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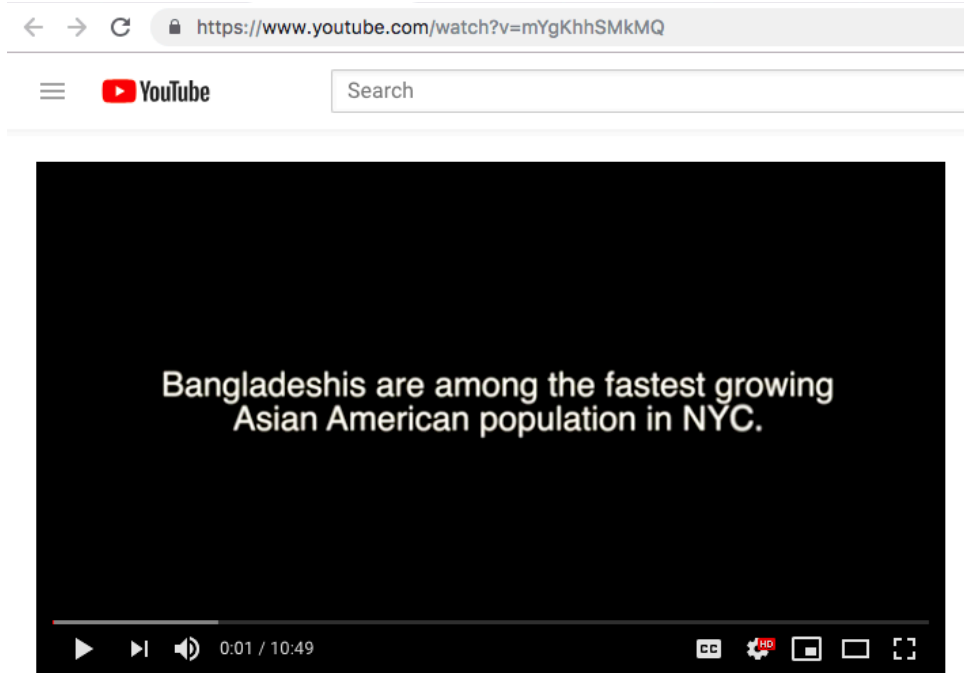
November 5th – Gender and Migration

- VIDEO – Watch: “Naree Shongothok/Women Organizers,” created by Chaumtoli Huq, Founder of Law@TheMargins. 2016.
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Video


Naree Shongothok/Women Organizers By Chaumtoli Huq, Founder, Law@TheMargins

Watch Link: <https://www.youtube.com/watch?v=mYgKhhSMkMQ>



Naree Shongothok Video

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 **Chaumtoli Huq**
Published on Apr 21, 2016 SUBSCRIBE 7

Naree Shongothok/Women Organizers is a project of Law@theMargins, an innovative platform focused on law and organizing. It features the work of five Bangladeshi women organizers in New York City. Through this video, we hope to raise funds to support the organizing work of Bangladeshi working class women here in NYC and also to cultivate women's leadership of in Bangladesh.

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12:00 AM, March 25, 2015 / LAST MODIFIED: 12:14 AM, April 23, 2015

Workers' rights through a gender lens

Chaumtoli Huq

Since Rana Plaza, there has been a laudable focus on workplace safety in Bangladesh. There are two international safety agreements that are leading efforts to inspect the electrical, fire, and structural safety of buildings; however, these efforts are limited in addressing key issues impacting the workplace safety of women workers and their overall rights.

In the summer of 2013, I interviewed survivors of the Rana Plaza tragedy and learned that pelvis fractures, injuries to reproductive organs and urinary tracts were common due to the building collapsing on their bodies. Media and advocates focused on limbs lost and campaigns to get prosthetics, but there was no mention of the impact on women's reproductive health or inability to maintain marital relations. Women confided to me that they feared their husbands would abandon them; neither can they work nor can they bear any children. The majority of the women working in the industry are at the peak of childbearing age, between their teens and thirties, and so, this fear is a real concern.

The focus solely on workers' rights, and not the specific way in which women workers are impacted has resulted in the failure of providing reproductive and also mental health services for women. Still, we have not researched the ways in which women are coping in their families, and how their social status has diminished due to their injuries. Working in the garment industry gave women a certain level of economic freedom because they were able to contribute income to the joint households. To resume to a dependent status on their family members surely will cause emotional and psychological distress.

Aside from the survivors of Rana Plaza, women workers' needs and concerns are routinely ignored in the workplace, such as maternity leave, child care on site, and sexual and verbal harassment. Many working women are still required to maintain household duties such as cooking, cleaning, and child care, and workers' advocates need to think about women's rights beyond the factory. Conscientious and business savvy owners provide on-site child care because they know if a worker's child is nearby she will be productive and will not be absent. In an industry driven by targets and deadlines, absences hurt the bottom line and it is cheaper to provide child care onsite. Some forward-thinking owners also provide free schools for the children of garment workers as a benefit.

Trade unions have benefited women workers. Women workers I have interviewed have used the trade union structure to collectively obtain maternity benefits. This is probably why women workers are unions' most vocal supporters. While Bangladesh labor law allows for maternity leave benefits, it is rarely enforced in the garment industry. As soon as an owner learns a worker is pregnant, she is terminated. Even if she is not, she is not given the legally owed benefits, which can have deadly consequences. In one case, the mother was unable to afford quality prenatal care, because her employer did not provide her maternity leave benefits, and as a result, she died during childbirth.

Also not often discussed is the work-life span of women workers. Sekender Ali Mina, Executive Director of Safety & Rights, shares "there is no systemic investigation on when women leave the workforce or programs to assist with the transition. After their labor is used in their youth, they are forgotten." But, he estimates by their thirties, women leave the garment industry. Younger workers eager to earn money replace them. Older women are capable of working; yet, there are few programs to

provide any safety net once they leave garment work or programs to retrain them to do other work. Back home, they are often viewed as an economic burden.

