



**U.S. Citizenship
and Immigration
Services**

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

GENDER-RELATED CLAIMS

TRAINING MODULE

May 16, 2013

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GENDER-RELATED CLAIMS

Training Module

MODULE DESCRIPTION:

This module provides guidance on gender-related factors you must consider when interviewing and adjudicating claims related to gender, including claims based on violations of societal norms associated with gender.¹

TERMINAL PERFORMANCE OBJECTIVE(S)

You, the Officer, will identify and assess gender-related factors when adjudicating claims involving gender or violations of societal norms associated with gender.

ENABLING LEARNING OBJECTIVES

1. Evaluate gender-related claims by applying appropriate legal, policy, procedural, and international guidance.
2. Evaluate factors related to gender that must be considered in determining eligibility for a gender-related claim.
3. Assess factors that may inhibit an applicant's ability to present fully a gender-related claim, including the use of an interpreter.
4. Apply effective interviewing techniques to fully elicit sensitive issues related to gender in a non-adversarial manner.
5. Evaluate factors related to gender that must be considered in evaluating credibility.
6. Evaluate factors related to gender that may affect an applicant's ability to relocate within his or her country.

¹ Violations of social norms associated with gender are also addressed in RAIO Training Module, *Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims*.

INSTRUCTIONAL METHODS

Classroom lecture, practical exercises

METHOD(S) OF EVALUATION

Written Test

REQUIRED READING

1. Coven, Phyllis. INS Office of International Affairs, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women (Asylum Gender Guidelines)*, Memorandum to INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995).

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

1. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Geneva: January 1992), P 57 (including the 1951 Convention and the 1967 Protocol; other UNHCR-provided materials).
2. United Nations High Commissioner for Refugees (UNHCR). Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme (Geneva: 1993), p.173.
3. United Nations High Commissioner for Refugees, Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees. HCR/GIP/03/05, 4 September 2003, 9pp.
4. United Nations High Commissioner for Refugees, Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses). HCR/GIP/03/03, 10 February 2003, 8 pp.
5. United Nations High commissioner for Refugees, Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
05/16/2013	Throughout document	Corrected minor typos, formatting, cites identified by OCC-TKMD.	L Gollub RAIO Training

TABLE OF CONTENTS

1	INTRODUCTION	10
2	GENDER-RELATED ISSUES	10
2.1	Overview of Gender-Related Persecution: Women’s Human Rights.....	10
2.2	International and National Guidelines Relating to Women and Children	11
2.3	State and Non-State Agents of Persecution	13
2.4	Torture and Psychological Trauma	13
3	GENDER-BASED PERSECUTION EXPERIENCES	14
3.1	Restrictive Social Norms.....	14
3.2	Economic and Social Rights	15
3.3	Reporting, Law Enforcement, and Access to State Protection	15
4	TYPES OF GENDER-BASED HARM	16
4.1	Sexual Violence	17
4.2	Female Genital Mutilation (FGM).....	19
4.2.1	Types of FGM	19
4.2.2	Short and Long Term Consequences of FGM.....	20
4.3	Forced and Early Marriage.....	20
4.4	Domestic Violence	21
4.5	Human Trafficking.....	22
4.6	Honor Crimes	23
5	INTERVIEWING CONSIDERATIONS	25
5.1	Pre-Interview File Review	25
5.2	Considerations Related to Gender and Culture.....	25
5.3	Suggested Interview Techniques.....	27
5.4	Examples of Questions to Elicit Sensitive Information	28
6	LEGAL ANALYSIS – ASYLUM AND REFUGEE CASES	29
6.1	Persecution and Agent of Persecution.....	29

6.1.1	Persecution	29
6.1.2	Agent of Persecution	32
6.2	Nexus.....	33
6.2.1	Overview	34
6.2.2	Political Opinion.....	35
6.2.3	Religion	37
6.2.4	Particular Social Group	38
6.2.5	Race and Nationality	39
6.3	Internal Relocation	39
6.3.1	Ability to Travel	40
6.3.2	Economic Circumstances	40
6.3.3	Social Circumstances	40
7	CREDIBILITY 40	
7.1	Detail	41
7.2	Consistency	42
7.3	Plausibility.....	42
7.4	Demeanor	42
8	EVIDENTIARY CONSIDERATIONS 43	
9	CONCLUSION 43	
10	SUMMARY 44	
10.1	Gender-Related Issues.....	44
10.2	International and National Guidelines Relating to Women Refugees	44
10.3	Types of Gender-Based Harm.....	44
10.3.1	Rape and Other Sexual Violence.....	44
10.3.2	Female Genital Mutilation (FGM)	45
10.3.3	Forced Marriage	45
10.3.4	Domestic Violence	45
10.3.5	Human Trafficking	45
10.3.6	Honor Crimes	45
10.4	Interviewing Considerations	46
10.5	Legal Analysis – Persecution and Agent of Persecution	46
10.5.1	Persecution	46
10.5.2	Agent of persecution	46

10.6 Legal Analysis – Nexus 47
10.7 Legal Analysis – Internal Relocation 47
10.8 Credibility 47

PRACTICAL EXERCISES 49

OTHER MATERIALS 52

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION 53

Reading 53

Required 53
Recommended 53

Supplements 53

SUPPLEMENT B – ASYLUM DIVISION 54

Reading 54

Required 54
Recommended 54

Supplements 54

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION 55

Reading 55

Required 55
Recommended 55

Supplements 55

Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

This lesson provides guidance on special factors you must consider when interviewing applicants with gender-based claims. Gender-related claims most commonly arise in the context of female claimants seeking refugee protection. However, it is important to note that the forms of gender-based persecution described in this lesson can, and often are, inflicted on both females *and* males. Although the lesson often focuses on female applicants, you should keep in mind that the issues presented in this lesson may also impact male applicants, albeit less frequently. The discussion in this lesson will address the way gender-based claims may differ within the protection context.

2 GENDER-RELATED ISSUES

2.1 Overview of Gender-Related Persecution: Women's Human Rights

The Executive Office of the United Nations High Commissioner for Refugees (UNHCR) specifically addresses the need for special training on gender-related issues.² It calls upon States to adopt a gender-sensitive interpretation of the 1951 Convention and its 1967 Protocol.³ UNHCR also provides guidelines for those adjudicating refugee protection claims in order to ensure that all gender-related claims are recognized as such and given the proper consideration.⁴

² UNHCR Executive Committee Conclusion No. 98 (LIV) (2003).

³ UNHCR Executive Committee Conclusion No. 85 (LIV) (2003).

