight alternative, where refugees may have to seek safety within their home country before applying for asylum abroad, is interpreted differently across jurisdictions.

Jurisdictional examples further illustrate the diversity in interpreting refugee definitions. Canada places emphasis on individual targeting and specific evidence of harm, while the United States recognizes persecution by non-state actors but requires a nexus to a protected ground. The European Union emphasizes broader societal discrimination and group-based persecution, while Australia has a stricter stance on internal flight alternatives.

---

<sup>108</sup> Maiani F, 'The concept of "persecution" in refugee law: Indeterminacy, context-sensitivity, and the quest for a principled approach' *Les dossiers du Grihl*, 2022.

<sup>109</sup> McAdam, J, 'The European Union qualification directive: the creation of a subsidiary protection regime' 3 *International Journal of Refugee Law*, 17, 2005,461-516.

These varying interpretations have significant consequences, including inconsistency in refugee decisions, protection gaps for individuals facing broader forms of discrimination, and increased pressure on asylum systems. Addressing these inconsistencies requires efforts to harmonize refugee law, improve data collection and sharing, and build capacity for asylum systems globally. The Global Refugee Framework is one example of such efforts aimed at promoting consistency and fairness in refugee protection.

The determination of refugee status is a crucial aspect of international protection for individuals who have fled their countries due to fear of harm and persecution. The United Nations High Commissioner for Refugees (UNHCR) plays a significant role in assessing and determining the grounds for refugee status under the 1951 Convention and its protocol.<sup>110</sup> The eligibility criteria for refugee status are based on key elements that must be met in order to qualify for international protection.

One of the fundamental criteria for refugee status is the existence of a well-founded fear of persecution if the individual were to return to their country of nationality or habitual residence. This forward-looking assessment takes into account the individual's profile and experiences, relevant country of origin information, and the likelihood of facing harm upon return.<sup>111</sup> It also considers whether State authorities are willing or able to provide protection in cases where the risk of harm comes from non-State agents of persecution.<sup>112</sup>

Persecution is another key element in determining refugee status. The harm identified must be considered sufficiently serious to constitute persecution, based on international human rights standards and principles. The reasons for persecution must be linked to one or more of the grounds outlined in the 1951 Convention, including race, religion, nationality, membership of a particular social group, and political opinion.<sup>113</sup>

Additionally, UNHCR's mandate extends beyond the 1951 Convention definition to provide international protection to individuals who are outside their country of origin and unable or unwilling to return due to serious threats to life, physical integrity, or freedom resulting from generalized violence or public disorder. This broader refugee definition allows for the recognition of individuals who may not fall within the strict criteria of the 1951 Convention, provided they do not fall within the scope of the exclusion clauses.<sup>114</sup>

---

<sup>110</sup> Alexander M, 'Refugee status determination conducted by UNHCR' 2 *International Journal of Refugee Law*, 11, 1999,251-289.

<sup>111</sup> Alexander M, 'Refugee status determination conducted by UNHCR' 2 *International Journal of Refugee Law*, 11, 1999,251-289.

<sup>112</sup> The United Nations High Commissioner for Refugees (UNHCR) plays a significant role in assessing and determining the grounds for refugee status under the 1951 Convention and its protocol.

<sup>113</sup> The United Nations High Commissioner for Refugees (UNHCR) plays a significant role in assessing and determining the grounds for refugee status under the 1951 Convention and its protocol.

<sup>114</sup> The United Nations High Commissioner for Refugees (UNHCR) plays a significant role in assessing and determining the grounds for refugee status under the 1951 Convention and its protocol.

For GBV victims particularly, it can be difficult to find proof to back up their allegations. Many victims are not able to establish a well-founded fear of future harm because they do not have the required paperwork or witnesses to support their claims of persecution.<sup>115</sup>

People may apply for protection under the refugee status determination process on the basis of a variety of factors, such as race, religion, nationality, political opinion, or membership in a specific social group. Every one of these grounds has different issues and things to take into account. People who are fleeing persecution or prejudice because of their race or ethnicity, for example, may be the subject of targeted violence by non-state actors or institutionalized discrimination by the government.<sup>116</sup>

Similarly, those seeking asylum based on religion may encounter persecution stemming from restrictions on religious practice, attacks on religious minorities, or oppressive blasphemy laws. Meanwhile, individuals seeking refuge on the grounds of nationality may be subjected to discrimination or violence due to conflicts between different national or ethnic groups, discriminatory citizenship laws, or statelessness.<sup>117</sup>

In each case, individuals must provide evidence demonstrating a well-founded fear of persecution based on one of the protected grounds. However, like GBV cases, they may encounter difficulties in gathering evidence, such as a lack of documentation or witnesses.<sup>118</sup>

Making sure gender sensitivity is maintained throughout the process of determining refugee status presents another difficulty. It is critical to have officials with the necessary training who comprehend the particular vulnerabilities and experiences faced by victims of gender-based violence. Insufficient consideration of gender issues may lead to incorrect assessments of these situations, perpetuating pre-existing prejudices and impeding the protection of individuals requesting asylum.<sup>119</sup>

In addition, victims of gender-based violence frequently undergo stigmatization and may be unwilling to talk about their experiences for fear of discrimination or retaliation. Because of this, it becomes difficult for authorities to recognize them and evaluate their claims, which could result in the denial of refugee status. It can be difficult to provide victims of gender-based violence with appropriate protection measures, such as safe housing and access to psychosocial assistance, particularly in settings with limited resources, such processing facilities or camps for refugees.

---

<sup>115</sup> Anderson A, McAdam, J and Lambert H, 'A well-founded fear of being persecuted... But when?.' 2 *The Sydney Law Review*, 42, 2010, 155-180.

<sup>116</sup> Heyman G, 'Asylum, Social Group Membership and the Non-State Actor: The Challenge of Domestic Violence' *University of Michigan Journal of Law Reform*, 36, 2002, 767.

<sup>117</sup> Heyman G, 'Asylum, Social Group Membership and the Non-State Actor: The Challenge of Domestic Violence' *University of Michigan Journal of Law Reform*, 36, 2002, 767.

<sup>118</sup> Adjin-Tettey, E, 'Reconsidering the criteria for assessing well-founded fear in Refugee Law' *Manitoba Law Journal*, 25, 1997, 127.

<sup>119</sup> Goodkind R, & Deacon Z, 'Methodological issues in conducting research with refugee women: Principles for recognizing and re-centering the multiply marginalized' *Journal of Community Psychology*, 32, 2004, 721-739.

The identification and treatment of gender-based violence are further complicated by cultural considerations and interpretation. The perceptions and reactions to such violence may vary depending on cultural norms and attitudes, and certain acts of violence may be accepted or justified in particular societies.<sup>120</sup> Thorough thought and cultural awareness are necessary to address these cultural aspects and guarantee an impartial and fair evaluation of situations involving gender-based violence.

#### **1.4.2 How the inclusion of gender in the refugee definition provided in Section 3 of the Refugees Act 2021 solves the challenges**

Through the explicit inclusion of gender as a criterion provided in Section 3, the law recognizes that victims of violence based on gender may qualify for refugee status. This guarantees that the experiences of victims of gender-based violence are acknowledged as legitimate reasons for requesting refuge, which helps to overcome the difficulty of defining persecution.

By affirming that such experiences constitute a form of persecution worthy of protection under refugee law. By recognizing GBV as a basis for refugee status, the law provides a crucial framework for addressing the complex intersection of gender, violence, and displacement, thereby offering greater protection to those most vulnerable to GBV-related persecution. Additionally, this explicit inclusion underscores a commitment to gender equality and human rights within the refugee protection system, signaling a recognition of the importance of addressing gender-specific forms of persecution and ensuring that GBV victims receive the support and protection they need to rebuild their lives in safety and dignity.

Additionally, in situations where victims lack typical documentation proof or witnesses to substantiate their claims, this inclusion aids in the consideration of other forms of evidence, such as reliable testimony and medical reports. The legislation fosters an atmosphere where the particular difficulties faced by victims of GBV in supplying evidence are recognized and what they assert is given due attention by taking into account these alternative evidentiary concerns.<sup>121</sup>

A gender-sensitive approach to the entire process of deciding refugee status is also encouraged by include gender in the definition of a refugee. This requires that all involved in the process understand the particular difficulties and weaknesses faced by victims of gender-based abuse. The law requires a gender-sensitive approach in order to address the issue of inadequate attention and inaccurate assessment of instances involving gender-based violence. It ensures that these

---

<sup>120</sup> Russo N and Pirlott, A, 'Gender-based violence: concepts, methods, and findings' 1 *Annals of the New York Academy of Sciences*, 1087,2006,178-205.

<sup>121</sup> McCreery E, 'Human Rights Obligations in Post-Disaster Haiti: Working toward Increased Justice for Victims of Gender-Based Violence' *Indiana International Law Review*, 28,2018, 63.

individuals' unique protection needs and concerns are taken into account, promoting an unbiased and fair assessment of their claims.<sup>122</sup>

Furthermore, if gender is taken into account when defining refugees, this helps combat the stigma attached to gender-based violence. Victims of gender-based abuse are more likely to feel comfortable sharing their stories and applying for refugee status when it is acknowledged as a basis for doing so. This recognition creates a safer and more supportive environment for victims to come forward, enabling authorities to identify and assess their claims more accurately.<sup>123</sup>

By including gender clearly in the definition of a refugee, the law highlights the necessity for further protective measures designed with the needs of victims of gender-based violence in mind. These include accommodations for safe housing, access to essential medical services, and emotional assistance. Despite potential financial limitations and conflicting priorities in refugee contexts, strengthening these protective mechanisms guarantees that victims of gender-based violence receive the assistance they need to reconstruct their lives.

## **1.5 CONCLUSION**

To conclude, in order to ensure effective implementation of the amended Refugees Act 2021 after the inclusion of gender in Section 3 we need to develop clear and detailed guidelines and standard operating procedures for officials handling refugee status determination cases. These guidelines should provide detailed instructions on how to assess gender-based violence claims, including alternative forms of evidence, credibility assessments, and the importance of confidentiality and privacy. The procedures should be designed to ensure a consistent and fair approach in assessing gender-based violence claims.

---

<sup>122</sup> Wirtz A, Pham K, Glass N and Loochkartt, et al 'Gender-based violence in conflict and displacement: qualitative findings from displaced women in Colombia' *1, Conflict and health*, 8, 2014,1-14.

<sup>123</sup> Jensen A, 'Gender-based violence in refugee camps: Understanding and addressing the role of gender in the experiences of refugees' *2 Inquiries Journal*, 11,2019,20.