Outside of the garment industry, in designing migrant worker programs, the Bangladesh Government fails to take into consideration unique issues women workers face. In the recent MOU with Saudia Arabia (KSA) where female workers will be hired as domestic workers, the Government has not taken steps to protect the rights of women. Human rights lawyer and program manager with Manusher Jonno Foundation, Sarawat Binte Islam, notes that the Government should investigate why other countries have withdrawn female workers from KSA and should have discussed remedies for those issues with them. These programs as they stand may violate ILO Migration for Employment Convention since the jobs are restricted based on sex and the remuneration is lower than that provided to nationalities from other labor sending countries. Some steps that could have taken are to demand wages on par with other migrant sending countries, designating safe houses in case of harassment by an employer, contacts for social service organizations, mobile phone so that women can call home for free or programs to allow women to meet each other so that they are not isolated. Also, Ms. Islam recommends skills training for jobs other than domestic work.

Bangladeshi women workers find themselves vulnerable in the export oriented industries of the garment sector as well as migrant workers, and a whole host of other workplaces. In conceptualizing workers' rights and designing workers' programs, if we use a gender lens then we can begin to identify and address some of the issues they may encounter in the workplace.

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You can follow her @lawatmargins on Twitter.

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Women and Migration: Incorporating Gender into International Migration Theory

MARCH 1, 2003 FEATURE | By Monica Boyd, Elizabeth Grieco



Introduction

Over the last 25 years, there has been little concerted effort to incorporate gender into theories of international migration. Yet, understanding gender is critical in the migration context. In part because migration theory has traditionally emphasized the causes of international migration over questions of who migrates, it has often failed to adequately address gender-specific migration experiences. Without clear theoretical underpinnings, it becomes difficult to explain, for example, the conditions under which women migrate, or the predominance of women in certain labor flows and not in others. Furthermore, traditional theory fails to help us understand the circumstances that encourage women to become transnational migrants, to enter into trafficking channels, or to seek refugee resettlement. Answering these questions and other more gender-sensitive inquiries requires showing how a seemingly gender-neutral process of movement is, in fact, highly gender-specific and may result in differential outcomes for men and women.

Today the question, "How can gender be incorporated into our understanding of migration?" remains only partially answered for a variety of reasons. For example, understanding migration and constructing useful theories must take into account many different types of migration, including temporary, permanent, illegal, labor, and conflict-induced migration. Developing a gendered theory of migration has been difficult because the disciplines of anthropology, sociology, political science, economics, demography, law, and history have tended to focus on only a few types of migration and stress different explanations. Also, incorporating gender as an explicit part of migration theory has more recently been

influenced by developments in feminist perspectives in North America, which continue to challenge more orthodox views.

Bringing Women In: An Overview of Current Theory

In the 1960s and early 1970s the phrase "migrants and their families" was a code for "male migrants and their wives and children." The women's movement, however, with its emphasis on the situation of women, caused some to question the near-invisibility of women as migrants, their presumed passivity in the migration process, and their assumed place in the home.

...the interests of men and women in families do not always coincide and may affect...who manages to migrate

Research in the 1970s and the 1980s began to include women, but did not cause a dramatic shift in thinking about who migrated, how immigration was explained, or the likely consequences. One of the central questions about women during this period was whether migration "modernized" women, emancipating them from their assumed traditional values and behaviors.

Gradually, the "add women, mix and stir" or the "gender as a variable" approach appeared in more and more research. Yet, this research ultimately did not question the underlying models used to explain why people moved, where they went, and how they integrated. Instead, differences between men and women were noted, and then explained as reflections of different sex roles. In the neoclassical economic models and the push-pull demographic models of the 1970s and 1980s, for example, migration was seen as the outcome of individual decisions. The responsibilities of women as wives and mothers (and the role of men as breadwinners) were thought to influence the decisions of women. These gendered responsibilities were believed to explain why women were less likely than men to participate in migration decisions or in the labor force of the host country when they did join their husbands.

The development of new economic concepts and theories that emphasized the importance of the family or the household as the primary site of decision making was also criticized for effectively substituting the rational, calculating individual with a rational, calculating household. Critics note that family/household decisions and actions do not represent unified and equally beneficial outcomes for all members. This is because families and households, as units where production and redistribution take place, represent centers of struggle where people with different activities and interests can come into conflict with one another. When placed within ongoing power relations that operate in families and households, such diverse interests and activities strongly suggest that the interests of men and women in families do not always coincide and may affect decisions about who manages to migrate, for how long, and to what countries.

The dual argument that gender is an integral part of the migration process and that theories of migration must incorporate it has also influenced other areas of migration research. For example, critics have observed that economic factors do not have a gender-neutral impact. At the macro level, national economic development may affect the economic roles of men and women in different ways, thus stimulating or retarding the international migration of women versus men. Similarly, the demand for labor in receiving countries can also be gender-specific, as seen in the migration of women domestic workers to North America, the Middle East, and Europe. Emphasizing the need to incorporate gender has also influenced network theory. Early research that focused on the importance of networks to stimulate and sustain migration from one area to another tended to emphasize networks of men. More recent research shows that women have their own networks with other women and utilize them both to migrate and to settle in a new country.