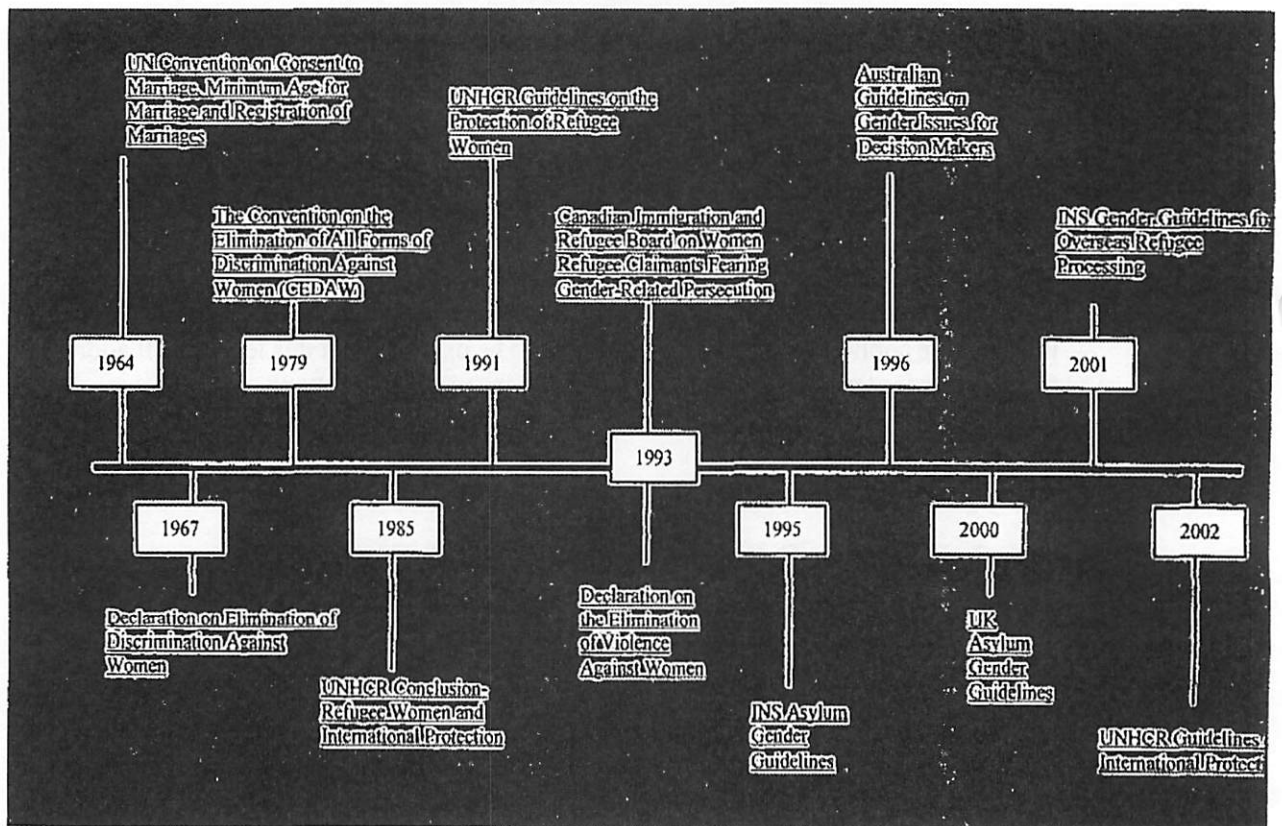
⁴ UNHCR *Guidelines on International Protection No. 1, Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* (May 2002).

2.2 International and National Guidelines Relating to Women and Children

In recognition of the particular vulnerability of women and children, international bodies and national governments have issued several documents in an effort to enhance their protection. UNHCR has provided guidance on gender-related persecution within the context of Article IA(2) of the 1951 Convention and its 1967 Protocol. Immigration authorities in Canada, the United States, and Australia have all issued guidelines for adjudicators in evaluating gender-based claims.

The chart below provides a timeline of the various guidelines enacted over the years to specifically protect vulnerable populations. (move the mouse over each document name for a brief overview of the document. Control + click for the entire document.)

Table 1 - Evolution of Guidelines on Gender-Related Claims



Of particular note, in 1995 the Immigration and Naturalization Service (INS), predecessor of the U.S. Citizenship and Immigration Services (USCIS), issued Asylum Gender Guidelines, instructing Asylum Officers on issues to consider when interviewing

and evaluating gender-related claims.⁵ The guidelines are not binding on adjudicators outside of USCIS. However, they have been cited in asylum decisions by immigration judges, the Board of Immigration Appeals, and federal courts. In July 1995, INS issued a memorandum, *Follow Up on Gender Guidelines Training*, to further clarify guidance following a nation-wide training on this topic.⁶ In February 2001, INS also issued *Gender Guidelines for Overseas Refugee Processing*, which provided additional guidance in the overseas context and techniques for interviewing gender-related cases.⁷

On May 7, 2002, the UNHCR issued *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*. The Guidelines recognize that while “gender-related persecution” has no legal meaning *per se*, gender can influence and dictate the type of persecution suffered and the reasons for the treatment. The Guidelines provide legal interpretative guidance for adjudicators in determining gender-related claims and offer recommendations for interviewing applicants with gender-based claims. The Guidelines are not binding on Officers adjudicating refugee or asylum claims, but, to the extent that they are consistent with U.S. law, are persuasive authority for the examination of gender-related claims.

The human rights of all individuals, regardless of gender, are guaranteed within international instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, due to discriminatory interpretations and applications, these instruments have not always provided sufficient protection to women who may be viewed negatively or harmed for transgressing social norms and refusing to conform to ascribed gender roles. Accordingly, over time other international instruments have been created to outline rights and protections specifically for women.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁸ defines discrimination as:

[a]ny distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise

⁵ Coven, Phyllis. INS Office of International Affairs, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women (Asylum Gender Guidelines)*, Memorandum to INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995), 19 p. Note that this memo was addressed to Asylum Officers. Refugee Officers have specific guidelines, as well. See Weiss, Jeffrey L., Office of International Affairs, *Gender Guidelines for Overseas Refugee Processing*, Memorandum to all Overseas District Directors (Washington, DC: 23 February 2001), 2 pp. plus attachment.

⁶ Melville, Rosemary, Asylum Division, Office of International Affairs, *Follow Up On Gender Guidelines Training*, Memorandum to Asylum Office Directors, SAOs, AOs, (Washington, DC: 7 July 1995), 2 pp. plus attachments.

⁷ Weiss, Jeffrey L., Office of International Affairs, *Gender Guidelines for Overseas Refugee Processing*, Memorandum to all Overseas District Directors (Washington, DC: 23 February 2001), 2 pp. plus attachment.

⁸ To date, the U.S. has not ratified CEDAW.

by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁹

The Declaration on the Elimination of Violence against Women (Declaration) defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹⁰ Recognizing that violence against women occurs in both public and private settings, the Declaration states that violence against women includes any violence that occurs “in the family, within the general community or perpetrated or condoned by the State, wherever it occurs.”¹¹

2.3 State and Non-State Agents of Persecution

Intimidation and harassment of individuals as a strategy of gaining power and control over vulnerable populations occurs both within the public context of community and society, as well as within the private sphere of home and family life. However, States are generally obliged to protect their citizens from persecution. Specifically, under international law, States parties to specific human rights covenants may be responsible “for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”¹² “Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.”¹³

2.4 Torture and Psychological Trauma

Both men and women who are persecuted throughout the world often suffer torture and psychological trauma for a variety of reasons. “The severity of the harm inflicted upon women by private individuals can be as damaging as that inflicted on women who are tortured by agents of the state.”¹⁴ Many of the practices described in the sections below induce acute psychological trauma, in which women live in constant fear of harm amongst multiple possible and actual abusers, including close relatives and primary care givers.

⁹ Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the UN General Assembly in 1979.

¹⁰ Declaration on the Elimination of Violence against Women, Article 1.

¹¹ Declaration on the Elimination of Violence against Women, Article 2.

¹² General Recommendations made by the Committee on the Elimination of Discrimination against Women, General Recommendation 19, point 9.

¹³ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, Dec. 2011, HCR/IP/4/Eng/REV.3.

¹⁴ Amnesty International, Broken Bodies, shattered minds: torture and ill-treatment of women, London, 2001 p. 5

Many abuses in the family or community are intentionally inflicted. In addition, such abuses are often inflicted for similar reasons to torture in custody. Torture in custody is often used not only to extract confessions but also to instill profound dread into victims, to break their will, to punish them and to demonstrate the power of the perpetrators. Similar purposes characterize acts of torture in the family or the community. The perpetrators may seek to intimidate women into obedience or to punish women for allegedly bringing shame on relatives by their disobedience.¹⁵

You should keep in mind that perpetrators of violence against women may be other women. For example, many girls experience pressure from female relatives to submit to female genital mutilation (FGM) or forced marriage. Concepts of gender inequality are often internalized and perpetuated by older women against younger generations.

3 GENDER-BASED PERSECUTION EXPERIENCES

In many societies, women hold significantly different positions than men. Experiences that give rise to women leaving their homelands are often different than the experiences of men. To properly evaluate the claims of women, you must be sensitive to certain unique aspects of their experiences and circumstances. You must also understand how to consider the experiences and circumstances in the context of refugee, asylum and immigration law.

3.1 Restrictive Social Norms

Social norms refer to the customary rules that govern behavior in groups and societies.¹⁶ In many countries around the world, women and girls face particularly restrictive social norms within their society and culture. For many women and girls, violence and discrimination at the hands of family members and the larger society is a reality.