## **CHAPTER 3**

### **ENSURING FAIR AND CONSISTENT ASSESSMENT OF GENDER BASED VIOLENCE CLAIMS IN REFUGEE STATUS DETERMINATION**

#### **1.0 INTRODUCTION**

The amendment of the Refugees Act of 2021 will represent a pivotal moment in the recognition and response to gender-specific vulnerabilities within the refugee context. By integrating gender considerations into Section 3, the Act acknowledges the distinct challenges encountered by individuals escaping gender-based violence (GBV) or being persecuted because of their gender identification.

However, the effective implementation of this amendment hinges upon the development of comprehensive guidelines and standard operating procedures (SOPs) to guide officials responsible for refugee status determination (RSD) cases. This chapter delves into the imperative nature of such guidelines and SOPs, delineating key components necessary for a sensitive and effective approach, particularly in assessing GBV claims.

In the next section I will show:

1. The significance of interpreting in a gender-sensitive manner asylum grounds, emphasizing the need for a more inclusive approach to protection for individuals fleeing GBV.

2. 2. The differentiation between personal injury and persecution, emphasizing the attitudes of society against women and the insufficient response of the government to various forms of
3. The importance of assessing the intensity and duration of GBV, the availability of state protection, the social and cultural context, and individual vulnerabilities.
4. The difficulties that women encounter seeking asylum, emphasizing the need for gender-sensitive interpretation of asylum grounds and recognizing Gender-based violence, or persecution, is one of its forms.

## 1.1 GENDER-BASED ASYLUM

Based on a "well-founded fear of being persecuted," the 1951 Convention on the Status of Refugees lists five acceptable grounds for asylum and provides the formal foundation for asylum and refugee policies in the majority of nations.<sup>124</sup> These grounds encompass persecution related to race, religion, nationality, political stance, and affiliation with a specific social group.<sup>125</sup> The 1951 Convention does not specifically address the predicament of women who are subjected to discriminatory patterns of traditional practices and behavior, sexual assault, rape, and other types of oppression because of their gender.<sup>126</sup>

The recognition of vulnerability among women seeking refugee status, particularly those facing Gender-Based Violence (GBV), is a crucial aspect of upholding the core tenets of gender-based asylum. It is imperative to acknowledge the unique challenges and risks that individuals fleeing GBV may encounter in their search for safety and protection. By recognizing GBV as a type of persecution qualifying for asylum, we affirm the need for a more inclusive and comprehensive approach to asylum protection.

However, as canvassed earlier, the UNHCR Handbook advocates for a "gender-sensitive interpretation" on the grounds.<sup>127</sup> They stress that claims pertaining to gender-based asylum must show how the persecution is connected to one of the listed reasons but in a setting that is unique to that gender.

While "Membership in a Particular Social Group" is a common justification for asylum in these circumstances, the proper justification can be vague, as persecution frequently falls under more

---

<sup>124</sup> Article 1, *United Nations Convention relating to the Status of Refugees* 1951.

<sup>125</sup> Article 1(2), *United Nations Convention relating to the Status of Refugees* 1951.

<sup>126</sup> UNHCR, *The 1951 Refugee Convention: Travaux Préparatoires Analyzed with a Commentary* by Dr Paul Weis <[THE REFUGEE CONVENTION, 1951](#)> Accessed 13th February 2024.

<sup>127</sup> *UNHCR Guidelines on International Protection: Gender-Related Persecution, On 7 May 2002*

than one category. For example, some asylum requests based on gender have been approved on the basis of political or religious beliefs.<sup>128</sup>

## 1.2 PERSECUTION BASED ON GENDER

Gender-based persecution refers to harm or discrimination inflicted on individuals due to their gender, including acts of violence, coercion, or control.<sup>129</sup> This can include a variety of violent acts, including forced marriage, female genital mutilation, sexual assault, domestic abuse, and violence motivated by honor.<sup>130</sup>

In the realm of gender-based asylum claims, a crucial differentiation lies in distinguishing personal harm from persecution.<sup>131</sup> While these two types of affliction may appear indistinguishable, the decisive factor rests on whether a judge or adjudicator deems the harm as strictly personal; in such cases, asylum is not granted.<sup>132</sup> Instances of persecution based on, encompassing domestic violence, honor killings, or conflict-related rape, are often misconstrued as personal or domestic matters, casting the victim merely as an unfortunate casualty of routine crime.<sup>133</sup>

The pivotal contrast between ordinary crime and persecution lies in demonstrating that the crime reflects a broader societal attitude towards women, and the home country's government is inadequately addressing or preventing such offenses.<sup>134</sup> This is substantiated by revealing discriminatory practices against women, serving as a breeding ground for the persecution of women.<sup>135</sup>

Examples include the denial of equal legal status, intentional lack of state protection in domestic matters involving abuse, and the enforcement of detrimental customs such as forced marriage and female genital mutilation, and polygamy.<sup>136</sup> Additionally, In addition, the denial of basic human rights and harsh penalties for breaking discriminatory societal norms designate gender-based violence as persecution as opposed to isolated or incidental incidents.<sup>137</sup>

---

<sup>128</sup> Stop Violence Against Women (StopVaw), *Gender Based Asylum*, January 2010 [Gender-Based Asylum](#)> Accessed 10th February 2024.

<sup>129</sup> Heaven Crawley, *Gender, persecution, and the concept of politics in the asylum determination process*, Forced Migration Review: Gender and Displacement, 16.

<sup>130</sup> Inka Lilja et. al, *Unseen Victims Report*, 11-12.

<sup>131</sup> StopVaw, *Gender Based Asylum*, [Gender-Based Asylum](#).

<sup>132</sup> Center for Gender and Refugee Studies, Hastings College of Law. Accessible on [Center for Gender and Refugee Studies](#)>

<sup>133</sup> Inka Lilja et. al, *Unseen Victims Report*.

<sup>134</sup> UNHCR *Guidelines on International Protection: Gender-Related Persecution*, On 7 May 2002.

<sup>135</sup> UNHCR *Guidelines on International Protection: Gender-Related Persecution*.

<sup>136</sup> Inka Lilja et. al, *Unseen Victims Report*.

<sup>137</sup> StopVaw, *Gender Based Asylum*, [Gender-Based Asylum](#).

In Kenya, there are more male than female refugees.<sup>138</sup> Decision-makers have neglected to acknowledge and address the gendering of politics and the state's relationship with women when using that term to particular situations, which adds to the particular difficulties experienced by many women seeking asylum.<sup>139</sup>

### 1.3 IDENTIFYING A WELL-FOUNDED FEAR OF PERSECUTION

When gender-based violence occurs, a legitimate fear of being persecuted may surface. When a woman can show that, because of her gender, she really runs the risk of suffering grave injury or mistreatment in her native country. This fear must be objectively reasonable, meaning that there is a credible threat supported by evidence or circumstances that indicate a likelihood of harm.

Various factors can be considered, these include: the severity and persistence of gender-based violence are critical factors in assessing a justified fear of being persecuted.<sup>140</sup> The severity of harm, encompassing physical, psychological, and emotional consequences, highlights the gravity of the threat faced by individuals, such as those who have experienced sexual assault or domestic abuse.<sup>141</sup> Additionally, the persistence of violence based on gender, whether recurrent or continuous, underscores the ongoing risk to the individual's safety and well-being, contributing to a legitimate fear of persecution.<sup>142</sup>

A well-founded fear of persecution's legitimacy is also significantly influenced by state protection and accountability. based on gender-based violence. The availability of state protection, including access to legal remedies and support services, is essential for individuals at risk.<sup>143</sup> In situations where legal systems are insufficient or complicit in the continuation of violence, it can exacerbate an individual's vulnerability and validate their fear of continued damage if the state fails to provide appropriate protection or punishment for those who commit gender-based violence.<sup>144</sup>

The background of gender-based violence in society and culture is essential in understanding the risks faced by individuals. Norms and practices that condone or normalize forceful marriages or other forms of violence against women honor killings, create a hostile environment where individuals are at heightened risk of persecution.<sup>145</sup> Stigmatization and discrimination against

---

<sup>138</sup> Statista, *Number of refugees and asylum seekers in Kenya from 2017 to 2021, by gender*. Accessible at <[Number of refugees and asylum seekers in Kenya 2017-2021, by gender](#)> Accessed on 9th February 2024.

<sup>139</sup> Heaven Crawley, *Gender, persecution, and the concept of politics in the asylum determination process*, Forced Migration Review: Gender and Displacement, 17.

<sup>140</sup> Inka Lilja et. al, *Unseen Victims Report*, 32, 37, 41.

<sup>141</sup> Inka Lilja et. al, *Unseen Victims Report*, 32.

<sup>142</sup> Inka Lilja et. al, *Unseen Victims Report*, 37, 41.

<sup>143</sup> Inka Lilja et. al, *Unseen Victims Report*, 74-77.

<sup>144</sup> Inka Lilja et. al, *Unseen Victims Report*, 77.

<sup>145</sup> Inka Lilja et. al, *Unseen Victims Report*, 43, 56, 72.

victims of gender-based violence further compound the challenges faced by individuals seeking protection, as societal attitudes may undermine their credibility and deter them from seeking help.<sup>146</sup>

Individual circumstances and vulnerabilities also influence the evaluation of a legitimate fear of persecution based on gender. Personal experiences of violence, including the nature and extent of harm suffered, provide crucial insights into the individual's risk of future persecution. Factors such as age, health status, socio-economic background, and family situation can increase vulnerability to gender-based violence, highlighting the intersecting dynamics that influence an individual's safety and protection needs.<sup>147</sup>

#### **1.4 GENDER-BASED VIOLENCE AND ASYLUM IN KENYA: REFUGEES INSIGHT**

Within the asylum setting, gender-based violence victims encounter an obstacle in the form of a referral system designed to safeguard them.<sup>148</sup> In the context of Kenya, the referral structure involves several key steps: upon arrival, asylum seekers typically register with the United Nations High Commissioner for Refugees (UNHCR) or other humanitarian organizations, where they undergo initial assessments to determine eligibility for refugee status. Those meeting the criteria are referred to the Kenyan government for further processing and the issuance of documentation. Once recognized as refugees, individuals gain access to services such as healthcare and education, often facilitated by UNHCR and its partners. For particularly vulnerable refugees, resettlement to a third country may be an option, coordinated by UNHCR in collaboration with receiving countries. Throughout these stages, coordination among UNHCR, government authorities, and other actors is essential, with community-based organizations and civil society groups also playing important roles in supporting as well as supporting refugee rights.<sup>149</sup>

The process that refugees and asylum seekers must go through could put them in danger of physical harm, even though the improvement of victim services is the intended outcome of sector coordination. This is because law enforcement and humanitarian actors are not fully aware of the Act's provisions. As a result, those who are requesting these services are harassed and occasionally arrested.<sup>150</sup>

One-stop centers, conversely, offer victims a means of relief. These centers act as safe spaces where victims can access a range of essential services under one roof, thereby minimizing the need to navigate multiple agencies and reducing the risk of re-traumatization. Within these

---

<sup>146</sup> Inka Lilja et. al, *Unseen Victims Report*, 43.