Gender as a "Social Construction" and Its Impact on Migration Theory. Ongoing developments in feminist theory throughout the 1980s and 1990s further contributed to a focus on gender, rather than one based on individual decisions of men and women. Gender is seen as a core organizing principle that underlies migration and related processes, such as the adaptation to the new country, continued contact with the original country, and possible return. Most important is the view that while sex is defined as a biological outcome of chromosomal structures, *gender* is "socially constructed." In feminist theory, gender is seen as a matrix of identities, behaviors, and power relationships that are constructed by the culture of a society in accordance with sex. This means that the content of gender – what constitutes the ideals, expectations, and behaviors or expressions of masculinity and femininity – will vary among societies. Also, when people interact with each other, by adhering to this content or departing from it, they either reaffirm or change what is meant by gender, thus affecting social relationships at a particular time or in a particular setting. This means that gender is not immutable but also changes and, in this sense, is both socially constructed and reconstructed through time.

The feminist view of gender as a "social construction" has raised two questions that have fuelled much of the research in the study of women and migration over the last decade. The first relates to patriarchy, or the hierarchies of power, domination, and control men use to rule women. How does patriarchy, which gives men preferential access to the resources available in society, affect women's ability to migrate, the timing of that migration, and the final destination?

The second question focuses on the interpersonal relationships between men and women. How do women's relationships to family members, including spouses, change with migration? In other words, how is patriarchy altered or reconstituted after migration? Some studies ask if labor force participation in the host country affects women's authority within the family and their sense of control, and contributes to men assuming more responsibilities for housework and childcare. Others ask if migration of either men or women influence power relations and decision making between men and women.

Studies that examine transnational migration, where migration creates and sustains social ties and various activities between two or more countries, often focus on individuals and the interpersonal relationships among individuals. One initiative in migration research undertaken by anthropologists is to examine the dynamics of power relationships when men migrate, leaving women behind in the origin country.

Women and Migration: Toward Theoretical Clarity

Since the 1960s, international migration theory has indeed become more gender sensitive, moving from the predominant view of female migrants as simply the wives and children of male migrants to incorporating explanations of the unique experiences of women migrants themselves. However, in an effort to correct the "invisibility" of women in migration theory, there is a chance that researchers will begin to over-emphasize the migration experience of women, paying less attention to that of men. This would inadvertently undermine the gendered view of migration that helps explain the experiences of both males and females.

To encourage the further development of international migration theory, what is needed is a general theoretical framework that guides research and helps explain the unique experiences of both males and females at all stages of the migration process. But, in light of the history of "bringing women in," how exactly is gender involved in the migration process? There are three distinct stages where gender relations, roles, and hierarchies influence the migration process and produce differential outcomes for women: the pre-migration stage, the transition across state boundaries, and the experiences of migrants in the receiving country.

The Pre-Migration Stage. In this stage, many factors exist that shape the decision to migrate and make migration more or less possible for women. These include both systemic and macro factors, such as the state of the national economy, and individual or micro factors, such as gender-specific stages in the life-cycle. These factors are further divided into the following three areas: 1) gender relations and hierarchies; 2) status and roles; and 3) structural characteristics of the country of origin.

Gender relations and hierarchies within the family context affect the migration of women because it is usually within the family that female subordination to male authority plays itself out. The family both defines and assigns the roles of women, which determine their relative motivation and incentive to migrate, and controls the distribution of resources and information that can support, discourage, or prevent migration.

"gender" is seen as a matrix of identities, behaviors, and power relationships...

The interaction of women's roles, status, and age within a particular socio-cultural context result in a "migratory probability" which can also affect the ability of women to migrate. A United Nations report on women and migration argues that the impact of women's status and roles on their propensity to migrate must be considered at three levels: individual, familial, and societal. Individual factors include age, birth order, race/ethnicity, urban/rural origins, marital status (single, married, divorced, widowed), reproductive status (children or no children), role in the family (wife, daughter, mother), position in family (authoritative or subordinate), educational status, occupational skills/training, labor force experience, and class position. Family factors include size, age/sex composition, life-cycle stage, structure (nuclear, extended, etc.), status (single parent, both parents, etc.), and class standing. Societal factors include those community norms and cultural values that determine whether or not women can migrate and, if they can, how (i.e., labor or family reunification) and with whom (alone or with family).

In other words, the culture of the sending society determines the likelihood that women in various positions will migrate. In this sense, a woman's position in the sending community not only influences her ability to autonomously decide to migrate and to access the resources necessary to do so, but also the opportunity she has to migrate at the point when the decision is being made.

Finally, certain macro characteristics of the country of origin can also influence gender-specific migration propensities. These characteristics can interact with the gender relations and the position of women in the sending society and affect decisions about who moves and when. These characteristics include: the state of the economy (agrarian, industrial, level of development); the types of economies present within various communities (i.e., all developed, mixed agrarian/industrial, some subsistence horticulturalists); the level of displacement caused by economic changes and shifts in production technologies; land tenure laws; labor market conditions and conditions of work (wage levels, benefits); the ability of the economy to provide jobs and the type of jobs available (number of industries); the ability of the national government to provide related infrastructure (education, job training); the geographic location of the country and the language(s) of the sending society; the relation and integration of the national economy into the world economy; the supply and demand conditions for the factors of production in sending and related receiving communities; and the presence or absence of established migration systems with other areas.

Gender and the Transition Across State Boundaries. Decisions made at the pre-migration stage are influenced by a variety of gender-related factors. In certain instances, men are more likely to migrate, while in others women may be the ones to leave. A decision to leave, however, is not the same as being allowed to exit or to enter a specific country. Through their policies, nation-states are major actors in a gendered international migration process.

National policies of the countries of origin can influence migration through prohibitive, selective, permissive, promotional, or expulsive rules of exit that may affect men and women migrants differently. These policies are frequently conditioned by implicit or explicit assumptions about the status and roles of men and women both within the family and in society. For example, some labor-exporting countries have implemented "conditions" in their policies to protect women from exploitation that effectively prevent them from engaging in labor migration.