Though some are subject to the brutality of individual family members, others suffer violence because cultural practices sanction the violence and make it legitimate and acceptable within the greater society. These structural forms of abuse are not always seen to constitute violence and are often embedded in the economic and social life of the community. Because of the link to notions of culture, these forms of violence are tenacious and extremely difficult to eradicate.

The type of violence and discrimination that women suffer under the guise of cultural practice are diverse and varied. Some cultural practices result in murder or severe pain and suffering, irretrievably transforming women's lives. Honor killings, female genital mutilation, bride burning, the pledging of young children to be concubines or sex slaves,

¹⁵ Amnesty International, *Broken bodies, shattered minds; Torture and ill-treatment of women*, London 2001 p. 6.

¹⁶ Social Norms, *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/social-norms/> (March 1, 2011)

are just a few examples of the types of practices that shock the conscience because they involve physical violence and brutality.¹⁷

Discrimination against women may be entrenched in a country or society, leading to unequal status within constitutions, legislation, cultural ideology, institutions, the workplace, schools, community and the home.

3.2 Economic and Social Rights

In some countries women do not have access to the same social and economic rights as men. They may have limited access to formal education and healthcare; they are not able to own land or property, inherit, work outside the home, travel freely, hold a bank account in their own name or obtain credit, among other things. As a result, women are often wholly or partially dependent on their male relatives, physically and psychologically, making it difficult for them to escape violence within the home and community, and seek protection and redress. Their position, status and treatment in society often make it difficult for them to relocate to another area without the support of male relatives or a family network. In addition, it may not be economically feasible for a woman to relocate if she has been deprived of the opportunity to pursue an education or if her ability to work outside the home has been severely restricted.

Poverty and unemployment may force women and girls into trafficking and/or smuggling situations, at times leading to prostitution for survival; “prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them.”¹⁸

3.3 Reporting, Law Enforcement, and Access to State Protection

Historically, countries where women are socially and economically dependent on male relatives underreport abuses against women, particularly because most women are dependent on their abusers for subsistence. A woman who has made a complaint may be identified as a “trouble maker” and become vulnerable to further harassment.¹⁹ Women may be ostracized, face extreme stigma or reprisals for reporting practices which are considered culturally acceptable and for bringing dishonor to the family by making “private” matters public.

There may also be practical difficulties in reporting abuses, such as the attitudes of law enforcement officials or a lack of legislation supporting women’s rights. Cultures of gender inequality are often internalized to the point where women are not aware of their

¹⁷ Special Rapporteur on Violence Against Women,
<http://www.unhcr.ch/hurricane/hurricane/nsf/view01/666287371B645B1C1256BA0004AADF5?opendocument>

¹⁸ General Recommendations made by the Committee on the Elimination of all Forms of Discrimination against Women, General Recommendation No. 19.

¹⁹ Daily Dawn, Woman accuses police of harassment, 10 October 2007, available from
<http://archives.dawn.com/2007/10/10/nat44.htm>

rights. Further, law enforcement officials and government entities often lack the sensitivity, professionalism and training to handle complaints of violence against women, and may use informal justice systems or cultural pressure to encourage women to return to an abusive situation rather than undertake serious investigations. In some countries women may be arrested and imprisoned “for their own protection.”²⁰ Attitudes amongst some law enforcement officials show that they down-play the significance of violence against women, perceiving acts of sexual violence within the family to be largely consensual and viewing domestic violence as a private, family matter rather than a criminal offense.²¹

In some countries gender discrimination is prevalent within legislation and the formal court system. Women may not have access to the same types of social or legal protections available to men. For example, requests for protection from abuse may be ignored if the abuser is a woman’s husband or father. In many countries, a woman’s testimony in court is not accorded the same legal weight as a man’s testimony.²²

Where legislation prohibiting violence against women does exist, women are often unable to access its protection and there is a failure by the State to prosecute the perpetrators. Women’s access to financial resources to pursue legal protection may be limited. The law may also criminalize female victims of violence, e.g., rape victims may be detained and prosecuted as adulterers and victims of trafficking may be prosecuted as prostitutes.²³

4 TYPES OF GENDER-BASED HARM

The types of harm that women suffer vary across a broad range of countries, cultures and classes. Forms of harm that are unique to, or more common to, women, include, but are not limited to:

- Sexual Violence
- Female Genital Mutilation (FGM)
- Forced and Early Marriage
- Domestic Violence
- Human Trafficking

²⁰ Amnesty International, Afghanistan: Women still under attack – a systematic failure to protect (May 2005).

²¹ Human Rights Watch, A Question of Security: Violence against Palestinian Women and Girls (November 2006) at p. 61.

²² See, e.g., U.S. Department of State Human Rights Report: Saudi Arabia (2010) at p. 35.

²³ Pearson, E., Human Traffic Human Rights: Redefining Victim Protection, Anti-Slavery International, London, 2002.

- Slavery
- Honor Crimes
- Infanticide
- Forced Abortion
- Bride Burning

The sections below address certain types of harm most often directed at women, though the list is not exhaustive. You should keep in mind that though these types of harm are most often directed at women, sexual violence can be, and often is, perpetrated against men as well.

4.1 Sexual Violence

Sexual violence is defined as "any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to a physical invasion of the human body and may include acts which do not involve penetration or even physical contact."²⁴ Much like beatings, torture or other forms of physical violence, sexual violence is a serious form of harm and may rise to the level of persecution, such as in the case of rape. For asylum and refugee status, sexual violence must be perpetrated on account of a protected characteristic. It is important for you to remember that the appearance of sexual violence in a claim does not mean that the claim is an instance of purely "personal harm."

Rape is an act of violence serving non-sexual needs or aims. Rape is not based on a need for a sexual relationship; it is based on a desire to degrade, control or terrorize the victim or the victim's community and is perpetrated against both males and females. Rape has long been an integral part of conflict, used as a tactical weapon to terrorize civilian communities, to achieve ethnic cleansing, to seek revenge against an enemy, and to suppress political opposition.²⁵

The rape of one woman is translated into an assault upon the community through the emphasis placed in every culture on a woman's virtue: the shame of the rape humiliates...all those associated with the survivor.²⁶

²⁴ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, September 2, 1998, at ¶ 688.

²⁵ See Human Rights Watch Women's Rights Project, *The Human Rights Watch Global Report on Women's Human Rights* (1995); Giller, Joan E. MA, MB, MRCOG; Swiss, Shana MD, *Rape as a Crime of War – A Medical Perspective*, JAMA (Vol. 270, No.5, 4 August 1993), pp 612-615. Human Rights Watch/Africa Human Rights Watch Women's Rights Project, *Shattered Lives - Sexual Violence During the Rwandan Genocide and its Aftermath* (September 1996).

²⁶ Pearson, E., *Human Traffic Human Rights: Redefining Victim Protection*, Anti-Slavery International, London, 2002.

In an extensive investigation of rape in a wide range of countries, including former Yugoslavia, India (Kashmir), Haiti, Somalia, and Peru, Human Rights Watch found that:

Of all the abuses committed in war or by repressive regimes, rape in particular is inflicted predominantly against women. Although men also are raped, efforts to document human rights abuse reveal that women are overwhelmingly the targets. Despite how pervasive it is, rape has often been a hidden element of strife, whether political or military, a fact that is inextricably linked to its largely gender-specific character. That this abuse is committed by men against women has contributed to its being narrowly portrayed as sexual or personal in nature, a characterization that depoliticizes sexual abuse in conflict and results in its being ignored as a crime.

Yet rape in conflict or under repressive regimes is neither incidental nor private. It routinely serves a strategic function and acts as a tool for achieving specific military or political objectives. Like other human rights abuses, rape serves as a means of harming, intimidating and punishing individual women. Further, rape almost always occurs in connection with other forms of violence or abuse against women or their families.