<sup>147</sup> Inka Lilja et. al, *Unseen Victims Report*, 43.

<sup>148</sup> Refugee Consortium of Kenya (RCK), *Refugee Insights*, Issue No. 24, Page 5.

<sup>149</sup> [How do I register my application for asylum? - UNHCR Kenya](#) accessed on 28 February 2024.

<sup>150</sup> RCK, *Refugee Insights*, 5-6.

centers, victims often receive medical care, counseling and psychosocial support, legal assistance, temporary shelter, and referrals to other specialized services as needed. Regarding refugee assistance, another issue is a lack of documents. This can be linked to the Kenyan government's directive from December 18, 2012, which mandated that every urban migrant relocate to their designated camps and that registration for all metropolitan areas be halted.<sup>151</sup>

This directive was canceled, citing, among other things, the stringent camping order's unconstitutionality and breach of the non-refoulement principle.<sup>152</sup> As a result, once they are awarded refugee status, it becomes more challenging for undocumented refugees and asylum seekers—especially those who have been victims of gender-based and sexual assault—to obtain essential assistance as intended by the SOA.<sup>153</sup>

Kenyan society is still rife with stigma related to sexual misconduct.<sup>154</sup> The Somali community disclosed in a study on the Child Rights Situational Analysis for Refugee Children in Nairobi that the practice of female genital mutilation, or FGM, lowers sexual libido in children between the ages of three and fifteen.<sup>155</sup>

Deeply ingrained cultural stigmas, as illustrated by the prevalence of practices like female genital mutilation, underscore the ongoing need for comprehensive interventions that address not only the immediate needs of victims but also the root causes of GBV within refugee communities. Efforts to combat GBV must therefore prioritize awareness, education, and collaboration among stakeholders to create a safer and more inclusive environment for all refugees and asylum seekers in Kenya.

#### **1.4.1 Practical Example**

*“My husband has been locking me in the house every time he goes to work. I am not supposed to interact with other neighbors in our estate since my husband says they will influence me negatively. If he finds me talking to any man, then I would be beaten as a way of disciplining me and keeping me focused only on him. I am used to it, though sometimes I get very stressed about my situation. But there is nothing I can do since I see other ladies go through the same and persevere. We have to be obedient to our husbands” - January 2013, asylum seeker, RCK Legal Clinic, Eastleigh.*<sup>156</sup>

This example portrays the struggles of GBV victims seeking asylum. It highlights how societal norms can normalize abuse, making it difficult for victims to recognize and escape it.

---

<sup>151</sup> RCK, *Refugee Insights*, 5.

<sup>152</sup> Kenya National Commission on Human Rights & another v Attorney General & 3 others [2017] eKLR.

<sup>153</sup> RCK, *Refugee Insights*, 5.

<sup>154</sup> RCK, *Refugee Insights*, 6.

<sup>155</sup> Government of Kenya (GoK), UNHCR, RCK, Kituo cha Sheria and Heshima Kenya, *Child Rights Situational Analysis for Refugee Children in Nairobi*, 2013.

<sup>156</sup> RCK, *Refugee Insights*, 6.

Additionally, the example demonstrates how abusers use isolation and control to maintain power, further hindering victims from seeking help. These complexities showcase the need for a nuanced approach to assessing asylum claims involving GBV, considering the cultural context and potential inadequate defense in the victim's nation of origin.

Furthermore, the majority of GBV survivors either wait until after difficulties arise to seek medical attention or do not do so at all after being abused.<sup>157</sup> The majority of women applying for asylum and refugees do not speak either Kiswahili, the official language of Kenya, or English. of the region, which exacerbates the problem. Additionally, because of social shame, they are reluctant to approach a community member who speaks the language to interpret for them while they are filing reports.<sup>158</sup>

Women emphasized over and over again the detrimental social repercussions of a known rape victim. They are branded as prostitutes and are assumed to have HIV/AIDS, making them unfit for matrimony.<sup>159</sup> It is embarrassing to acknowledge SGBV incidents, and many survivors want to remain anonymous to avoid being recognized and made fun of.<sup>160</sup>

The above section serves as a poignant reminder of the urgent need for refined and culturally sensitive approach to addressing GBV in the asylum process. It underscores the importance of recognizing the unique vulnerabilities and systemic barriers faced by GBV survivors, particularly within the context of migration and displacement. Efforts to support and protect GBV survivors seeking asylum must consider how gender, culture, and human rights intersect in order to guarantee that everyone has access to the protection and assistance they need.

## **1.5 APPLYING FOR ASYLUM IN KENYA**

The following information is available to the public.<sup>161</sup> Individuals fearing serious harm due to factors such as social class, sex, politics, nationality, ethnicity, or religion or those fleeing war or public order disturbances in their country of origin, can apply for asylum in Kenya through the Department of Refugee Services (DRS), which operates under the Ministry of Interior and Coordination of National Government. The DRS processes asylum applications and issues identification cards for asylum seekers and refugees at its offices located in Dadaab, Eldoret, Kakuma, Mombasa, Nairobi, and Nakuru.

Additionally, to register an asylum application in Kenya, individuals must promptly present themselves to the Refugee Services Department (DRS) upon arrival or within 30 days of

---

<sup>157</sup> RCK, *Refugee Insights*, 8. RCK, *Legal Clinic Statistics*, 2013.

<sup>158</sup> RCK, *Legal Clinic Statistics*, 2013.

<sup>159</sup> RCK, *Refugee Insights*, 7.

<sup>160</sup> Forced Migration Review (FMR), Issue no.43.

<sup>161</sup> [Applying for asylum in Kenya](#)> Accessed on 12th February 2024.

entering the country.<sup>162</sup> If lawfully in Kenya but unable a well-founded fear of persecution compelling them to return to their place of origin, applicants should register with the DRS before their lawful stay expires. Registration is a crucial responsibility, serving as the legal basis for staying in Kenya, providing the ability to use public services and assistance, and preventing forced return. During registration, DRS collects biographical data, family information, and biometric data.

The UNHCR also adds that it is essential to bring family members and required documents such as IDs, passports, divorce and marriage licenses, and birth and death certificates.<sup>163</sup> Once registered, applicants receive documentation allowing them to stay in Kenya until a decision is made on their application, along with proof of registration and an asylum seekers pass.<sup>164</sup> Additionally, a movement pass could be granted for travel inside the asylum nation depending on the registration location.

## **1.6 ADDRESSING THE COMPLEXITIES OF GBV IN REFUGEE-STATUS DETERMINATION**

The above mentioned complexities surrounding GBV necessitate specialized protocols to ensure a consistent and equitable approach in RSD cases. In the absence of clear guidance, officials may lack the requisite tools and knowledge to appropriately assess GBV claims, potentially leading to disparate outcomes and re-traumatizing experiences for survivors.<sup>165</sup> Comprehensive guidelines and SOPs serve as indispensable resources, equipping officials with the necessary frameworks and procedures to handle GBV cases sensitively and effectively.

A primary objective of the amended Refugees Act will be to recognize and address the explicit lack of recognition of GBV victims who are seeking refugee status. However, identifying and evaluating GBV claims require specialized knowledge and sensitivity. Guidelines should delineate specific indicators of GBV, encompassing physical violence, sexual assault, psychological abuse, and forced marriage.<sup>166</sup> Furthermore, officials must receive training to recognize the intersectionality of GBV with other forms of persecution, such as discrimination based on gender identity or sexual orientation.

---

<sup>162</sup> [How do I register my application for asylum? - UNHCR Kenya](#)> Accessed on 12th February 2024.

<sup>163</sup> [How do I register my application for asylum? - UNHCR Kenya](#)> Accessed on 8th February 2024.

<sup>164</sup> [How do I register my application for asylum? - UNHCR Kenya](#)> Accessed on 8th February 2024.

<sup>165</sup> Mengistu L, 'Experiences of Women Survivors of Gender-based Violence with Survivor-centered Approach, a Case of Association for Women's Sanctuary and Development (Awsad) Ethiopia', unpublished, University of Nairobi, Nairobi,44,2017.

<sup>166</sup> Osime E, 'Utilization of Sexual and Gender Based Violence (SGBV) Response Services among Women and girls affected by Conflict in Northeast Nigeria: Barriers, Opportunities, and Strategies', Vrije Universiteit Amsterdam, Amsterdam,40-60,2021.

Additionally, traditional methods of evidence collection might not always be accessible or appropriate for survivors of GBV, particularly in contexts where reporting mechanisms are limited or stigmatized. Guidelines should encourage officials to consider alternative forms of evidence, including testimonies from trusted individuals, medical records, and documented changes in behavior or mental health. Furthermore, officials should undergo training to approach evidence-gathering processes with sensitivity, acknowledging the potential barriers survivors may encounter in disclosing their experiences.<sup>167</sup>

Central to the adjudication of GBV claims is the evaluation of the applicant's credibility narrative. However, conventional evaluation of credibility methods may be inadequate in capturing the nuances of GBV experiences. Guidelines should underscore a trauma-informed approach to credibility assessments, recognizing the inherent challenges survivors may face in recounting traumatic events. Officials should be trained to identify common coping mechanisms, such as inconsistencies in narratives or delayed disclosures, as legitimate responses to trauma rather than indicators of dishonesty.<sup>168</sup>

Confidentiality and privacy are paramount in GBV cases to safeguard the safety and well-being of survivors.<sup>169</sup> Guidelines should underscore the importance of establishing a safe and private environment for survivors to disclose their experiences without fear of reprisal or further harm. This entails implementing stringent confidentiality protocols, restricting the dissemination of sensitive information, and providing survivors with options for anonymous reporting where feasible. Additionally, officials should undergo training on the ethical and legal obligations pertaining to confidentiality and privacy in GBV cases, ensuring adherence to international standards and human rights principles.<sup>170</sup>

Consistency and fairness are foundational principles in the adjudication of refugee claims, including those related to GBV. Guidelines and SOPs should strive to establish uniform standards and procedures to mitigate the risk of bias or arbitrary decision-making. This encompasses providing officials with clear criteria for assessing GBV claims, conducting thorough investigations, and documenting decision-making processes meticulously. Furthermore, regular monitoring and evaluation mechanisms should be instituted to identify any discrepancies

---

<sup>167</sup> Mengistu L, 'Experiences of Women Survivors of Gender-based Violence with Survivor-centered Approach, a Case of Association for Women's Sanctuary and Development (Awsad) Ethiopia', unpublished, University of Nairobi, Nairobi,44,2017.

<sup>168</sup> Campbell K, Demir, E, and O'Reilly M, 'Understanding conflict-related sexual violence and the 'everyday' experience of conflict through witness testimonies', 2, *Cooperation and Conflict*, 54, 254-277,2019.