Immigration laws and regulations of the country of destination also influence the migration of women and men. These policies can influence the ability of women and men to migrate in three ways. First, the migration policies of many receiving countries implicitly assume a "dependent" status for women and an "independent" migrant status for men. Women are often classified by their relation to men (e.g., wife or daughter) with whom they migrate regardless of their own, independent status.

Second, by implicitly defining immigrant women as "dependent" and men as "independent," immigration policies of receiving societies place women in a "family role" rather than a "market role." This, in turn, can reinforce some of the factors responsible for the social vulnerability of migrant women. This is especially true in labor-importing countries that separate the right to work from the right to reside and where women who lack a work permit may be employed illegally.

Third, traditional sex roles and stereotypical images regarding the place of women in society can influence the type of work for which migrant female labor is recruited. Women admitted as workers are generally concentrated in "female" occupations, such as domestic service or nursing. When women enter on the basis of labor-market skills, many are in service occupations. In countries that recruit migrant workers on a temporary basis, most women are admitted as domestic workers, which includes those specializing in childcare.

In addition to nation-states, intermediary organizations and institutions also influence who gets in, and thus the gender composition of immigration flows. Domestic workers and workers in the sex trade, for example, may enter countries under the auspices of organized intermediaries. Although not part of the policies of the countries of origin and destination, these intermediary institutions and agencies, both legal and illegal, work to circumvent established policies. The actions of intermediaries can increase the likelihood that women will migrate because they act as networks linking potential female migrants with demands for female labor in destination countries.

Finally, international conventions that influence immigration policies also may be gendered. This can be seen in the United Nations Convention relating to the Status of Refugees, which defines who is a refugee. Critics charge that this definition favors the recognition of men as refugees because forms of persecution experienced by women in private settings are less likely to be recognized as grounds for persecution. **Read article by Anker and Lufkin.**

Gender and the Post-Migration Stage. Men and women may be treated differently and experience resettlement differently once in a receiving country. Integration outcomes are primarily influenced by three factors: 1) the impact of entry status on the ability to integrate and settle; 2) patterns of incorporation into the labor market; and 3) the impact of migration on the status of women and men.

If immigration policy determines the entry status of migrants, entry status in turn often determines residency and employment rights. This can also be part of the eligibility criteria for social welfare programs. Entry status is more likely to handicap female migrants than male migrants because residency and employment rights and related entitlements often differ by gender. Because migrant women are often viewed by the state as "dependents," their rights may become legally dependent – sometimes precariously so – on the migration and residency status of other family members. This may affect the ability of migrant women to obtain those rights and entitlements in their own right.

How women are defined at entry also may affect other social rights and entitlements, including the capacity to gain legal citizenship quickly, to access language-training classes, to obtain job training, and to access income security programs. For this reason, studies of immigrant women argue that women more often than men are denied full citizenship; that is, the full civil, political, and social rights and responsibilities that normally come with membership in a society.

Racial, birthplace, and gender-based hierarchies that exist in countries of destination are important and influence the incorporation of women and men migrants into the labor market. Women may have different experiences than men because they are frequently segregated into traditional "female" occupations, such as domestic work, childcare, or garment manufacturing. Even highly skilled immigrant workers may have different experiences based on their gender. The gender hierarchies that affect all women in general also handicap immigrant women in particular, influencing job opportunities, work environment, and wages vis-a-vis their male counterparts.

In the receiving country, migration may also alter the status and gender relations of men and women. New economic roles and new responsibilities affect spousal relationships, in some instances leading to considerable negotiations and resistance to change by both men and women. Studies have examined the

alteration in marital power and the process of negotiation not only for immigrant couples, but also in cases where one partner is still living in the origin country.

The literature on female migration generally focuses on two broad aspects of status that can change as a result of the migration process. The first is the position of migrant women within their families. For some women, migration may mean an increase in social mobility, economic independence, and relative autonomy. This is especially true if women's moves are accompanied by increased participation in the labor market. New economic and social responsibilities may change the distribution of power within the family, leading to greater authority and participation in household decision making and control over the family's resources. These also may cause positive shifts in the relationship between immigrant women and their husbands and children.

However, participation in the labor force does not automatically improve equality between a migrant and her husband. For some migrant women, labor force participation may increase the burden that they must carry unless they find new alternatives to old roles, particularly those of childcare and housework.

The second aspect of status change discussed in the literature on women and migration focuses on the impact of moving from one form of gender stratification system to another. Generally speaking, this means moving from one system of patriarchy to another. Here, the literature on women and migration emphasizes the interaction between the societal and family contexts. While migration may lead to an improvement in the social status of women, it may not change their relative position within the family.

Conclusions

Gender is deeply embedded in determining who moves, how those moves take place, and the resultant futures of migrant women and families. If international migration theory is to incorporate gender appropriately and effectively, it must take into account the subtle as well as the obvious factors that coalesce to create different experiences all along the migration spectrum. Further defining and understanding these forces and outcomes will greatly enhance the theoretical grounding of international migration in general and the individual experiences of migrant women around the world.

[Click here for an extensive resource list on women and migration.](#)

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Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law

KAREN MUSALO

In August 2014, the US Board of Immigration Appeals (BIA), the highest immigration tribunal in the country, conceded that women fleeing domestic violence could meet the refugee definition and qualify for protection.

The case in question, *Matter of A-R-C-G- et al.*, involved Aminta Cifuentes, a Guatemalan woman who had suffered egregious brutalization over a 10-year period at the hands of her spouse. Her husband beat and kicked her, including incidents where he broke her nose and punched her in the stomach when she was eight months pregnant with such force that the baby was born prematurely and with bruises. Ms. Cifuentes told her husband she would call the police, but he said it would be pointless since “even the police and the judges beat their wives.” Unfortunately, her husband’s claim bore true; she called the police on at least three occasions and they dismissed her complaints as marital problems and told her to go home to her husband.