Far from being an isolated sexual or private act, rape often occurs alongside other politically motivated acts of violence.²⁷

Note that the historic portrayal of rape as "sexually" or "personally" motivated influences the way that many women articulate the assailant's motives for attacking her. An applicant may initially characterize the attack as motivated by sexual desire, but you should make efforts to elicit any evidence that the assault occurred on account of a protected ground. The following exchange, quoted in *Shoafara v. INS*²⁸, recognizes that rape is not primarily motivated by sexual desire, and is instructive on how to elicit relevant information about a sensitive incident:

[Q.] Now, with regard to the rape, do you have any idea—and I know this is a difficult question, but do you have any idea why Hagos Belay did this to you?

[A.] I just--He probably was attracted to me. I don't know.

Q. Aside from the fact that he may have been attracted to you, can you think of any other circumstances or factors that might have made you an easier target for him, or someone who he felt he could do this to?

A. 'Cause I'm an Amhara. If I was a Tigrean he wouldn't do it.

²⁷ Human Rights Watch Women's Rights Project, *The Human Rights Watch Global Report on Women's Human Rights* (1995).

²⁸ *Shoafara v. INS*, 228 F.3d 1070 (9th Cir. 2000) (reversing the immigration judge who held that the applicant's comment that the rape was on account of her ethnicity was "speculative," despite supporting testimony by her sister and country conditions information).

4.2 Female Genital Mutilation (FGM)

Female genital mutilation (FGM) is a custom involving the cutting or removal of all or part of the female genitalia. The origins of FGM are unknown. It predates Christianity and Islam and is not required by the Bible or the Koran. FGM crosses religious, ethnic and cultural boundaries.

FGM can expose women to serious and potentially life threatening physical complications. Factors that allow for the continued practice of FGM include traditional beliefs, superstition, the role of women in the society and the belief that FGM will suppress and control sexual behavior. It may be performed on infants, children, adolescents, single, married, pregnant, or post-partum women, and corpses.²⁹

FGM is most prevalent in Africa. It is practiced in at least twenty-eight African countries as well as in several Middle East countries, including Egypt, Oman, Saudi Arabia, Yemen and the United Arab Emirates. It is found in India, Pakistan, Indonesia and Malaysia, as well as within small indigenous groups in Peru, Mexico and Brazil.

4.2.1 Types of FGM

Some people refer to the practice of FGM as “circumcision.” Circumcision is only one type of FGM, and it is the least physically traumatic and dangerous. Only a small percentage of women subjected to FGM are circumcised. The vast majority of women suffer more drastic and dangerous forms of FGM.

1. Circumcision

The clitoral prepuce or tip of the clitoris is cut away. About five percent of the women who undergo FGM undergo circumcision.

2. Excision

The clitoris and/or prepuce are partially or totally cut away. In addition, all, or part of, the labia minora are cut away. This is the most commonly practiced type of FGM.

3. Infibulation

The clitoris, the prepuce, the labia minora and a part of the labia majora are cut away. The edges of the labia majora are then sewn, pinned, or brought together with an adhesive in order for scar tissue to form.

²⁹ United States Department of State, Office of the Under Secretary for Global Affairs, Office of the Senior Coordinator for International Women's Issues, Female Genital Mutilation (FGM) (Washington, DC: Feb. 1, 2000, updated June 27, 2001).

4.2.2 Short and Long Term Consequences of FGM

FGM can have devastating and harmful consequences for a woman throughout her life.

Those performing FGM have varying degrees of expertise. FGM is often performed without anesthesia, under unsanitary conditions, by non-medical personnel. The type of procedure, the degree of sterility and the expertise of the individual performing the procedure affect the degree of harm experienced. However, long-term serious harm may result even when the least damaging procedure (circumcision) is performed by qualified surgeons in sterile operating rooms.³⁰

Short-term consequences include: bleeding, post-operative shock, infection, tetanus, damage to other organs and death.

Long-term consequences include retention of blood in the abdomen and swelling of the stomach, chronic infections of the bladder and vagina, extremely painful menstruation, child-birth obstruction, risk of HIV infection, psychological problems and sexual dysfunction.

4.3 Forced and Early Marriage

Forced marriage is arranged and enforced against the victim's wishes. International human rights documents recognize that the right to marry is a fundamental human right, and they also mandate that "no marriage shall be legally entered into without the full and free consent of both parties." However, some women and girls are married against their will in forced marriages.³¹

In some circumstances, a forced marriage may be determined to be persecution,³² although you will still need to establish a nexus to a protected characteristic. It is important to distinguish between forced marriages and arranged marriages. Arranged marriages are an important tradition in many cultures and are often entered into willingly, even in situations where the girl might not have reached 18 years of age. Factors to consider in determining whether a marriage was or would be forced include the type and level of coercion to which an applicant was or would be subjected, the applicant's ability to avoid the marriage at all, and the nature of the consequences for the applicant if she were to refuse to submit to the marriage.

³⁰ United States Department of State, Office of the Under Secretary for Global Affairs, Office of the Senior Coordinator for International Women's Issues, Female Genital Mutilation (FGM) (Washington, DC: Feb. 1, 2000, updated June 27, 2001)

³¹ United Nations, Covenant on Consent to Marriage, Minimum Age for Marriage and Registration at Marriage, G.A. Res. 1763(A)(XVII), U.N. GAOR, Nov. 7, 1962 (Note the United States has not ratified this treaty); United Nations, Universal Declaration of Human Rights, G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

³² See, e.g., *Bi Xia Ou v. Holder*, 618 F.3d 602, 607-09 (6th Cir. 2010)(finding women in China who have been subjected to forced marriage and involuntary servitude constitute a particular social group and that the applicant suffered past persecution).

Forced marriage takes place throughout the world and occurs for a variety of reasons stemming from issues such as poverty, gender discrimination, and lack of security.³³ A family may sell or offer a daughter in marriage to alleviate the financial burden on the family, to settle a debt, to provide the daughter with a “better life,” or to afford additional wives for the male family members. In some contexts, forced marriage may provide a method to atone for criminal conduct or as punishment to the perpetrator of a gender-based crime such as rape. Forced marriage may serve the purpose of uniting two families or adhering to religious and cultural traditions. Families may wish to force their daughters to marry to protect them from rape or to keep their virginity intact.³⁴

Forced marriage violates numerous human rights. It provides an arena in which sexual abuse, sexual exploitation, domestic violence, forced labor, and slavery often go unnoticed. Women in forced marriages may have fewer educational and work opportunities and their freedom of movement may be restricted. In some cultures, women and girls may be subjected to FGM prior to the forced marriage. A woman’s attempt to refuse the forced marriage may result in abusive or harmful treatment.³⁵

Forced marriage poses particular human rights concerns for girls, who are subject to early marriage. Early marriage is one which takes place before a child reaches the age of majority. According to the Convention on the Rights of the Child, a girl under the age of 18 is a minor and cannot give informed consent.³⁶ Thus, under this standard, it might be possible to consider any underage marriage as forced. It would not constitute persecution, however, unless the applicant experienced it, or her treatment within it, as serious harm.

Although most countries have minimum age requirements for marriage, the age for girls is often two or three years lower than the age for boys and national age requirements may be ignored at the local level. For example, in most of Africa, Asia, Latin America, and the Middle East, girls are often married before the age of 18.

4.4 Domestic Violence

³³ See, e.g., For Somali Women, Pain of Being a Spoil of War, New York Times, December 27, 2011, describing how militants are forcing families to hand over girls for short-term forced marriages which “are essentially sexual slavery.”

³⁴ UNHCR, Sexual and Gender-based Violence Refugees, Returnees and Internally Displaced Persons (May 2003) at 24; Elizabeth Warner, Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls, 12 Am. U.J. Gender Soc. Poly & L. 233 (2004)

³⁵ *Id.*; The Forum on Marriage and the Rights of Women and Girls, Early Marriage: Sexual Exploitation & the Human Rights of Girls (Nov. 2001); Sexual and Gender-based Violence Refugees, Returnees and Internally Displaced Persons at 18.

³⁶ Early Marriage: Sexual Exploitation & the Human Rights of Girls; Convention on the Rights of the Child, G.A.Res 44/25, U.N.GAOR, Nov. 20, 1989.