<sup>169</sup> Osime E, 'Utilization of Sexual and Gender Based Violence (SGBV) Response Services among Women and girls affected by Conflict in Northeast Nigeria: Barriers, Opportunities, and Strategies', Vrije Universiteit Amsterdam, Amsterdam,40-60,2021.

<sup>170</sup> Abdi M, 'Assessment of Sexual and Gender Based Violence Reporting Procedures Among Refugees in Camps in Dadaab Kenya', unpublished, University of Nairobi, Nairobi,10,2016.

or patterns of inequity in RSD outcomes, facilitating timely adjustments and enhancements to the guidelines and SOPs.<sup>171</sup>

## **1.7 RECOMMENDATIONS**

Drawing from this analysis, the recommendations that follow are divided into three categories, each concentrating on doable actions that different stakeholders could implement to improve women refugees who have experienced gender-based violence access to criminal justice, international protection, and victim support services.

### **1. Improving Gender-Sensitiveness of the Asylum System**

To guarantee a more considerate and knowledgeable attitude during asylum interviews, improve training and awareness initiatives for decision-makers and asylum officers regarding gender-based violence. Adopt gender-sensitive asylum processes that consider the unique vulnerabilities and accounts from women who have suffered from abuse or neglect because of their gender. bolster procedures for recognizing and recording When deciding whether to grant refuge, consideration should be given to gender-based violence.

### **2. Promoting a Victim-Centered Criminal Justice Process**

Advocate for a victim-centered approach in the criminal justice system to encourage reporting of offenses involving gender-based violence and make sure victims receive proper support. Improve coordination between law enforcement agencies, legal professionals, and victim support services to provide comprehensive assistance to victims of gender-based violence who are refugees. Enhance legal frameworks to address the particular assistance requirements of victims of gender-based violence and ensure their rights are protected throughout the criminal justice process.

### **3. Enhancing Access to Services for Refugee Women Victims**

Plan integrated, multidisciplinary services that are tailored to the special requirements of women refugees who have been victims of various types of violence. Ensure that long-term psychosocial counseling is available to all female refugees who have experienced gender-based violence in order to support their overall welfare and healing. Women's shelters need greater resources and space in order to offer safe havens and assistance to victims of gender-based violence. Enough

---

<sup>171</sup> Fehrmann T, Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol, 2021.

money should be allocated at the national and local levels to start and maintain vital services for refugees who have experienced gender-based violence..

## **1.8 CONCLUSION**

In conclusion, by implementing comprehensive guidelines and strengthening asylum procedures for refugee women victims of GBV, we can strive towards a more just and compassionate response to the unique vulnerabilities and experiences of individuals escaping prejudice based on their gender identity or experiences with gender-based violence. In the next chapter, I'll demonstrate how removing gender as a basis for refugee status is harmful for women as it fails to acknowledge their unique vulnerabilities and forms of persecution.

Women often face gender-based violence such as rape, forced marriage, and domestic abuse, forcing them to flee in search of safety. The current system often ignores these specific risks, endangering women's chances of being refused asylum and facing further difficulties in host countries. I will embark on a critical exploration of the profound implications of neglecting to acknowledge gender-based violence (GBV) through the lens of gender, particularly concerning the exacerbation of systemic disparities within refugee populations.

## **CHAPTER 4.**

### **EXPOSING THE IMPACT OF GENDER EXCLUSION IN THE DETERMINATION OF REFUGEES STATUS**

#### **1.0 INTRODUCTION**

For women, the exclusion of gender as a valid factor in determining refugee status has serious and detrimental effects. failing to recognize the unique vulnerabilities and forms of persecution they face. Women are specifically targeted for gender-based violence, including rape, forced marriage, and domestic abuse, driving them from their homes in search of safety and protection. Yet, the current system often overlooks these distinct harms leaving women vulnerable to denial of asylum and worsening conditions in receiving nations.<sup>172</sup> This chapter delves into the crucial role gender plays in shaping displacement experiences and argues why incorporating it into refugee status determination is essential for a truly inclusive and just system.

The ramifications of gender exclusion in refugee status determination have been well documented, particularly concerning the challenges faced by gender-based violence (GBV) survivors in their pursuit of asylum. In the ensuing section of this study, a comprehensive

---

<sup>172</sup> Freedman J, 'Women's right to asylum: Protecting the rights of female asylum seekers in Europe?' *Human Rights Review* 9.4,2008,413-433.

analysis will illustrate the systemic implications of this issue beyond the refugee status determination phase, extending into the very fabric of refugee settlements. This scrutiny will showcase the compounded vulnerabilities experienced by women within these settings, further underscoring the pressing need for gender-sensitive frameworks to mitigate their heightened risks and disadvantages.

## **1.1 THE SYSTEMIC IMPACT OF GENDER EXCLUSION IN REFUGEE SETTLEMENTS**

The significance of accepting gender-based violence (GBV) as a valid factor in determining a person's refugee status is emphasized in this section, especially in situations like Kenya where people are seeking safety from conflict and persecution in neighboring countries and are housed in refugee camps. Survivors of gender-based violence are deprived of the protection and assistance they sorely require to start over by rejecting gender as a valid reason for refuge.

In Kenya, as in other refugee-hosting countries, survivors of GBV face numerous challenges within refugee camps. The lack of recognition of GBV as a valid reason in the Refugees Act for seeking asylum aggravates these challenges, leaving survivors vulnerable to further harm. This highlights the urgent need for tailored interventions to attend to the unique requirements and weaknesses of GBV survivors in refugee environments.<sup>173</sup>

Excluding gender as a legitimate basis for refugee status determination carries far-reaching consequences that extend beyond the initial decision of granting asylum.<sup>174</sup> Survivors in refugee camps confront numerous difficulties due to the refusal to acknowledge of gender-based violence (GBV) as a basis for lawfully granting refugee status. Many survivors are deprived of the protection and assistance they sorely want because GBV is not recognized as a legitimate basis for requesting refuge.<sup>175</sup>

While the denial of asylum based on GBV is a clearly documented problem, the aftermath extends beyond the initial determination phase. Refugee settlements, often designed and managed with a gender-neutral lens, fail to adequately address the vulnerabilities and unique

---

<sup>173</sup> Karooma C and Murembe N 'Sexual and gender-based violence (SGBV) among protracted refugees in Nakivale refugee settlement, Uganda: Addressing gaps in knowledge and responses',2024.

<sup>174</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26 ,1993, 630.

<sup>175</sup> Lilja I, 'Unseen victims: why refugee women victims of gender-based violence do not receive assistance in the EU' *European Institute for Crime Prevention and Control*, 2020.

demands of women. This systemic oversight creates a multifaceted problem with various negative consequences.<sup>176</sup>

The lack of recognition of GBV as a form of persecution often translates to inadequate access to protection mechanisms within settlements. This includes limited availability of safe spaces, inadequate reporting mechanisms, and insufficient support services for survivors. A study by the UNHCR found that only 30% of refugee settlements have designated safe spaces for women and girls. This lack of access leaves women exposed to further violence and exploitation within the settlements.<sup>177</sup>

Women in refugee settlements often face significant barriers to accessing essential healthcare services, particularly those addressing reproductive health needs and GBV-related trauma. A World Health Organization report (WHO) found that maternal mortality rates are significantly higher among refugee populations compared to host communities, highlighting the critical need for improved healthcare access for women.<sup>178</sup>

The exclusion of gender perspectives in settlement design and programming often overlooks the specific economic challenges faced by women. Limited access to skills training, income-generating opportunities, and childcare services further entrenches existing inequalities and hinders women's ability to achieve economic self-reliance. An International Labor Organization (ILO) research found that women refugees are significantly underrepresented in formal employment within settlements compared to men.<sup>179</sup> This research from various organizations underscores the disproportionate impact of gender exclusion on women in refugee settlements.

There are overarching consequences of excluding gender as a legitimate basis for refugee status determination. It is therefore necessary to highlight the necessity of a gender-responsive approach to refugee protection and assistance in Kenya and beyond. Recognizing and addressing women's and girls' particular needs and vulnerabilities is crucial for ensuring their safety, dignity, and full participation in refugee communities.

---

<sup>176</sup> Cintra N, Owen D, and Riggiozzi P, *Displacement, Human Rights and Sexual and Reproductive Health: Conceptualizing Gender Protection Gaps in Latin America*, Policy Press, Bristol, 2023, <https://doi.org/10.1332/policypress/9781529222791.001.0001> accessed 20 February 2024.

<sup>177</sup> Borges G, 'Journey of Violence: Refugee Women's Experiences Across Three Stages and Places' *Journal of International Migration and Integration*, 2023, 11.

<sup>178</sup> Borges G, 'Journey of Violence: Refugee Women's Experiences Across Three Stages and Places' *Journal of International Migration and Integration*, 2023, 14.

<sup>179</sup> Borges G, 'Journey of Violence: Refugee Women's Experiences Across Three Stages and Places' *Journal of International Migration and Integration*, 2023, 15.

## 1.2 ADDRESSING THE SYSTEMIC GAPS IN PROTECTING WOMEN FLEEING GENDER-BASED VIOLENCE

In her article "Gender-Related Persecution: Assessing the Asylum Claims of Women," Nancy Kelly exposes the critical shortcomings of the current refugee protection system in addressing the unique vulnerabilities faced by women fleeing gender-based violence (GBV). While acknowledging the effects of displacement and conflict on women are disproportionate, often driven by GBV like rape, forced marriage, and domestic abuse, Kelly highlights the systemic failure to recognize these distinct forms of persecution during refugee status determination. This oversight results in the denial of asylum for many women, leaving them exposed to further hardship and jeopardizing their safety.<sup>180</sup>

Gender-based violence is a pervasive issue that predominantly impacts women on a global scale. Intimate relationship or non-partner sexual violence has affected 35% of women globally, either physically or sexually.<sup>181</sup> Women are frequently compelled to leave their homes in order to avoid this violence. However, the mechanisms put in place to safeguard these women are frequently insufficient and do not take into account the complicated requirements of survivors.<sup>182</sup>

Lack of coordination amongst agencies and organizations is one of the major obstacles to combating gender-based violence. When a woman flees her home due to violence, she may interact with several distinct systems, such as the judicial system, social services, and law enforcement.<sup>183</sup> However, these systems often operate in silos and fail to communicate effectively with one another. This can lead to confusion and delays in providing critical services to survivors.

Additionally, the legal system can be a barrier to women seeking protection from gender-based violence. In many cases, survivors must navigate a complex and daunting legal process in order to obtain a restraining order or seek justice against their abusers. This process can be overwhelming and intimidating, especially for women who are already traumatized by their experiences. Furthermore, cultural and societal norms may discourage women from seeking help or speaking out against their abusers, further complicating the legal process.<sup>184</sup>

Nancy Kelly delves deeper, exposing the compounded vulnerabilities faced by women even after they reach refugee settlements. The lack of gender-inclusive infrastructure and services within

---

<sup>180</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26, 1993, 630.