The decision in *Matter of A-R-C-G- et al.* is notable for many reasons, not the least because it put an end to a controversy that had been raging in US law since 1999 when the same body denied protection to another Guatemalan woman, Rody Alvarado, whose case presented very similar

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facts. Ms. Alvarado, like Ms. Cifuentes, had suffered more than a decade of violent abuse, and her appeals to both the police and the judicial system had been met with scorn, indifference, and inaction.

In the interim—between 1999 when the BIA denied Ms. Alvarado’s claim, and 2014 when it ruled in favor of Ms. Cifuentes—there existed a remarkable level of disagreement at the highest levels of the US government on the central issue of whether women fleeing domestic violence are entitled to asylum protection. No fewer than three Attorneys General of the United States (Janet Reno, John Ashcroft, and Michael Mukasey) became personally

involved in the issue, and various federal agencies adopted diametrically opposed positions. These entrenched differences in policy positions led to a virtual deadlock that lasted for 15 years.

Why has the issue of protection for women who are brutalized by their intimate partners been such a lightning rod for controversy and evoked such strong dissension and resultant gridlock? In order to answer, it is necessary to situate the question of asylum protection for victims of domestic violence within the broader context of “gender asylum” (claims for protection arising from gender-motivated rights violations), and to examine both the origins of our modern refugee protection regime and the historical resistance to recognizing women’s rights as human rights.

Historical Context

The birth of our international refugee protection regime can be traced back to the aftermath of World War II and the recognition of the failure to protect Jews and other victims of the Holocaust. Many who fled and attempted to seek haven were turned back. One of the most shameful and iconic examples of this refolement occurred when the US refused safe harbor to a ship, the *St. Louis*, carrying Jews from Europe after they were denied promised landing in Cuba. The *St. Louis* with its more than 400 passengers was forced to return to Europe, where many of the people on board perished in concentration camps.

When representatives of state governments came together to draft an international treaty to address refugees, the World War II experience stood foremost in their consciousness. The 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol defined a refugee as an individual with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,” grounds which reflected the historical period and the drafters’ understanding of reasons for persecution. The drafting of these treaties preceded the recognition of women’s rights as human rights, and therefore, it is not surprising that gender is absent from the list of criteria.

There are currently 147 countries, including the United States, that are parties to the Refugee Convention, its Protocol, or both. These countries have, with some qualifications, adopted the international refugee definition in their domestic legislation, with its requirement of demonstrating that persecution be linked to one of the five aforementioned “protected grounds.”

Growing Recognition of Women’s Rights

Historically, the violation of women’s rights was not seen as an issue of concern within the international human rights framework. Violations of women’s rights were often considered expressions of cultural norms or were justified as being mandated by religion. In addition, there persisted a perceived delineation between violations by governments committed against its citizens in the public sphere and violations by non-state actors of women in the so-called

“private sphere.” It was only through the efforts of women’s rights activists that this distinction has been largely eroded, and within the human rights arena there has been growing acceptance that violations of women’s rights, even if they take place in “private,” are a matter of public concern and state responsibility.

Such progress came much more slowly in the area of refugee protection, where two principal conceptual barriers were in play. First, there was the reluctance to recognize traditional practices, such as female genital cutting (FGC), as acts of “persecution.” Second, and equally important, was that the definition of “refugee” in the UN Refugee Convention—which has been adopted by most countries that are parties to it—does not include gender as one of the five protected grounds. In 1985, the United Nations High Commissioner for Refugees (UNHCR), whose role it is to provide guidance to governments on their application of the 1951 Convention and its 1967 Protocol, began to address the potential exclusion of women from refugee protection. The UNHCR encouraged a broader recognition of gender-related harms as persecution, as well as the use of the “particular social group” protected ground to include claims based on gender. In 1993, the UNHCR, in Executive Committee Conclusion 73, recommended that state parties to the Refugee Convention or Protocol develop “appropriate guidelines on women asylum-seekers in recognition of the fact that women refugees often experience persecution differently from refugee men.”

In 1995, in an apparent response to the UNHCR’s recommendation, the United States issued gender guidelines, which were generally positive in their approach towards recognizing violations of women’s rights as deserving of asylum protection. Their impact, however, was limited by the fact that they were directed only to the first tier of decision-makers in the US system, asylum officers. Even at that level, the guidelines had no binding effect, leaving it up to the discretion of each asylum officer whether to follow them or not.

An immigration judge’s denial of asylum to Fauziya Kassindja, a young woman from Togo fleeing FGC, provided clear demonstration of the guidelines’ circumscribed effect. Ms. Kassindja appealed the judge’s ruling to the BIA, and there, the principle of protection for women fleeing gendered harms prevailed. In a 1996 decision known as *Matter of Kasinga*, the BIA ruled that the physical and psychological harm inflicted by FGC met the legal definition of “persecution,” and that it would be imposed on Ms. Kassindja because of her “membership in a particular social group,” defined in significant part by gender. The BIA’s holding was a landmark in US law as the first to accept that women fleeing harms inflicted because of gender could qualify for refugee status. However, it had a strong basis in existing law; the definition of persecution had long included acts of physical and psychological harm analogous to FGC, and a 1985 precedent decision, *Matter of Acosta*, had specifically ruled that social groups could be defined by “sex.”

The 15-Year Controversy in the United States

Shortly after the BIA's positive decision in Fauziya Kassindja's case, Rody Alvarado—a Guatemalan woman fleeing brutal domestic violence, whose case is referred to above—was granted asylum by an immigration judge in San Francisco. The judge applied the same rationale as the BIA had in Ms. Kassindja's case—that egregious harms inflicted because of a woman's gender in combination with other characteristics can be the basis for a successful claim to asylum. Implicit in the decision was that the judge saw no reason to treat the harm of domestic violence any differently than the harm of FGC. Although they took different forms, both rose to the required level of severity, and both were imposed or motivated by the gender-defined social group of the victim. Given the rationality of this approach, it was a surprise to many when the attorney representing the US government decided to appeal the grant of asylum to Ms. Alvarado, and even more of a surprise three years later when the BIA, which had granted asylum to Ms. Kassindja, reversed the grant of asylum to Ms. Alvarado in a decision known as *Matter of R-A-*.