Violence against mothers, sisters and daughters, like other forms of violence against women, is often related to the historically more powerful position of men in the family and in society, the perceived inferiority of women, and unequal status granted by laws and societal norms. In many societies, the police, the court system, and even the laws may condone the practice, allow for it, and at best may simply do nothing to prevent it or to punish the perpetrator. For example, in some countries, there is no legal recognition that sexual assault is a crime, if committed by a husband against his wife.³⁷

Speaking to the extent and scope of domestic violence in certain societies, a Special Rapporteur on violence against women reported to the UN Commission on Human Rights:

There are many different types of domestic violence. Young girls are often the victims of sexual assault within the family. Elderly family members and the infirm may also be subject to ill treatment. In extended families, mothers-in-law are often violent towards their daughters-in-law. Though there are many incidents of assault directed against the husband, studies show that they are not so frequent and rarely result in serious injury.³⁸

Although most battered women engage in various forms of resistance to abuse, there are many factors that may make it difficult for a battered woman to leave her abuser. Fear of losing her children is one such factor as socio-economic factors may make it impossible for a woman to support herself and her children without assistance from her husband. Other factors include fear of arrest themselves and the stigma of leaving their husbands caused by cultural, religious and social norms. Leaving the batterer also could pose an even greater threat to a woman's safety than staying, unless she can escape to a place where the batterer has no access to her.

At the point that separation (or the decision to separate) occurs, the risk of violence to the battered woman increases, a phenomenon referred to as "separation abuse." When battered women are killed, they are more likely to be killed after having left the relationship.³⁹

Therefore, for some women, staying with the batterer may actually be a strategy to protect herself or her children.

4.5 Human Trafficking

"Trafficking in persons" is defined as the recruitment, harboring, transportation, provision, or obtaining of persons by means of the threat or use of force or other forms of

³⁷ United Nations Commission on Human Rights, *Violence Against Women, its Causes and Consequences*, Preliminary Report by the Special Rapporteur Ms Radhika Coomaraswamy, 22 November 1994; United Nations Commission on Human Rights, *Violence Against Women*, Report by the Special Rapporteur, 24 February 2000.

³⁸ *Id.* p. 22.

³⁹ Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 Fla.B.J. 24, Oct 1994.

coercion, or fraud for the purpose of exploitation.⁴⁰ Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or removal of organs.⁴¹

Trafficked women are bought and sold as commodities; they are held against their will and subjected to sexual slavery, forced labor or forced marriage, for the profit of their trafficker. Traffickers use various control mechanisms including repeated rape by the agent and his associates to erode a girl's sense of "self" and to break her will. Agents will use physical and psychological abuse against the victim and make threats towards her family. Agents create debt bondage by imposing debts for the journey, accommodation, clothes and make-up. Women can be imprisoned and isolated by their traffickers. Agents withhold passports and identity papers. Because a woman's immigration status is often as an illegal entrant, she may fear law enforcement officials. Women may believe that the law enforcement agencies are complicit in the trafficking of women. Traffickers also instill this fear to deter escape.⁴²

Women are lured into trafficking in different ways, often by deception or force. Women may be made false promises of jobs as nannies, waitresses, etc., through bogus recruitment agencies, only to discover en route or upon arrival that they have been deceived. The trafficker may pretend to be romantically interested in a woman, developing a coercive relationship in which the woman finds that her "boyfriend" forces her to have sex with his "friends." Women may be drugged and abducted. Some girls are trafficked with family involvement. While some parents may innocently believe they are sending their child to receive an education, other parents are aware that they are selling their child into slavery.⁴³

A more detailed discussion of trafficking and smuggling is available in the RAIO Training Module, *Detecting Possible Victims of Trafficking*.

4.6 Honor Crimes

In some cultures women are perceived to be the keepers of a family's honor, conditioning women and girls to be self-controlled, show deference to men throughout their lives, and present subservient behavior. A woman is considered to bring shame on her family and community if she does not adhere to strict social norms of behavior and conduct. Honor crimes are acts carried out to "restore" a family's honor. Perpetrators may be members of a woman's family or community. Abuses involving the concept of honor are prevalent

⁴⁰ See RAIO Training Module, *Detecting Possible Victims of Trafficking*. See also Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁴¹ *Id.*

⁴² See Department of State, *Trafficking in Persons Report* (2010).

⁴³ The International Association of Chiefs of Police (IACP), The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation, p. 7.

throughout the world and are factors in other types of persecution listed in this section, including, but not limited to, FGM and domestic violence.

Examples of honor crimes include, but are not limited to, stoning, abduction, imprisonment, rape, poisoning, acid attacks, disfigurement, forced marriage, murder, or attempts to coerce the victim to commit suicide. Women also may suffer reprisal attacks as a result of another relative's perceived behavior.⁴⁴

The family may go to great lengths to pursue women (and men) accused of violating a family's honor. Families employ bounty hunters, private detectives and social networks to pursue victims and searches may persist over years. In cultures with extended family networks over a large geographical area, relocation may offer no real protection. In patriarchal societies, women without family or male relatives may create suspicion in a new community, attracting further stigmatization and persecution. It may be difficult for a woman to integrate and support herself economically. In many countries there are few shelters or other resources available to women who seek to escape harm and access to those resources may be impeded by cultural factors or considered taboo. Women may be at risk of being arrested "for their own protection"⁴⁵ or prosecuted for adultery.

Acts deemed to transgress a family's honor may include, but are not limited to, having sex before or outside marriage, losing virginity, even as a result of rape. Some societies do not make a clear distinction between rape and consensual sexual relations and will hold a woman who has been raped fully responsible for losing her virginity or committing "adultery."⁴⁶ Other acts of transgression include refusing to accept a forced marriage, being suspected of having an affair,⁴⁷ attracting gossip within the community, seeking an education, being assertive and outgoing in behavior or inappropriate dress.⁴⁸

Victims of rape may be murdered for bringing shame upon their family, or victims may be forced to marry their rapists to appease family honor.⁴⁹ Controlling women through the concept of honor is permitted in many countries. Even in countries where honor crimes are illegal, lesser sentences may be given if the crime was committed in the name of honor.⁵⁰

⁴⁴ BBC, Acquittals in Pakistan gang rape, April 21, 2011.

⁴⁵ UNICEF, Innoceti Digest, Early Marriage: Child Spouse, No. 7 March 2001.

⁴⁶ See, e.g., Afghanistan: Woman Jailed on Charges of 'Forced Adultery' Is Released, NY Times, Dec. 14, 2011.

⁴⁷ *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011).

⁴⁸ See, e.g., Afghanistan: Woman Jailed on Charges of 'Forced Adultery' Is Released, NY Times, Dec. 14, 2011; Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission, Vol. II, Chapter III, ¶. 336-7 at 171 (2004)(describing how under Sierra Leonean customary law, "[f]amilies usually settle crimes of rape and sexual violence by accepting monetary compensation or by the offender being compelled to enter into marriage with the minor victim. The Commission recommends...end[ing] the practice under customary law of compelling women and girls who have been raped to enter into marriage with the offender."

⁴⁹ *Id.*

⁵⁰ Human Rights Watch, Jordan: Victims Jailed in Honor Crime Cases, April 2004.

5 INTERVIEWING CONSIDERATIONS

The purpose of this section is to emphasize the importance of creating an interview environment that allows applicants to discuss freely the elements and detail of their claims and to identify issues that may be related to a female applicant's gender. This section should be considered in conjunction with the RAIO Modules on Interviewing.

5.1 Pre-Interview File Review

Prior to the interview, you may have the opportunity to review the information in the case file. You should take this time to identify any gender-related issues involved in the claim. You are expected to conduct interviews involving gender-related claims in a non-adversarial manner and with sensitivity. Due to the very delicate and personal issues arising from sexual abuse, some applicants may have inhibitions about disclosing past experiences to an interviewer of the opposite sex.