<sup>181</sup> [Gender-Based Violence \(Violence Against Women and Girls\)](#) on 25 September 2019.

<sup>182</sup> Borges, G. M. (2023). Journey of Violence: Refugee Women's Experiences Across Three Stages and Places. *Journal of International Migration and Integration*, 1-21.

<sup>183</sup> Borges, G. M. (2023). Journey of Violence: Refugee Women's Experiences Across Three Stages and Places. *Journal of International Migration and Integration*, 1-21.

<sup>184</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26, 1993, 623.

settlements creates significant barriers to accessing essential resources like protection mechanisms, healthcare, and livelihood opportunities. This further entrenches existing inequalities and disadvantages, jeopardizing women's ability to achieve self-reliance and rebuild their lives. Kelly emphasizes the need for a paradigm shift in refugee protection. This shift requires not only recognizing GBV as a legitimate form of persecution but also establishing robust mechanisms for its identification and assessment during the asylum process. Additionally, fostering gender-inclusive refugee settlements that cater to the unique requirements and weaknesses of women is crucial for ensuring their safety, dignity, and empowerment.<sup>185</sup>

### 1.3 THE DIFFICULTY OF MEASURING THE UNSEEN

This section emphasizes how difficult it is to quantify the hidden effects of gender-based violence (GBV) and how this hidden nature affects the assessment of refugee status. The word "unseen impact" describes a phenomenon's impacts or repercussions that are not immediately apparent or readily quantifiable. In this context, it refers to the difficulties in realizing and measuring the complete impact of gender-based violence (GBV), particularly while attempting to determine a person's status as a refugee.<sup>186</sup>

By shedding light on the challenges of measuring GBV and the importance of a more comprehensive approach that delves deeper into the cultural and societal factors at play, this section underscores the significance of gender exclusion in refugee status determination. It shows how the invisibility of GBV in measurement tools can perpetuate gender inequality and hinder efforts to address the devastating consequences of this form of violence. Ultimately, it calls for a nuanced understanding of GBV to effectively combat its impact and create a future free from gender-based violence.

There is still gender-based violence and it is inflicting immense suffering on individuals and societies. However, measuring its true scope and impact presents a significant challenge.<sup>187</sup> One key obstacle lies in the very nature of indicators. Rates, percentages and numbers are the indicators which are used to condense complex data related to gender-based violence (GBV) into formats that are understandable for policymakers and the public. However, while these indicators offer valuable insights, they may oversimplify the multifaceted issue of GBV and risk overlooking the broader context and nuanced experiences of survivors and perpetrators. This

---

<sup>185</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26, 1993, 624.

<sup>186</sup> Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26, 1993, 625.

<sup>187</sup> Nógrádi N, 'Global Gender-based Violence Against Women as a Matter for Global Justice Theory: Pervasive Patriarchal Structures and Responsibility for Harm' Doctoral dissertation, University of Leeds School of Politics and International Studies, Leeds, 2018.

selective approach, while offering valuable insights, risks overlooking the broader context and nuanced experiences of survivors and perpetrators.<sup>188</sup>

Furthermore, the motivations and root causes of GBV often lie beyond the reach of traditional measurement tools. As highlighted by “Jewkes”, individuals involved in the cycle of violence may not fully comprehend the underlying factors, which are often deeply embedded in a culture that perpetuates gender inequality.<sup>189</sup> These deeply ingrained societal norms and power dynamics are difficult to quantify, making it difficult to fully express the core of the issue.

The consequences of this hidden nature are far-reaching. The difficulty in establishing accurate prevalence rates hinders effective resource allocation and program development. The human suffering caused by GBV, encompassing physical, psychological, and emotional trauma, remains largely unaccounted for in economic models, thereby underestimating its true societal cost.

In conclusion, measuring GBV presents a complex and multifaceted challenge. While indicators offer valuable insights, their limitations and the often-hidden nature of the violence itself hinder our understanding of its full scope and impact. Moving forward, a more comprehensive approach is necessary, one that acknowledges the limitations of traditional measurement tools and delves deeper into the cultural and societal factors that perpetuate this form of violence. Only through a nuanced understanding of GBV can we effectively address its devastating consequences and build a future free from gender-based violence.

## 1.4 ESSENTIAL SERVICES

Access to essential services is a fundamental aspect of ensuring the well-being and empowerment of refugee women worldwide. Despite the recognition of their rights under various international conventions and covenants, refugee women often face significant barriers in accessing vital services such as healthcare, education, employment, housing, and psychological support. These challenges are worsened by intersecting factors such as gender, refugee status, and cultural norms, which restrict their ability to fully realize their rights and participate in society.<sup>190</sup>

---

<sup>188</sup> Nógrádi N, ‘Global Gender-based Violence Against Women as a Matter for Global Justice Theory: Pervasive Patriarchal Structures and Responsibility for Harm’ Doctoral dissertation, University of Leeds School of Politics and International Studies, Leeds, 2018.

<sup>189</sup> Fulu E, Kerr-Wilson A, and Lang J et al ‘What works to prevent violence against women and girls. Evidence Review of interventions to prevent violence against women and girls, *Pretoria Medical Research Council*, 2014, 1580-9.

<sup>190</sup> Bruijn B, *The living conditions and well-being of refugees*, <https://mpra.ub.uni-muenchen.de/19208/> 12 December, 2009.

In this section, I explore the multifaceted obstacles encountered by refugee women in accessing essential services and highlight the urgent need for gender-inclusive policies and targeted interventions to address their unique needs. By examining specific case studies and research findings from diverse contexts, This study article's goal is to make clear the complex realities faced by refugee women and advocate for comprehensive strategies that promote their safety, dignity, and inclusion in global refugee communities.

Accessing basic services including accommodation, work, education, healthcare, and psychological assistance can be difficult for women refugees. Recognizing The crucial part that gender plays in determining a refugee's status is pivotal in providing a stronger legal foundation for protecting women fleeing gender-based violence and persecution. By incorporating gender as a defining factor, countries like Kenya can ensure greater access to asylum for vulnerable women and customize essential services to meet their unique needs. Gender-inclusive policies can empower refugee women to rebuild their lives with safety, security, and hope, benefiting both their well-being and the inclusivity of global refugee communities.<sup>191</sup>

## 1.5 HEALTH CARE

One of the fundamental rights is the right to health in the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>192</sup> which is essential to guaranteeing people's well-being everywhere.<sup>193</sup> Unfortunately, a number of obstacles frequently threaten the implementation of this right for female migrants. These challenges include difficult linguistic and cultural obstacles, limited access to healthcare facilities, and the persistent threat of gender-based violence, which discourages people from seeking necessary medical care.<sup>194</sup>

Syrian women's experiences as refugees in Lebanon demonstrate the difficulties they face in accessing essential reproductive health treatments, dealing with social stigma, and lack of awareness about available services. Hajjar and colleagues' 2020 study sheds light on the specific difficulties encountered by these women in seeking healthcare in Lebanon. The findings underline the critical need for focused efforts and policy frameworks that address the intersections of gender, refugee status, and healthcare rights. This research provides valuable insights for advocates, policymakers, and healthcare professionals working towards ensuring

---

<sup>191</sup> Bruijn B, *The living conditions and well-being of refugees*, <https://mpra.ub.uni-muenchen.de/19208/> 12 December, 2009.

<sup>192</sup> International Covenant on Economic, Social and Cultural Right, 16 December 1966, 2200A

<sup>193</sup> Jain A, Leka S, Zwetsloot G, Jain A, Leka S, and Zwetsloot G, *The fundamental human right to health, safety and well-being. Managing Health, Safety and Well-Being: Ethics, Responsibility and Sustainability*, Springer, Nottingham, 2018, 139-173.

<sup>194</sup> Sloand E, Killion C, Gary A, Dennis B, Glass N, Hassan M, and Callwood G, Barriers and facilitators to engaging communities in gender-based violence prevention following a natural disaster. *Journal of health care for the poor and underserved*, 26(4), 2015, 1377.

equitable access to healthcare services for vulnerable refugee populations, particularly Syrian women in Lebanon.<sup>195</sup>

## 1.6 LABOUR MARKETS

The Agreement on Civil and Political Rights of the International Covenant on<sup>196</sup> is a cornerstone of the field of labor rights, clearly stating that everyone has a right to employment that is accompanied by fair and secure working conditions.<sup>197</sup> Nevertheless, a depressing story of exploitation and vulnerability surfaces when considering the real-world effects of these rights on refugee women. The lack of legal documentation, cultural norms that restrict mobility, and restricted access to language training are the main causes of this. As a result, women who are refugees often end up in informal, insecure jobs that pay poorly and provide poor working conditions.<sup>198</sup>

The International Labor Organization (ILO) performed a research in Jordan that provides a dramatic illustration of this unstable reality.<sup>199</sup> The study highlights the unique problems faced by refugee women in the labor market. The results of an ILO study conducted in 2018 showed that refugee women worked in the informal sector at a disproportionate rate, putting their health at risk and making them more vulnerable to harassment and exploitation. The research highlights the widespread obstacles encountered by female refugees, highlighting the pressing requirement for focused interventions and legislative structures that tackle the interplay between gender, refugee status, and employment rights.<sup>200</sup>

## 1.7 HOUSING AND LIVING CONDITIONS

Unfortunately, for many women refugees, the right to decent housing— one of the essential rights guaranteed by the Universal Declaration of Human Rights (UDHR)<sup>201</sup> remains a distant dream. The difficulties they face in finding appropriate accommodation are numerous; for

---

<sup>195</sup> Hajjar S & Abu-Sittah G, The multidimensional burden of COVID-19 on Syrian refugees in Lebanon. *Journal of global health*, 2021, 11.

<sup>196</sup> International Covenant on Civil and Political Rights, 16 December 1966, 2200A (XXI).

<sup>197</sup> Yabah L, 'Autocracies and the implementation of human rights treaties-the case of Cameroon and the International Covenant on Civil and Political Rights (ICCPR)' Doctoral dissertation, Middlesex University, London, 2019.

<sup>198</sup> Davies A, Basten A and Frattini C, Migration: a social determinant of the health of migrants. *Euro health*, 16(1), 2009, 10-12.

<sup>199</sup> Lenner K, and Turner L, Making refugees work? The politics of integrating Syrian refugees into the labor market in Jordan. *Middle East Critique*, 28(1), 2019, 65-95.

<sup>200</sup> Research Partnership for Improved Livelihoods of Jordanian & Syrian Youth.