The Board's decision in *Matter of R-A-* set off a series of Executive Branch actions which often conflicted with each other, and laid bare the deep divides between governmental actors on the issue. In December 2000, then-Attorney General Janet Reno issued proposed regulations specifically intended to sweep away the legal barriers to asylum for domestic violence survivors imposed by the decision in *Matter of R-A-*. She next took the unusual step of personally intervening in the *R-A-* case (in a process called "certification"), and wiped out the negative ruling. She directed the board to decide the case anew once the proposed regulations were issued as final.

In the subsequent years, Attorneys General Ashcroft and Mukasey would also undertake the somewhat rare measure of directly intervening in Rody Alvarado's case. In 2003, Ashcroft certified the case to himself and asked both parties—Ms. Alvarado and the government, represented by the Department of Homeland Security (DHS)—to submit briefs on the issue of whether Ms. Alvarado met the refugee definition.

Information leaked from government sources indicated that Ashcroft took the case with the intention of reinstating the earlier board denial. However, in an unexpected change of position, the government—the party that had disagreed with the asylum grant to Ms. Alvarado in 1996 and lodged the appeal that resulted in the reversal—filed a brief in 2004 stating that Ms. Alvarado met the legal definition of



A group of Kenyan girls who left their homes to avoid female genital cutting (FGC) by their community in 2002, like Ms. Kassindja, whose 1996 asylum decision ruled FGC to be persecution under US asylum laws. With the help of the NGO Centre for Human Rights and Democracy, they became the first Kenyan girls to successfully win a restraining order against anyone attempting to subject them to FGC.

a refugee and should be granted protection. This made it quite impossible for Ashcroft to reinstate the denial, when the government itself (albeit the DHS, a different agency from Ashcroft's Department of Justice) was arguing that she should be granted asylum. Ashcroft decided to dodge the issue by declining to decide it and sending the case back to the BIA with the same directive as had his predecessor Janet Reno—to decide the matter once the proposed regulations were issued as final.

The depth of controversy around this issue affected the ability of the relevant government agencies to agree on issuing regulations; by 2008 the regulations proposed in 2000 had still not been finalized, and to this date have not been finalized. At that point Michael Mukasey, the third Attorney General to involve himself, decided to intervene. He certified the case to himself, and ordered the BIA to decide Ms. Alvarado's case on the basis of the existing law, and not await finalized regulations.

In compliance with his order, Ms. Alvarado's case went back to the BIA, which agreed to send it back to an immigration judge. During the trial, the DHS repeated its statement from 2004 when the case was in front of John Ashcroft: that Rody Alvarado qualified for relief and should be granted protection. She was thus granted asylum once more, 13 years after she had originally been granted asylum—but this time the decision was not appealed, and her odyssey for protection came to a positive conclusion. Nonetheless, this did not by any means resolve the issue on a national level. Decisions by immigration judges do not bind other immigration judges, and it would be five more years until there would be binding precedent assuring protection for women fleeing gender-based harms such as domestic violence. That binding precedent was *Matter of A-R-C-G-*.

Why all the Controversy?

Why has there been such resistance? There is prob-

ably no single answer, but rather a long list of factors. The comments of some who oppose protection often reveal a resistance to accepting that women's rights are indeed human rights, and therefore of legitimate concern within a human rights and refugee rights framework. Their remarks frequently demonstrate an adherence to the old public/private sphere approach, stating that one should not "expect asylum law to address 'personal' or 'family' issues." But this argument ignores the fact that the fundamental purpose of the refugee regime is to provide a safe haven to those who are persecuted in situations where their governments fail to protect them. There is no legitimate reason to exclude women from this arc of protection.

Asylum is one of the few areas of immigration law not subject to maximum quotas; any individual who makes it to the United States and passes preliminary screening procedures can apply for protection. It should be noted however, that the process of applying is difficult, and the legal standard quite demanding. Notwithstanding these challenges, there is the fear of floodgates opening, and it is not hard to see how this fear has fueled the controversy over protection. Fear of the opening of the floodgates was repeatedly given voice around the case of Fauziya Kassindja, with some commentators observing that approximately 3 million girls are subject to FGC each year, and that a positive decision in her case would lead to the United States being deluged with girls and women seeking protection. However, the positive decision in her case came down 18 years ago, and the hordes of refugee women have not materialized. The experience of Canada also refutes this fear: it has recognized gender-based refugee claims since 1993 (including, explicitly, domestic violence) and has not experienced any appreciable increase in women's claims.

There are many reasons why skyrocketing numbers of women asylum seekers have not resulted from recognition of their legitimate claims to protection. Included is the fact that women who have claims to protection often come from countries where they have little or no rights, which limits their ability to leave in search of protection at all. They are frequently the primary caretakers for their children and extended family, and have to choose between leaving family behind or exposing them to the risks of travel to the potential country of refuge. In addition, they often have little control over family resources, making it very difficult for them to have the money to travel to countries where they might seek asylum. Unfortunately, the fear of floodgates has continued to have currency, notwithstanding the fact that predicted deluges have not materialized, and that there are genuinely good reasons that explain why they have not.

Different Asylum Claims?