To the extent that personnel resources permit, you should honor an applicant's request for an interviewer of a particular sex. If a pre-interview review of the case file indicates that the case may involve sensitive gender-related issues, you should consult with your supervisor prior to the interview to evaluate whether it would be more appropriate for an Officer of the opposite sex to conduct the interview.

5.2 Considerations Related to Gender and Culture

Cultural factors, such as the expected role of a woman in her society, may significantly affect an applicant's testimony. In order to properly elicit and evaluate testimony, you must be aware of such factors when eliciting testimony at the interview.

1. Cultural norms may exacerbate reluctance to relate sensitive information.

Due to strict cultural norms in many countries, applicants may be reluctant to disclose experiences of sexual violence. This may be especially true for women from societies that place extreme importance on preserving a woman's virginity. With regard to sexual assault, this type of harm perpetrated on men, as well as women is seen as a violation of community or family morality. The combination of shame, feelings of responsibility and blame for having been victimized in this way can seriously limit a man's or a woman's ability to discuss or even to mention such experiences.

2. Cultural norms may limit an applicant's knowledge of other family members' activities

In some cultures, men normally do not share the details of their political, military or even social activities with spouses, sisters, daughters or mothers. Women from such cultures may be able to present only vague testimony about experiences of male relatives, even

husbands. Some women may not be able to explain which male relatives were politically active or, if they are aware of the relative's political activity, may be unable to provide any details about it.

3. Presence of relatives may inhibit testimony

For a variety of reasons, the presence of relatives, particularly a husband, father, or child, may impede an applicant's willingness to discuss gender-related persecutory acts or fears. For example:

- The applicant's relatives may not be aware of the harm experienced by the applicant. She may wish that the relative remain unaware of her experiences, or she may be ashamed to say what she has experienced or fears in front of a relative.
- The applicant's claim may be based, in part, on fear of the relative who is present.
- In some cases, a woman may be accustomed to having a male relative speak for her and may try to defer to that male relative in the interview, or the male relative may insist on speaking for the applicant, in which case you should remind the relative that the applicant must answer the question herself.

While the presence of a relative may inhibit testimony, as described above, in other cases a woman may be more comfortable testifying with the presence of a relative, male or female. Therefore, to the extent possible, the choice of whether to be interviewed alone or with a relative present should be left to the applicant. She should be asked her preference directly, and in the absence of any relatives, when possible, prior to the interview.

If the applicant elects for the relative to be present at the interview, you should exercise sound judgment during the interview; determining whether the presence of the relative is impeding communication. If it appears that the relative's presence is interfering with open communication, the relative should be asked to wait in the waiting room.

4. Interpreters may inhibit testimony

Testimony on sensitive issues such as sexual abuse may be diluted when received through the filter of an interpreter. The applicant may not feel comfortable discussing gender-related issues with an interpreter, especially one of the opposite sex. The same holds true for the interpreter; even if the applicant feels comfortable using a particular interpreter, the interpreter may be inhibited about discussing gender-related issues or using certain terms. For example, the interpreter may substitute the word "harm" for "rape," because the interpreter is not comfortable discussing rape or because of cultural taboos. *See also* RAIO Training Module, *Interviewing – Working with an Interpreter*.

5.3 Suggested Interview Techniques

In all cases, you must use your utmost care to assure that all interviews are conducted in a non-adversarial and open atmosphere that allows for the discussion of various issues, including past experiences and fears of future harm and its ramifications.

Some techniques that may be employed (discussed in greater detail in the lessons on interviewing) include the following:

- Begin with easy topics to establish rapport and give the applicant time to become accustomed to the interview.
- If the applicant becomes upset, pause to allow the applicant to regain composure.
- Acknowledge how difficult it may be for the applicant to answer certain questions by assuring the applicant that it is all right to let you know when something is difficult to discuss in detail.

Note: In the protection context, it is necessary for you to elicit a certain level of detail in order to establish credibility. The applicant may be able to provide sufficient detail about certain parts of the claim to establish credibility, without providing minute detail on particularly sensitive topics. Example: The applicant provides detail about circumstances of arrest and conditions of detention, but finds it extremely painful to provide detailed description of certain torture she endured during detention. You do not need to press for detail about the torture if the applicant's testimony about the arrest and the general conditions of detention is credible.

- Temporarily switch from the sensitive topic to something less sensitive, remembering to return to the sensitive topic later if more information is required.
- Approach the issue from a different angle. For example, ask about events that led up to the traumatic experience and how the applicant felt after the experience, instead of asking about the specifics of the traumatic incident.
- Switch the focus to another victim the applicant has testified about and then return to the applicant's experience.
- Ask open-ended questions to explore the applicant's claim, then ask specific follow-up questions, as needed, to establish the credibility of the claim. Be mindful that your tone of voice and questions don't come across as judgmental, as that may place the applicant on the defensive and possibly impede the flow of communication.
- Emphasize the confidential nature of the interview.
- Remind the applicant that in order to evaluate eligibility for the benefit, you need to understand the applicant's history, including the harm she may have experienced.

5.4 Examples of Questions to Elicit Sensitive Information

If you suspect the applicant may have been sexually abused but is not forthcoming, you may try to help the applicant relax by reassuring her of the confidentiality of the process and by acknowledging that the interview process may be difficult for her.

- “I understand that it is difficult to talk about such things. I know that women in your country often have bad experiences. Everything we talk about here is completely confidential. No one in your country (family) will know what you tell me today, unless you tell them yourself. Is there anything else you want to tell me?”

In some instances country conditions reports may reflect that individuals in the applicant’s country may be ostracized for being raped. However, where no such country conditions information exists, you should still attempt to elicit testimony about any potential harm by asking questions like:

- “Would anything happen to you if your family and community found out what happened to you while you were detained?”

In cases where sexual assault is alleged and the applicant has difficulty providing details, you may focus on the circumstances surrounding the incident.

- “You said you were assaulted. I understand that this is difficult to talk about, but it would be helpful for me to understand more about what happened.
 - Where were you at the time?
 - Were you alone?
 - What happened to your sister who was with you?
 - Did that also happen to you?
 - Did you tell anyone about the incident?
 - What did the attacker say to you?
 - Do you remember what you did immediately after the assault?”

You should always ask questions one at a time and give the applicant sufficient time to fully answer.

In cases where applicants fear the stigma or other social consequences of being seen as a rape victim, it may help to remind the applicant that everything she or he says in the interview is kept confidential.

6 LEGAL ANALYSIS – ASYLUM AND REFUGEE CASES

6.1 Persecution and Agent of Persecution

Neither this lesson, nor the component-specific lessons on this subject provide guidance that expands the statutory definition of a refugee. The legal criteria used to evaluate a female asylum or refugee applicant's eligibility for immigration benefits, whether the claim is gender-based or not, is the same criteria used in all other asylum and refugee adjudications. However, because female applicant's experiences are often different than those of men, it is useful to discuss how those experiences fit into the legal framework of established asylum and refugee law.

6.1.1 Persecution

As explained in greater detail in RAI0 Training Modules, *Refugee Definition and Definition of Persecution and Eligibility Based on Past Persecution*, the term "persecution" is not defined by treaty, statute, or regulation, and you must rely on guidance from various sources, including international human rights norms, to evaluate whether harm constitutes persecution. To be eligible for asylum or refugee status, the applicant must also establish that the persecution is "on account of" a protected characteristic in the refugee definition. This section focuses on the type of harm that may constitute persecution. The requirement that the persecution be on account of a protected characteristic ("Nexus") will be discussed in the next section.

1. General Considerations

In evaluating whether harm constitutes persecution in a gender-related case, you should consider the same factors as in an asylum or refugee case that is not related to gender. The relevant considerations are:

- Whether the harm the applicant experienced and/or fears is serious enough to constitute persecution by objective standards,
- Whether the applicant would experience the harm in question as serious harm, and
- Whether the persecutor is the government (or agent of the government) or an entity that the government is unable or unwilling to control.