<sup>201</sup> Universal Declaration of Human Rights, 10 December 1948, 217 IIIA.

example, the overcrowding in refugee camps, the lack of safe havens, and discriminatory housing policies all contribute to an atmosphere that is more likely to result in violence, sexual exploitation, and human trafficking.<sup>202</sup>

The situation of Rohingya refugee women in Bangladesh serves as an example of the deplorable reality of subpar housing circumstances for female refugees.<sup>203</sup> Their overcrowded camps present serious difficulties, especially in terms of housing. Inadequate sanitation facilities exacerbate these problems, making Rohingya refugee women more susceptible to sexual assault and waterborne illnesses.<sup>204</sup> The 2018 Human Rights Watch report provides a thorough and empirically based assessment of the housing issues encountered by Rohingya refugee women in Bangladesh, as it thoroughly documents their living circumstances and related risks.<sup>205</sup>

## 1.8 PSYCHOLOGICAL SUPPORT

The psychological effects of displacement and ongoing exposure to violence and insecurity have a profound effect on the psychological health of women who are refugees. The CEDAW stands for the Convention on the Elimination of All Forms of Discrimination Against Women. clearly recognizes the right to the best possible level of health, including mental health.<sup>206</sup> But even with this acknowledgement, there are still shockingly few culturally competent and gender-specific mental health therapies available. This stark disparity is exemplified by research from Colombia, where results show that women who are refugees from that country struggle with depression and anxiety brought on by displacement and violence, as well as stigma and limited access to mental health services.<sup>207</sup>

The 2019 study by González and colleagues offers a sophisticated perspective of the mental health difficulties Colombian refugee women encounter. It clarifies the intricate relationships that exist between mental health conditions, pressures associated with relocation, and the obstacles that prevent people from accessing the right kind of support. Through the use of rigorous research techniques, such as qualitative interviews and assessments, the study adds empirically

---

<sup>202</sup> De Bruijn B, The living conditions and well-being of refugees, *Human Development Research Paper*, 25, 2009,

<sup>203</sup> Puapattanakajorn N, Investigating Host Countries' Refugee-Related Policies and Its Effect on Lived Experiences of Rohingya Refugees. *Penn Journal of Philosophy, Politics & Economics*, 17(1), 2022, 4.

<sup>204</sup> Abiru Exploring the human rights of the Rohingya: a case study of Kutupalong refugee camp in Bangladesh, Master's thesis, Norwegian University of Life Sciences, 2018.

<sup>205</sup> Frelick B, 'Bangladesh is Not My Country': The Plight of Rohingya Refugees from Myanmar. Human Rights Watch, 2008.

<sup>206</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249.

<sup>207</sup> León-Giraldo S, Casas G, Cuervo-Sánchez S, García T, González-Urbe C, Moreno-Serra R, and Bernal O, Mental health disorders in population displaced by conflict in Colombia: Comparative analysis against the National Mental Health Survey 2015. *Revista Colombiana de psiquiatria*, 52(2), 2023, 121-129.

supported perspectives to the corpus of information about mental health among populations of refugees.<sup>208</sup>

## 1.9 EDUCATION AND TRAINING

As per the Covenant on Economic, Social, and Cultural Rights (CESCR), people's ability to perform certain tasks depends on their access to education and training to integrate into society and attain economic empowerment, especially for vulnerable groups like refugee women.<sup>209</sup> Although this right has been acknowledged internationally, there are a number of barriers that prevent refugee women from effectively realizing their possibilities for education and training.<sup>210</sup> Primarily, these obstacles consist of language problems and limited availability of culturally suitable training programs, which greatly impede refugee women's capacity to learn new skills and engage in the workforce.<sup>211</sup>

A relevant case study demonstrating these barriers can be found in Uganda, where women who are refugees from South Sudan struggle to gain entry to programs for vocational training. The constraints result from a confluence of language hurdles and childcare obligations, which in turn intensify their reliance on humanitarian assistance. This data is taken from a report published in 2017 by the UNHCR, the United Nations High Commissioner for Refugee. The research provides a comprehensive examination of the barriers that South Sudanese refugee women in Uganda face with regard to opportunities for training and education.<sup>212</sup>

## 2. THE IMPLICATION OF DETERMINING REFUGEES' STATUS BY Gender.

Including gender in Kenya's refugee status determination process is a critical step toward addressing the pervasive issues that displaced people face. The implications of such a paradigm shift are extensive: First and foremost, it enhances protection of female migrants. When women are given refugee status based on their gender, a more robust legal framework is made available to them in order to protect them from gender-based abuse and persecution.<sup>213</sup> This, in turn,

---

<sup>208</sup> León-Giraldo S, Casas G, Cuervo-Sánchez S, García T, González-Uribe C, Moreno-Serra R, and Bernal O, Mental health disorders in population displaced by conflict in Colombia: Comparative analysis against the National Mental Health Survey 2015. *Revista Colombiana de psiquiatria*, 52(2), 2023, 121-129.

<sup>209</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993.

<sup>210</sup> Mounné R, and Sakai, L. Protecting the right to education for refugees, 4, 2017.

<sup>211</sup> Mounné R, and Sakai, L. Protecting the right to education for refugees, 4, 2017.

<sup>212</sup> United Nations High Commissioner for Refugees (UNHCR) 2017.

<sup>213</sup> Efil S, 'Protecting Syrian refugee women and girls from gender-based violence in Turkey: public policy, law instruments, practices and burden sharing', Dissertation Università di Padova, Padova, 2020.

facilitates their access to asylum, providing a secure haven and safeguarding them from further harm.

Secondly, recognizing gender-specific vulnerabilities enables Kenyan authorities and humanitarian organizations to customize essential services to cater to the distinct needs of female refugees. Addressing healthcare gaps, offering secure housing options, and providing culturally sensitive mental health support become more effective and responsive.<sup>214</sup>

Lastly, the inclusion in skills training and language programs equips refugee women with the necessary tools to actively participate in the Kenyan economy. This fosters self-reliance, diminishing dependence on external aid and contributing to their economic autonomy. Furthermore, acknowledging gender-based persecution fosters a more inclusive and welcoming environment for refugee women within Kenyan communities. This not only reduces the prevalence of stigma and discrimination but also aids in creating cohesive social structures.<sup>215</sup>

of female migrants. When women are given refugee status based on their gender, a more robust legal framework is made available to them in order to protect them from gender-based abuse and persecution. Kenya signifies more than a legal amendment; it embodies a commitment to upholding the fundamental rights and dignity of women escaping persecution. By actively addressing the gendered aspects of displacement, Kenya can ensure that refugee women are not marginalized but rather empowered to rebuild their lives with safety, security, and hope. This transformative shift holds the potential to serve as a beacon of progress not only for Kenya but for the global refugee community, paving the way for a more just and equitable world for all.

### **3. GENDER CONSIDERATION IN REFUGEE STATUS DETERMINATION: IMPACT ON WOMEN'S PROTECTION AND ACCESS TO SERVICES**

The ability of refugee women to obtain essential services is critical to their well-being. But gender is often overlooked when assessing a person's refugee status, which makes it more difficult to access housing, work, healthcare, education, and mental health services. The lack of regulations that consider gender equality increases the likelihood of gender-based violence, making women more susceptible to mistreatment and exploitation in both host communities and refugee camps.<sup>216</sup>

---

<sup>214</sup> Hyndman J, 'Geographies of displacement: gender, culture and power in UNHCR refugee camps, Kenya' Doctoral dissertation, University of British Columbia, Canada, 1996.

<sup>215</sup> Hyndman J, 'Geographies of displacement: gender, culture and power in UNHCR refugee camps, Kenya' Doctoral dissertation, University of British Columbia, Canada, 1996.

<sup>216</sup> Hawkins M, 'Healing in a New Home: An Analysis of Psychosocial Interventions for Refugee Women Survivors of Gender-Based Violence in a Resettlement Context', Boston College, Boston, 34, 2020.

The current global refugee crisis draws attention to the suffering of the displaced and begs for a more thorough examination of the difficult challenges faced by those requesting asylum. Despite the fact that international conventions protect the rights of all refugees, male or female, the unpleasant reality is that women have particular obstacles that prevent them from receiving essential services. This chapter illustrates what happens when the process of determining if someone is a refugee without taking their gender into account. It makes clear how this exclusion exacerbates the obstacles women face in their pursuit of opportunities for housing, employment, mental health treatment, and education.

Gender inconsideration in determining refugee status has real-world repercussions, especially when it comes to denying women refugees access to basic services. The poor availability of healthcare tailored to a person's gender is one glaring example. Prenatal and postnatal care are among the specialized reproductive health services that women who are fleeing conflict or persecution frequently need. But the lack of a gender-sensitive strategy in the decision-making process makes it difficult to identify these particular demands, which leaves a shortage of focused healthcare services.

Furthermore, the persistence of gender-based violence inside host communities and refugee camps is facilitated by the absence of gender-informed policy. Women who lack the legal protection of recognized refugee status are more vulnerable to domestic abuse, human trafficking, and sexual exploitation. The difficulties faced by women trying to start over after being uprooted are made worse by the lack of specialized assistance.<sup>217</sup>

#### **4. CONCLUSION**

In conclusion, women applying for asylum face significant challenges as a result of the procedures used to determine an individual's refugee status failing to take gender into account, particularly when it comes to identifying those who have been subjected to gender-based violence (GBV). Regarding this topic, there are two main issues: first, women who have been persecuted due to gender-based violence are not given enough credit; second, women in refugee camps suffer difficulties such as restricted access to basic services that are vital to their wellbeing. Women in refugee camps continue to be marginalized due to a lack of gender-responsive policies, which also makes it difficult for them to access essential basic services. The only way the international community can carry out its duty to safeguard the rights and well-being of all refugees, regardless of gender, is by taking a comprehensive and gender-inclusive approach.

---

<sup>217</sup> Hawkins M, 'Healing in a New Home: An Analysis of Psychosocial Interventions for Refugee Women Survivors of Gender-Based Violence in a Resettlement Context', Boston College, Boston, 34, 2020.

## **CHAPTER 5**

### **1.CONCLUSION**

Gender-based violence (GBV) is a serious worldwide problem that disproportionately affects women and girls and has a long-lasting effect on their quality of life. Even though GBV is now illegal in many nations, including Kenya, the underlying reasons of this widespread problem are frequently not sufficiently addressed by the legal frameworks that are already in place. The Refugee Act 2021 in Kenya makes GBV survivors even more vulnerable by excluding their gender as a reason for applying for refugee or asylum status, depriving them of vital services and protection measures. This is because by not including gender as a basis to apply for refugee or asylum status, the Act ignores the special vulnerabilities and unique experiences of GBV survivors. This makes it more difficult for survivors to get the protection and support services they require in order to heal and start over.