A common narrative accompanying the claims of female asylum seekers is that they are asking for special treatment. This discourse assumes women fleeing gender-related persecution would not qualify for protection absent

some twisting of the legal standard to accommodate their claims. This erroneous perspective harkens back to the largely repudiated vision of a human rights system, discussed above, which places women in a private sphere and privileges culture and religion over universality of rights. It is quite ironic that opponents continue to make the argument that the protection of women requires special (that is, favorable) rules, when in reality, women have been excluded from protection precisely because of a refusal to fairly apply the refugee definition in an unbiased and neutral fashion.

The multitude of harms that women (and women in particular) suffer—sexual slavery, rape, female genital cutting, honor killings—are clearly grave enough to constitute persecution. Furthermore, as early as 1985, in *Matter of Acosta*, US law recognized that particular social groups could be comprised of individuals who share an immutable or fundamental characteristic, such as "sex." There is simply no credibility to the argument that recognizing women as refugees accords them special treatment or requires a distortion of the legal standards.

Conclusion

The right to protection for women fleeing female genital cutting, although contentious at the time the courts first heard the issue, was accepted almost 20 years ago in *Matter of Kasinga*. The principles established in that decision should have been applied to cases involving domestic violence. Instead it has taken the nearly two decades since to accept that women fleeing brutal partner abuse are entitled to protection.

There are other forms of gender violence that frequently arise in claims for protection raised by female asylum seekers. These forms include practices such as forced marriage, rape, sexual slavery, trafficking for labor or sexual exploitation, honor killings, and repressive social norms (e.g., forbidding education or employment). In a number of these areas, there is still no binding legal precedent that would assure protection for the women who have escaped such violations. In the absence of binding precedent, many judges refuse to apply the *Kasinga* principles to find that these harms are acts of persecution inflicted because of gender or social group membership.

It would be unfortunate if judges continued to read *Kasinga* and subsequently, *A-R-C-G-* so narrowly, viewing them simply as decisions that apply to FGC and domestic violence—rather than as landmarks with far broader implications. The legal principles in both cases chart an analytical approach for gender claims in general. The two decisions demonstrate that special interpretations and rules are not necessary in order to extend protection to women fleeing gender-motivated harms. To the contrary, the rulings stand for the proposition that an unbiased application of the law—particularly of the terms "persecution" and "particular social group"—will result in protection for women who fear grave harms because of their gender in situations where their governments cannot or will not protect them. ❧

Dimensions of gender-based violence against Syrian refugees in Lebanon

Ghida Anani

Assessments of the impact of the Syrian crisis indicate high levels of sexual and gender-based violence, with rape, assault, intimate partner violence and survival sex appearing increasingly common. Humanitarian agencies urgently need to work together to address this trend.

In times of conflict everyone is affected by violence; however, women and girls in particular are more at risk of facing different forms of violence including sexual and gender-based violence (SGBV) due to the lack of social protection and lack of safe access to services. There is wide recognition of sexual violence as a weapon of war but other forms of violence against women during conflict also exist, including domestic violence, sexual exploitation and early marriage.

In early September 2013 UNHCR estimated the number of Syrian refugees in Lebanon at 720,003 and the number of the displaced

is still rising. Several local and international organisations have conducted rapid assessments to better understand the magnitude and impact of the crisis on displaced Syrians in Lebanon. Some of the main issues identified by these assessments include overcrowding, inadequate access to basic services, rising rent and food prices, and competition for the limited work opportunities. The assessments also helped to identify women and children as among the most vulnerable groups, solely by virtue of belonging to a particular gender, a certain age group or social status. This in turn shed light on the increase in SGBV among the

refugees and the need for humanitarian agencies urgently to develop a tailored response to reduce this form of violence.

There is no quantitative data in respect to violence against women but many displaced Syrian women and girls report having experienced violence, in particular rape. A rapid assessment conducted in 2012 by the International Rescue Committee in collaboration with ABAAD-Resource Center for Gender Equality assessed the vulnerabilities of Syrian women and girls to increased exposure to GBV both prior to crossing the borders and in their new host communities, and concluded the following:

- Rape and sexual violence were identified by focus groups and key informants alike as the most extensive form of violence faced by women and girls while in Syria.
- Intimate partner violence (IPV), early marriage and survival sex were identified by adult women and adolescent girls as other forms of violence experienced since arriving in Lebanon. Adult female participants in several focus groups reported that IPV has increased since their arrival in Lebanon, while adolescent girls stated that early marriages have increased, most frequently framed as efforts by families to 'protect' girls from being raped or to ensure that they are 'under the protection of a man'. Survival sex, typically linked to women's and girls' desperate need to earn money to cover the cost of living since arriving in Lebanon, was also identified as a type of violence frequently experienced by Syrian women and girls.
- Many newly arrived women and girls are living in unplanned and overcrowded refugee settlements, with minimal privacy and compromised safety, particularly among those refugee populations inhabiting abandoned public buildings.
- Survivors are reluctant to report SGBV or seek support due to the shame, fear and 'dishonour' to their families. Women

risk further physical and sexual violence, including death, often from their own families, when reporting GBV, a pattern that exists in many contexts

- Minimal coordination and lack of adherence to international standards of humanitarian assistance have hindered women's and girls' ability to access services. Discrimination and mistreatment are key barriers to accessing services.
- Women and girls have restricted access to information about the availability of services and support, particularly those that are relevant to survivors of GBV. Key informants strongly agreed that there are few services currently in place specifically designed to meet the needs of survivors of GBV or that are accessible to Syrian refugees.¹

Sexual exploitation or non-consensual 'survival' sex occurs when women and girls exchange sexual favours for food or other goods, or money to help pay the rent, especially in Lebanon. *"And if you want other help from other NGOs you should send your daughter or your sister or sometimes your wife... with full make-up so you can get anything... I think you understand me."* (participant in focus group discussion)

Although early marriage of daughters was common practice in Syria before the conflict began, this is reportedly being resorted to more commonly as a new coping strategy, either as a way of protecting young women or of easing pressures on family finances.