The fact that a practice is widespread, (e.g., domestic violence, FGM, rape as part of an occupation during war) is not relevant to determining whether the alleged acts constitute persecution.⁵¹

⁵¹ See *Mohammed v. Gonzales*, 400 F.3d 785, 796, n.15 (9th Cir. 2005) (rejecting the government's argument that the widespread practice and acceptance of FGM in Somalia meant that FGM could not form a basis for a past persecution claim. The court stated that the approach to analyzing refugee claims does not change because a type of harm is commonly accepted and practiced.)

1. Rape and Other Sexual Violence

Rape constitutes harm serious enough to amount to persecution. Other sexual violence may constitute persecution, depending on the degree of harm experienced by the applicant. In some countries a woman may experience severe discrimination and social ostracism because she was raped. The ostracism is further harm after the rape, and may itself be sufficiently serious to constitute persecution.⁵² In other words, even if the harm of the original rape was not “on account of” a protected ground, societal perception of a rape victim and the social consequences arising from that perception may give rise to a well-founded fear of persecution on a protected ground, most likely membership in a particular social group. See RAI0 Training Module, *Nexus – Particular Social Group*.

2. Torture, Beatings, and Inhuman Treatment

Female asylum and refugee applicants may have experienced or fear the same types of “traditional” persecution experienced by male applicants, such as torture, beatings, and other inhuman treatment. Note that rape in detention is a form of torture that occurs to both men and women.

3. Female Genital Mutilation (FGM)

Harm resulting from FGM is sufficiently serious to constitute persecution. FGM has been internationally recognized as a violation of women's and female children's rights and is criminalized under federal law. The U.S Court of Appeals, Second Circuit stated that FGM involves the infliction of “grave harm constituting persecution.”⁵³ Thus it is clearly serious harm by objective standards. The applicant’s testimony that she experienced or would experience FGM as serious harm is best and sufficient evidence on this point.

Note that even if a woman has been subjected to FGM in the past, it is a form of harm that is capable of repetition.⁵⁴ Moreover, a woman is not required to show that she would

⁵² See *Shoafra v. INS*, 228 F.3d 1070 (9th Cir. 2000) (rape by gov’t official constitutes persecution).

⁵³ *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Matter of A-T-*, 24 I&N Dec. 296 (BIA 2007) (vacated in part, *Matter of A-T-*, 24 I&N Dec. 617 (A.G.2008)); *Abankwah v. INS*, 185 F.3d 18 (2d Cir. 1999) citing to Report of the Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 14, U.N. GAOR, 45th Sess., Supp. No. 38, at 80, ¶ 438, U.N. Doc. A/45/38; and The Beijing Declaration and The Platform for Action, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, U.N. Doc. DPI/1776/Wom (1996) ¶¶ 112-113.

⁵⁴ *Matter of A-T-*, 24 I&N Dec. 617, 621 (AG 2008)(vacating BIA’s determining that FGM was a one-time act incapable of repetition and that future harm need not be in the identical form as the original harm).

undergo the identical form of past harm to establish well-founded fear in cases in which the past harm (e.g., FGM) is unlikely to be repeated.⁵⁵ Consideration of the enduring harm, in such circumstances, is also appropriate to the analysis of whether there are compelling reasons arising from the severity of the past persecution to grant asylum status in the absence of a well-founded fear.⁵⁶

In *Matter of A-K-*, the BIA clarified that an applicant cannot establish eligibility for asylum based solely on a fear that his or her child would be subject to FGM. The rationale is that an applicant must establish persecution that is targeted at him or herself. An applicant may certainly be affected by his or her child undergoing FGM. But, in most cases, the persecutor is directing the FGM at the child, not the parent. However, a parent who actively opposes FGM and takes affirmative steps to keep a child from undergoing the procedure could conceivably suffer *other* harm on account of this political or religious opinion.

Also, the harm must be on account of a protected characteristic. When a child is being subjected to FGM, it is generally not because of a parent's protected characteristic. Rather, the FGM is imposed on the child because of the child's characteristic of being a female who has not yet undergone FGM as practiced by his or her culture.⁵⁷ If, however, there were evidence that the child would be targeted for FGM *in order to punish the parent for the parent's opposition to FGM (or for some other protected reason)*, this might be distinguishable from the scenario discussed in *Matter of A-K-*.

4. Forced Marriage

In some circumstances, forced marriage may constitute persecution. However, it is important to note the distinction between forced marriage and arranged marriage. Arranged marriage is not considered persecution as both parties willingly enter into the arrangement, even if reluctantly. Forced marriage, on the other hand, may constitute persecution as one or both parties do not consent to the arrangement. You should also consider whether the consequences for refusal would constitute persecution.⁵⁸

NOTE: You should keep in mind that in addition to asylum and refugee cases, you may encounter victims of forced marriage in the family petition context (e.g., I-130 and I-730).

⁵⁵ *Id.* at 622.

⁵⁶ See *Matter of S-A-K- and H-A-H-*, 24 I&N Dec. 464 (BIA 2008). See also *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005). This consideration exists primarily within the asylum context since a refugee applicant need not establish a well founded fear of return if she or he has established past persecution.

⁵⁷ *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007).

⁵⁸ See United Nations, Convention on Consent to Marriage, Minimum Age for Marriage and Registration at Marriages, G.A. Res. 1763(A)(XVII), U.N. GAOR, Nov. 7, 1962 (Note the United States has not ratified this treaty); United Nations, Universal Declaration of Human Rights, G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

Asylum and refugee claims involving forced marriage often include allegations that the applicant was subjected to FGM or fears being subjected to FGM. You must analyze whether the FGM or forced marriage, or both, were inflicted (or would be inflicted) on account of a protected characteristic. See RAIIO Training Module, *Nexus – Particular Social Group*.

5. Forced Abortion and Forced Sterilization

The INA provides that forced abortion and forced sterilization, or persecution for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, constitute harm amounting to persecution that is on account of political opinion.⁵⁹

6. Discrimination and Harassment

Discrimination and harassment may amount to persecution if the adverse practices or treatment accumulates to the level of persecution, or is so serious that that it leads to consequences of a substantially prejudicial nature. An applicant's deprivation of educational opportunities, the right to work, the right not to be forced into marriage, and other deprivations of internationally recognized rights may constitute persecution, depending on how such deprivations affect the applicant's well-being.

7. Violation of Fundamental Beliefs

The U.S. Court of Appeals, Third Circuit indicated that "the concept of persecution is broad enough to include governmental measures that compel an individual to engage in conduct that is not physically painful or harmful but is abhorrent to that individual's deepest beliefs."⁶⁰

In *Fatin v. INS*, the court considered whether the asylum applicant's opposition to strict Iranian dress codes would constitute persecution. In that case, the court found that the record before it failed to establish that obeying the strict dress codes would be "so profoundly abhorrent" as to amount to persecution, but left open the possibility that other applicants could make such a case.⁶¹

6.1.2 Agent of Persecution

⁵⁹ INA § 101(a)(42)(B); *Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996).

⁶⁰ *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993).

⁶¹ *Id.* See also *Sharif v INS*, 87 F.3d 932 (7th Cir. 1996) (finding that applicant failed to meet this standard because she did not offer evidence that conforming to Iranian law caused her serious harm).

As in any other asylum or refugee claim, in order to establish persecution, the applicant must demonstrate that the persecutor is the government (including agents of the government) or an entity that the government is unable or unwilling to control. The persecutor may be a rebel group, a clan, a tribe, or a family member, such as a brother, father, or husband.⁶²

In evaluating whether a government is unwilling or unable to control the infliction of harm or suffering, you should consider whether the government protection that is available is reasonably effective. Factors to consider include whether the government takes reasonable steps to control the infliction of harm or suffering and whether the applicant has reasonable access to the existing state protection. Evidence that the government does not respond to requests for protection is a strong indication that state protection is unavailable.⁶³

In some cases, an applicant may establish that state protection is unavailable even when she did not actually seek protection. For example, the evidence may indicate that the applicant would not have received assistance if she had sought it. Country conditions information may reveal that government officials in the applicant's country view violence perpetrated by a family member, clan member, or tribal member as a "private" dispute for which governmental intervention is inappropriate.