#### **Restatement of the problem**

This dissertation has looked at how victims of gender-based violence in Kenya are at a disadvantage when claiming for refugee status because gender is not taken into consideration when requesting asylum under Section 3 of the Refugees Act 2021. Though a sizable fraction of women are victims of violence against them on a regular basis, the existing legal system does not sufficiently acknowledge this problem in asylum claims. The focus is on the need to explicitly

include gender within the provision to make certain that those harmed due to their gender are not denied refugee status and are consequently not at a risk of being denied essential services at the refugee camps even when they are granted refugee status.

### **Recap of the analysis**

In order to guarantee the rights and safeguards of vulnerable people, it is crucial to incorporate these principles into domestic legislation, as demonstrated by the chapter two's analysis of international legal instruments governing gender-based violence and refugee protection. By examining Kenya's initiatives to combat gender-based violence with institutional and legislative frameworks, the chapter sheds light on the progress made and areas for improvement in protecting GBV victims. This discussion contributes to the broader discourse on refugee protection and gender-based violence, emphasizing the need for comprehensive approaches to address these complex issues.

The suggested amendment to the Refugees Act of 2021 will represent a significant step towards recognizing and responding to gender-specific vulnerabilities within the refugee context. The integration of gender considerations into the Act acknowledges the unique challenges faced by individuals fleeing persecution based on their gender identity, encompassing encounters with violence against women. However, the successful implementation of this amendment will depend on the development of guidelines and SOPs to guide officials responsible for refugee status determination. Chapter three underscores the importance of such frameworks in ensuring a sensitive and effective approach to assessing GBV claims and providing adequate protection for survivors.

Women suffer greatly when gender is excluded as a valid factor in determining a person's refugee status since they are disproportionately affected by gender-based violence and other types of persecution. The existing system fails to give women the protection and support they need because it ignores the unique problems they experience. In order to create a just and inclusive system that acknowledges and addresses the unique vulnerabilities experienced by female refugees, the fourth chapter makes the case for the inclusion of gender factors in the assessment of refugee status. Its in-depth examination of these problems emphasizes how urgent it is to develop gender-sensitive frameworks in order to solve the structural obstacles that GBV survivors must overcome in order to get asylum.

To this end, it is important for Kenya to amend the Refugee Act 2021 to encompass gender as a valid basis for seeking refugee or asylum status. By doing so, Kenya can uphold its commitments under international refugee law, provide a more inclusive and comprehensive framework for refugee protection, and affirm its dedication to addressing the critical issue of GBV. This

inclusive approach will not only benefit GBV survivors seeking refuge in Kenya but will also contribute to a more just and equitable society for all individuals.

## **2. RECOMMENDATIONS**

### **1. Gender Inclusion in Section 3 of Kenya's Refugees Act 2021**

Gender must be explicitly included in the Kenyan Refugee Act 2021's what is a refugee in order to address the unique obstacles that survivors of gender-based violence (GBV). This recognition can lead to a more comprehensive understanding of gender-based persecution, ensuring tailored policies and services for GBV survivors. By including gender in the refugee definition, the Act can create a more inclusive and protective environment for individuals at risk due to their gender identity, contributing to a more effective response to GBV within refugee populations.

### **2. Enhancing Refugee Protection Through Gender-Sensitive Training**

Implementing gender-sensitive training for asylum officials, decision-makers, and legal practitioners involved in the refugee status determination process. This training should focus on understanding the unique vulnerabilities and needs of GBV survivors, ensuring appropriate support and a shared responsibility in gathering evidence.

### **3. Specialized Support Services for Gender-Based Violence Survivors in Refugee Camps**

Gender-based violence is a significant issue among refugee populations, leading to abuse and trauma. Providing specialized support services within refugee facilities is crucial for the well-being of survivors. This includes safe housing, psychosocial assistance, legal aid, and tailored resources to help survivors heal and rebuild their lives. By offering comprehensive support, refugee camps can create a safe environment for survivors to heal and thrive.

### **4. Strengthening Response to Gender-Based Violence in Refugee Populations**

Enhanced data sharing and coordination among various entities involved in addressing gender-based violence (GBV) within refugee populations are crucial for improving the response to GBV cases. By collaborating and sharing information, stakeholders can identify patterns, trends, and service gaps related to GBV, leading to more effective prevention and intervention strategies. This coordinated approach can help address inconsistencies in refugee determinations, ensuring fair treatment and protection for individuals at risk of GBV. By harmonizing processes and sharing information, stakeholders can better support GBV survivors, advocate for policies promoting safety, and create a safer environment for all individuals, regardless of gender identity or refugee status.

## **BIBLIOGRAPHY**

### **National Legislation**

Refugees Act No. 10 of 2021.

Sexual Offences Act, Act No. 3 of 2006.

The Anti FGM Act of 2011.

### **Conventions and Declarations**

1967 Protocol relating to the Status of Refugees.

Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249.

International Covenant on Civil and Political Rights, 16 December 1966, 2200A (XXI).

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993.

United Nations Convention Relating to the Status of Refugees, 28 July 1951.

Universal Declaration of Human Rights, 10 December 1948, 217 IIIA.

### **Soft Law**

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1979.

UNHCR Guidelines on International Protection: Gender-Related Persecution, On 7 May 2002.

UNHCR, The 1951 Refugee Convention: Travaux Préparatoires Analyzed with a Commentary by Dr Paul Weis <[THE REFUGEE CONVENTION, 1951](#)>.

United Nations General Assembly resolution 429(V) of 14 December 1950, available at <<http://www.unhcr.org/refworld/docid/3b00f08a27.html>>.

### **Dissertations**

Abdi M, 'Assessment of Sexual and Gender Based Violence Reporting Procedures Among Refugees in Camps in Dadaab Kenya', unpublished, University of Nairobi, Nairobi,2016,10.

Abiru N, 'Exploring the human rights of the Rohingya: a case study of Kutupalong refugee camp in Bangladesh', unpublished, Norwegian University of Life Sciences Norway,Oslo,2018,15-25.

Efil S, 'Protecting Syrian refugee women and girls from gender-based violence in Turkey: public policy, law instruments, practices and burden sharing', unpublished, Università di Padova, Padova,2020,23-26.

Hawkins M, 'Healing in a New Home: An Analysis of Psychosocial Interventions for Refugee Women Survivors of Gender-Based Violence in a Resettlement Context', unpublished, Boston College, Boston,2020,34.

Mengistu L, 'Experiences of Women Survivors of Gender-based Violence with Survivor-centered Approach, a Case of Association for Women's Sanctuary and Development (Awsad) Ethiopia', unpublished, University of Nairobi, Nairobi,2017,20.

Osime E, 'Utilization of Sexual and Gender Based Violence (SGBV) Response Services among Women and girls affected by Conflict in Northeast Nigeria: Barriers, Opportunities, and Strategies', unpublished, Vrije Universiteit Amsterdam, Amsterdam,2021,40-60.

;

Torrison O 'Armed conflict and family outcomes: the consequences of exposure to war on fertility, teen marriage and intimate partner violence' published dissertation, London School of Economics and Political Science, London,2022.

### **Journal Articles**

Aberman T, 'Gendered Perspectives on Refugee Determination in Canada.' *Refuge: Canada's Journal on Refugees*, 30(2),2014, 57–66. <https://www.jstor.org/stable/48648752>

Adhena G, 'Magnitude of intimate partner violence and associated factors among pregnant women in Ethiopia' *Advances in Public Health* 2020,1-9

Adjin-Tettey, E, 'Reconsidering the criteria for assessing well-founded fear in Refugee Law' *Manitoba Law Journal*,1997,25.

Alexander M, 'Refugee status determination conducted by UNHCR' *2 International Journal of Refugee Law*, 11, 1999,251-289

Anderson A, McAdam J and Lambert H, 'A well-founded fear of being persecuted... But when?.' *2 The Sydney Law Review*, 2010,42.

Binaifer A, 'Rethinking Gender-Related Persecution, Sexual Violence, and Women's Rights: A New Conceptual Framework for Political Asylum and International Human Rights Law' *Tex. J. Women & L.* 6 ,1996,36-62.

Bookey B, 'Domestic violence as a basis for asylum: An analysis of 206 case outcomes in the United States from 1994 to 2012', *Hastings Women's LJ*, 24 ,2013,2-43.

Borges G, 'Journey of Violence: Refugee Women's Experiences Across Three Stages and Places' *Journal of International Migration and Integration*, 2023.

Cintra N, Owen D, and Riggiozzi P, *Displacement, Human Rights and Sexual and Reproductive Health: Conceptualizing Gender Protection Gaps in Latin America*, Policy Press, Bristol,2023, <https://doi.org/10.1332/policypress/9781529222791.001.0001>

Crisp J, 'No solutions in sight: the problem of protracted refugee situations in Africa' *Refugee Survey Quarterly* 22,4,2003, 114-150

Dahal P, Joshi S, and Swahnberg K, 'A qualitative study on gender inequality and gender-based violence in Nepal' *BMC Public Health*, 22, 2005.

David L, 'Women as a social group: Recognizing sex-based persecution as grounds for asylum.' *Colum Hum. Rts. L. Rev*, 20,1988

Davies A, Basten A, and Frattini C, Migration: a social determinant of the health of migrants. *Euro health*, 16(1), 2009,

De Bruijn B, The living conditions and well-being of refugees, *Human Development Research Paper*,25,2009,

Edwards A, 'Transitioning gender: Feminist engagement with international refugee law and policy 1950–2010' *Refugee Survey Quarterly*, 29,2 2010,

Ellesburg M, *What Is Gender-Based Violence, Ending violence against women*, Issues in World Health 11,1999,1-44.

Erfe F, 'How Do the Courts See Sexual and Gender-Based Violence in the US Asylum Context: Issues of Judicial Ethics in the Fact-Finding and Decision-Making Process' Published, Doctoral dissertation, Yale University, New Heaven,2023.

European Commission, Gender-Based Violence, [What is gender-based violence?](#) 18 February 2022.

European Parliament, Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States France, Belgium, Hungary, Italy, Malta, Romania, Spain, Sweden and the United Kingdom, On November 2012,18.

Fan P, and Margaret M, 'Influences on gender-role attitudes during the transition to adulthood', *Social Science Research*, 29,2 ,2000,258-283

Fehrmann T, 'Women's Gender-Based Violence as Grounds for Asylum Under the 1951 Refugee Convention and 1967 Protocol', 2021.

Freedman J, 'Women's right to asylum: Protecting the rights of female asylum seekers in Europe?' *Human Rights Review* 9.4,2008,413-433.

Frelick B, 'Bangladesh is Not My Country': The Plight of Rohingya Refugees from Myanmar. Human Rights Watch,2008.

Fullerton M, 'A comparative look at refugee status based on persecution due to membership in a particular social group' *Cornell International Law Journal*, 26,1993,505.