Lower self-esteem among men because of what being a refugee means, in some cases, leads to a negative expression of masculinity. Violence towards women and children has increased as some men vent their frustration and abuse their power within the household. *"I don't feel that I am a real man after what has happened to me now, and to be honest, I can't handle it anymore." ... "When my wife asks me for vegetables or meat to prepare food, I hit her. She does not know why she was hit, neither do I."*

September 2013

Outside the household, there are also examples of women and girls who are vulnerable to physical and verbal harassment, including sexual harassment, and in many areas they fear kidnap, robbery and attacks. Widowed or other women on their own are particularly vulnerable, with some hiding the fact that their husbands have been killed or kidnapped and even pretending in public to receive phone calls from their former husbands to protect themselves from male harassment.

Information on the prevalence of GBV among men and boys – and its impact – has been markedly lacking but recent research conducted by ABAAD with the support of UNICEF² confirms that men and boys also have faced and/or are likely to face GBV and SGBV in Syria or in their new host communities. Interviews with displaced male youth and boys revealed they did not know the term ‘Gender-Based Violence’ but almost all the interviewees identified different forms of GBV – including domestic violence and harassment based on gender – as present within their communities after fleeing Syria, and had either witnessed such violence or were survivors of it. 10.8% of them had been exposed to sexual harm/harassment in the previous three months but tended to associate the forms of GBV they were exposed to with being Syrian and/or Palestinian/Syrian; thus racism and discrimination masked their ability to identify violence as GBV.

When interviewees were asked specifically about the impact of sexual harm/harassment on them, the majority reported ignoring it and trying to forget it; some thought it was their fault that it happened. Moreover, the very few who had told someone about it stated that nothing was done as a result. It was clear that the behaviour of the majority of those surveyed had changed drastically due to their displacement and what they had witnessed, resulting in constant conflict within households; they expressed feelings of insecurity, sadness, doubt, anger and loneliness, and were sometimes violent themselves. They have had little access to the resources and social support necessary

to help them. Young males and boys in particular are also highly susceptible to forced and early labour because they are seen from childhood as the economic provider for the family, which in itself is a form of GBV.

Response

Many national and international organisations have been working on reducing GBV against Syrian refugee women, focusing on prevention and protection programmes using a holistic multi-sectoral approach incorporating a range of services such as legal services, information provision and awareness raising, medical and psychological health services, etc. However, these services are decentralised and scattered throughout the different regions and are provided by different providers. Having to go to different access points to obtain services hinders – either because of financial or cultural restrictions – people’s ability to access all the services they need.

Some new initiatives are addressing this problem of scattered service-provision points by creating a clear referral system among providers to facilitate access by beneficiaries. One example is the opening (by ABAAD in collaboration with UNHCR, UNICEF and the Danish Refugee Council) of three Safe Shelters in three different areas within Lebanon where there are large concentrations of Syrian refugees. These houses provide a secure and confidential place for Syrian refugee women who are survivors of or are at high risk of being exposed to GBV, and their children. In addition to providing housing for up to 60 days, the centres also provide – in one venue – case management and crisis counselling, psychosocial and legal support, forensic and medical care and referrals for provision of social services (economic opportunities, longer-term shelter, medical services, etc).

Recommendations

The following recommendations are drawn from our recent study published with Oxfam which assesses the impact of the Syrian crisis from a gendered perspective, including an examination of the prevalence and impact of GBV:³

September 2013

- Increase the number of safe spaces for women, men, boys and girls.
 - Organise mass distribution of educational protection messages for women and men.
 - Build the capacity of care providers in clinical care for survivors of sexual assault, gender-based violence case management, and caring for child survivors.
 - Conduct community safety audits to further assess the security situation in relevant areas. Establish community protection mechanisms on the basis of regular community safety audits, including support for women's groups and capacity-building protection programmes for women.
 - Sensitise and engage relevant community stakeholders and actors in the security sector to install appropriate gender-sensitive security measures, including mechanisms to control the proliferation of small-arms.
 - Work to ensure all actors engaged in the delivery of aid receive training on gender equity, the elimination of violence against women and minimum ethical standards in aid delivery, and aim to meet standard operating principles. All actors should systematically track sexual violence in conflict, and build their GBV documentation capacities.
 - Ensure all aid agencies adhere to the principle of zero tolerance of sexual violence and exploitation, establish mechanisms for reporting such incidents, and act accordingly when incidents are observed or reported.
 - Establish confidential and trusted mechanisms for tracking and reporting incidents of sexual exploitation and abuse during aid delivery, and inform Syrian women and girls about the existence of such mechanisms.
 - Provide awareness sessions on GBV affecting male youth to staff of aid organisations and start support group sessions for male youth and boys.
- Ghida Anani ghida.anani@abaadmena.org is Founder and Director of ABAAD-Resource Center for Gender Equality, Beirut, Lebanon. www.abaadmena.org This article also draws on the two reports listed in endnotes 1 and 3. Quotations by focus group participants are from the *Shifting Sands* report.
1. See Executive Summary, *Syrian Women & Girls: Fleeing death, facing ongoing threats and humiliation*, International Rescue Committee, August 2012 <http://tinyurl.com/IRC-Lebanon-August2012>
 2. *Assessment of the Impact of GBV on Male Youth and Boys among Syrian and Syrian/Palestinian Refugees in Lebanon*, ABAAD-UNICEF, forthcoming September 2013.
 3. Roula El Masri, Clare Harvey and Rosa Garwood, *Shifting Sands: Changing gender roles among refugees in Lebanon*, ABAAD-Resource Center for Gender Equality and OXFAM, September 2013 <http://tinyurl.com/Oxfam-ABAAD-ShiftingSands-2013> Arabic: <http://tinyurl.com/Oxfam-ABAAD-ShiftingSands-ar>