Fulu E, Kerr-Wilson A, and Lang J et al 'What works to prevent violence against women and girls. Evidence Review of interventions to prevent violence against women and girls, *Pretoria Medical Research Council*, 2014,1580-9.

Goodkind R, & Deacon Z, 'Methodological issues in conducting research with refugee women: Principles for recognizing and re-centering the multiply marginalized' *Journal of Community Psychology* ,2004,32.

Hajjar S & Abu-Sittah G, The multidimensional burden of COVID-19 on Syrian refugees in Lebanon. *Journal of global health*,2021,15.

Healey K and Sullivan C, 'Batterer Intervention: Program Approaches and Criminal Justice Strategies', *U.S Department of Justice*,1998,18.

Heyman G, 'Asylum, Social Group Membership and the Non-State Actor: The Challenge of Domestic Violence' *University of Michigan Journal of Law Reform*,2002, 36.

Hyndman J, & Nylund B, 'UNHCR and the status of prima facie refugees in Kenya' *International Journal of Refugee Law*, 1998, 10.

Jain A, Leka S, Zwetsloot G, Jain A, Leka S, and Zwetsloot G, *The fundamental human right to health, safety and well-being. Managing Health, Safety and Well-Being: Ethics, Responsibility and Sustainability*, Springer, Nottingham,2018

Janice D, and Arnold S, 'Toward a feminist understanding of women and power', *Psychology of women quarterly* 16,4 ,1992, 381-388.

Jensen, M, 'Gender-based violence in refugee camps: Understanding and addressing the role of gender in the experiences of refugees' *Inquiries Journal*, 11,2,

Kelly N, 'Gender-related persecution: Assessing the asylum claims of women' *Cornell International Law Journal* 26 ,1993, 625.

Kneebone S, 'Women within the refugee construct: exclusionary inclusion in policy and practice—the Australian experience' *International Journal of Refugee Law*,17.1 ,2005, 7-42.

Lenner K, and Turner L, Making refugees work? The politics of integrating Syrian refugees into the labor market in Jordan. *Middle East Critique*, 28(1),2019.

León-Giraldo S, Casas G, Cuervo-Sánchez S, García T, González-Uribe C, Moreno-Serra R, and Bernal O, Mental health disorders in population displaced by conflict in Colombia: Comparative analysis against the National Mental Health Survey 2015. *Revista Colombiana de psiquiatria* , 52(2), 2023,121-129.

Macklin A, 'Refugee Women and the Imperative of Categories' *Human Rights Quarterly*, 17, 2, 1995,213–277. JSTOR, <http://www.jstor.org/stable/762517> , Accessed 20 Feb. 2024.

Marian M, *News coverage of violence against women: Engendering blame*, Sage Publications, 1996.

Maiani F, 'The concept of “persecution” in refugee law: Indeterminacy, context-sensitivity, and the quest for a principled approach' *Les dossiers du Grihl*, 2022.

Marsden J, 'Domestic Violence Asylum After Matter of L-R'123, *Yale Law Journal*,7,2014,

Mary H, 'International Human Rights, Gender-Based Violence, and Local Discourses of Abuse in Post Conflict Liberia: A Problem of “Culture”' *African Studies Review*, 55, 2, 2012, 119–146.

McAdam J, 'Refugees: Why seeking asylum is legal and Australia's policies are not' UNSW Press, 2014.

McAdam, J, 'The European Union qualification directive: the creation of a subsidiary protection regime' 3 *International Journal of Refugee Law*, 17, 2005

McCreery E, 'Human Rights Obligations in Post-Disaster Haiti: Working toward Increased Justice for Victims of Gender-Based Violence' *Indiana International Law Review*, 28,2018,

Michael P, 'Gender and types of intimate partner violence: A response to an anti-feminist literature review *Aggression and violent behavior*', 16,4 ,2011

Millbank J, 'The ring of truth: a case study of credibility assessment in particular social group refugee determinations' *International Journal of Refugee Law* 21,1,2009, 1-33.

Monica B, 'Gender, refugee status, and permanent settlement: Immigrant women' *Routledge*, 2018,103-124.

Musalo K, 'Protecting Victims of Gendered Persecution',14, *Virginia Journal of Social Policy and the Law*,2007

Muuo S, Muthuri, K, and Mutua, K, et al, 'Barriers and facilitators to care-seeking among survivors of gender-based violence in the Dadaab refugee complex' *Sexual and reproductive health matters*, 28(1),2020.

Njoku C, *Humanitarian Protection in International Refugee Law, Sexism and Exclusion: Case for Human Rights Assessment*,2023

Nógrádi N, 'Global Gender-based Violence Against Women as a Matter for Global Justice Theory: Pervasive Patriarchal Structures and Responsibility for Harm' Doctoral dissertation, University of Leeds School of Politics and International Studies, Leeds,2018.

Peter J, and Charles W, 'Refugees and asylum seekers: a review from an equality and human rights perspective' Research Report 52, *Equality and Human Rights Commission*, 2010.

Petrunov G, 'Human Trafficking in Eastern Europe: The Case of Bulgaria', 653, *The Annals of the American Academy of Political and Social Science*,2014,162-182.

Puapattanakajorn N, *Investigating Host Countries' Refugee-Related Policies and Its Effect on Lived Experiences of Rohingya Refugees. Penn Journal of Philosophy, Politics & Economics*, 17(1),2022

Randall M, 'Particularized Social Groups and Categorical Imperatives in Refugee Law: State Failures to Recognize Gender and the Legal Reception of Gender Persecution Claims in Canada, the United Kingdom, and the United States'<sup>4</sup>, *Am. UJ Gender Soc. Pol'y & L.* 23 ,2014, 529.

Russell D, 'Report on the International Tribunal on Crimes against Women, *A Journal of Women Studies*,2, (1),1977, 1-6.

Russian women are being forced to pay their abusers' domestic violence fines, advocates say  
Social Sharing, Russian 20 December 2017.

Russo N, & Pirlott A, 'Gender-based violence: concepts, methods, and findings 'Annals of the New York academy of sciences, 2006,178-205

Sahar H, 'Recognizing Sexual and Gender-Based Violence as Persecution Grounds for Women Seeking Refugee Status and Asylum' Published, Doctoral dissertation, Columbia University, New York, 2017.

Sidahmed A, 'Problems in Contemporary Applications of Islamic Criminal Sanctions: The Penalty for Adultery in Relation to Women',2, *British Journal of Middle Eastern Studies*,28,2001,188.

Simeon, J., *The UNHCR and the supervision of international refugee law. Cambridge University Press,2013.*

Sloand E, Killion C, Gary A, Dennis B, Glass N, Hassan M, and Callwood G, Barriers and facilitators to engaging communities in gender-based violence prevention following a natural disaster. *Journal of health care for the poor and underserved*, 26(4),2015,1377.

Steiner N, Gibney M, and Loescher G, *Problems of protection: the UNHCR, refugees, and human rights*, Psychology Press,2003.

Sudarso S, Phillipus K, and Mas'udah S, 'Gender, religion and patriarchy: The educational discrimination of coastal Madurese women, East Java.' *Journal of International Women's Studies* ,20.9 ,2019, 2-12.

Tastsoglou E, and Shiva N, '(Re) Producing Gender: Refugee Advocacy and Sexual and Gender-Based Violence in Refugee Narratives' *Canadian Ethnic Studies*, 51,3,2019, 37-56.

Teays W, 'The Burning Bride: The Dowry Problem in India', *Journal of Feminist Studies in Religion*, 7,2,1991, 42-45.

The Public Policy Advisory Network on Female Genital Surgeries in Africa, 'Seven Things to Know about Female Genital Surgeries in Africa', 6, *The Hastings Center Report* ,42,2012, 19-27.

Walker K, 'Defending the 1951 Convention Definition of Refugee' *Georgetown Immigration. Law Journal*, 17,2002, 583.

Willman M, and Crystal C. 'Sexual and gender-based violence: what is the world bank doing and what have we learned, a strategic review,'

Wimplemann T, *Good Women Have No Need for This Law: The Battles over the Law on Elimination of Violence against Women*, in Wimplemann T, (eds), *In The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan*, University of California Press, California,2017,53-55.

Wirtz A, Pham K, Glass N and Loochkartt, et al 'Gender-based violence in conflict and displacement: qualitative findings from displaced women in Colombia' *1, Conflict and health*, 8, 2014,

Yabah L, ‘Autocracies and the implementation of human rights treaties-the case of Cameroon and the International Covenant on Civil and Political Rights (ICCPR)’, Middlesex University, London,2019.

Zimmermann A, Dörschner J, and Machts, F, *The 1951 Convention relating to the status of refugees and its 1967 protocol: A commentary*. Oxford University Press, USA,2011.

### **Online Sources**

Statista, *Number of refugees and asylum seekers in Kenya from 2017 to 2021, by gender*. Accessible at <[Number of refugees and asylum seekers in Kenya 2017-2021, by gender](#)>

[Applying for asylum in Kenya](#)>

[How do I register my application for asylum? - UNHCR Kenya](#)>

### **Reports**

Alys M and Crystal C, ‘Sexual and Gender-Based Violence : What is the World Bank Doing and What Have We Learned, A Strategic Review’ *World Bank Publications - Reports* 16733, The World Bank Group, <https://ideas.repec.org/p/wbk/wboper/16733.html>, accessed on 20 February 2024.

Carman T and Alash A, ‘Gender persecution the top reason women seek asylum in Canada’ CBC, [Gender persecution the top reason women seek asylum in Canada | CBC News](#) ,On 7 February 2018.

CGRS Database Case #8491,2011.

Government of Kenya (GoK), UNHCR, RCK, Kituo cha Sheria and Heshima Kenya, *Child Rights Situational Analysis for Refugee Children in Nairobi*, 2013.

Lilja I, 'Unseen victims: why refugee women victims of gender-based violence do not receive assistance in the EU' *European Institute for Crime Prevention and Control*, 2020.

Refugee Consortium of Kenya (RCK), *Refugee Insights*, Issue No. 24,

Stop Violence Against Women (StopVaw), *Gender Based Asylum*, January 2010 [Gender-Based Asylum](#)> Accessed 10th February 2024.

Forced Migration Review (FMR), Issue no.43.

UNHCR, Kenya Statistics Package, [KENYA STATISTICS PACKAGE](#) 31 December 2021.

United Nations Population Fund, [Gender-based violence](#).

UNIFEM. Facts and figures: Violence against women <https://asiapacific.unwomen.org/en/focus-areas/end-violence-against-women/evaw-facts-and-figures>,2007.

World Health Organization, 'Female Genital Mutilation—What It Is and Why It Continues', *Eliminating Female Genital Mutilation: An Interagency Statement*, *World Health Organization*, 2008, 4–7.

World Health Organization Report,9 March 2021.