Or, evidence may establish that seeking protection would have placed an applicant at even greater risk of persecution. For example, country conditions information shows that women from Pakistan who report rape to the authorities are often themselves arrested and jailed under laws prohibiting sexual relations outside of marriage, and may be subject to verbal and physical abuse. Therefore, a woman from Pakistan may reasonably fear reporting a rape and seeking state protection from the person who raped her.⁶⁴

You often must consult country conditions information to evaluate whether state protection is available to an applicant who suffered or fears persecution from a non-governmental entity.

6.2 Nexus

The "nexus" requirement, discussed in the RAIO Training Modules, *Nexus and the Protected Grounds**, and *Nexus – Particular Social Group*, applies equally to female and male applicants and to all claims, including those related to gender. Because "nexus" is discussed in detail in other modules, this section focuses on common nexus issues raised

⁶² *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996)

⁶³ See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000) (finding applicant had established a state action where country conditions evidence showed that applying to the police would have been futile and dangerous and that legal remedies were generally unavailable to women).

⁶⁴ See U.S. Department of State, "Pakistan," Country Reports on Human Rights Practices for 2005 (Washington, DC: U.S. Government Printing Office, Mar. 8, 2006); *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000)

in gender-related claims, explaining how the analysis may be formulated, taking into account the social circumstances of female applicants.

6.2.1 Overview

To be eligible for asylum or refugee status, the applicant must provide some evidence, direct or circumstantial, that the persecutor is motivated to persecute the applicant because the persecutor perceives the applicant to possess a protected characteristic. The persecutor's perception can be either because the applicant actually has such a characteristic, or because the persecutor incorrectly imputes it to the applicant.⁶⁵

Evidence about patterns of violence in the society against individuals similarly situated to the applicant may be relevant to the "nexus to a protected ground" determination. For example, in a domestic violence claim, an adjudicator would consider evidence that the abuser uses violence to enforce power and control over the applicant because of the social status that a woman may acquire when she is in a domestic relationship. This would include any direct evidence about the abuser's own actions; as well as any circumstantial evidence that such patterns of violence are (1) supported by the legal system or social norms in the country in question, and (2) reflect a prevalent belief within society, or within relevant segments of society.⁶⁶

Such circumstantial evidence (in addition to the direct evidence regarding the abuser's statements or actions) would be relevant to determining whether the abuser believes he has the authority to abuse and control the victim "on account of" her status in the relationship. Further, in domestic violence cases, there is often no evidence that the abuser would seek to harm other women who share the same social status in a domestic relationship. Rather, it often appears that the abuser is motivated only to harm his own spouse or partner. While evidence of motivation to harm others who share the applicant's protected trait may help to establish nexus, it is not required. Where other evidence shows that the persecutor harms the victim because of her status within the relationship, the absence of a motivation to harm others with that trait does not undermine a finding of nexus.

There are two factors to consider when evaluating "nexus." The first is whether the harm is "on account of" a protected characteristic. The second is whether the applicant possesses or is believed to possess a protected characteristic.

1. "On account of"

⁶⁵ *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); RAI0 Training Module, *Nexus – Particular Social Group*.

⁶⁶ See *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000) (noting that in Morocco, a father's power over his daughter is unfettered).

The “on account of” requirement focuses on the motivation of the persecutor. The persecutor must be motivated to harm the applicant on account of a protected characteristic. However, the persecutor may have mixed motivations in harming the applicant. In refugee processing cases, the persecutor must be motivated, at least in part, by a protected characteristic.⁶⁷ For more on these standards, see RAIIO Training Module, *Nexus and the Protected Grounds**. In asylum adjudications, as long as at least one central reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic, the applicant may establish the harm is “on account of” a protected characteristic. This “one central reason” standard was added to the statute by the REAL ID Act, and applies only to asylum adjudications. The Board has explained, however, that the “one central reason” language should be interpreted consistent with prior Board precedent that allows nexus to be established where the persecutor has mixed motivations.⁶⁸

2. Protected Characteristics (“Five Grounds”)

As the Court of Appeals for the Ninth Circuit has noted, “gender” is not specifically listed as one of the five enumerated characteristics in the refugee definition. However, an asylum or refugee applicant may present a claim that is based on one of the five protected characteristics and that is at the same time related to the woman’s gender. Additionally, gender may be one of the characteristics included in the formulation of a particular social group.⁶⁹

6.2.2 Political Opinion

1. Actual Political Opinion

There are a few important points you should bear in mind when evaluating women asylum or refugee applicants’ claims. First, women often express political opinions in the traditional sense of actively participating in political institutions within a country, such as political parties, and organizing or participating in political demonstrations. Even in countries with extremely restrictive norms and laws governing women’s behavior, some women may risk severe harm by taking such actions.

Second, women may also engage in more non-traditional political expression than men, because of their situation in society. For example, a woman may cook and provide food for an opposition group or rebel forces, rather than campaign for the group or fight with the rebel forces. Or women may organize to try to obtain release of male relatives detained for political reasons.

⁶⁷ *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988); *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996)

⁶⁸ *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007)

⁶⁹ *Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996); *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993); Asylum Gender Guidelines.

Third, opposition to institutionalized discrimination of women, expressions of independence from male social and cultural dominance in society, and refusal to comply with traditional expectations of behavior associated with gender (such as dress codes and the role of women in the family and society) may all be expressions of political opinion. Feminism is a political opinion and may be expressed by refusing to comply with societal norms that subject women to severely restrictive conditions.⁷⁰

2. Imputed Political Opinion

- **Activities of Family Members**

In evaluating why a persecutor may have harmed or seek to harm an applicant, it may be important to inquire into any political activities of the applicant's family members and whether the government has attributed a family member's political views to the applicant. For example, if the applicant's husband is involved in opposition political activities, the authorities might assume that the applicant has assisted her husband and shares his political views.

- **Violation of Social Norms**

In some cases, a political opinion may be attributed to a woman who refuses to comply with social norms or laws governing behavior based on gender. For example, authorities might attribute a feminist political opinion to a woman who refuses to participate in an arranged marriage or who otherwise attempts to live outside the constraints governing the role of women in her society. It is important for you to elicit information regarding how the feared persecutor views the woman for such behavior.

Violation of social norms may also indicate persecution on account of religion. The Board of Immigration Appeals considered the case of a young Moroccan woman whose father repeatedly abused her. He burned her thighs to discourage her from wearing short skirts, brutally beat her for giving directions to a man on the street, and forbade her from leaving the house, all because of his religious viewpoint about the proper role of women in society. The Board found that the applicant, in wearing western-style clothing and interacting with men, was demonstrating that her religious beliefs were different than those of her father. Although both were Islamic, the Board determined that the father persecuted the daughter on account of her religion.⁷¹

- **Applicants Living in Theocracies**

In some cases, a political opinion may be imputed to an asylum or refugee applicant who resides in a theocracy, if she displays behavior that is considered contrary to societal norms. Where tenets of the governing religion in such a country require certain kinds of

⁷⁰ *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993).

⁷¹ *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).

behavior, contrary behavior may be perceived by the government as evidence of an unacceptable political opinion, because it is perceived as being in opposition to the national law.⁷²

Cases involving female applicants who flee theocracies may be complex. You must determine whether the applicant is subject to legitimate prosecution for violating the laws of the country (including an assessment of whether the law itself is persecutory), or whether there is evidence that the applicant is perceived as holding an adverse political (or religious) opinion and punished as a result.⁷³

- **Imputing a Political Opinion as a Means of Control**

In one case, the court found an applicant eligible for asylum based on persecution on account of imputed political opinion because an army sergeant who had in effect enslaved the applicant threatened to tell the authorities that she supported the guerrillas. Although the sergeant knew that the applicant did not support the guerrillas, he used the threat to terrorize the applicant into submission and keep control over her. Because of his position in society, it was found that the sergeant would be believed by the authorities and therefore the applicant's fear of future persecution on account of imputed political opinion was reasonable.⁷⁴

6.2.3 Religion

The notion of freedom of religion encompasses the freedom to hold and express a belief system of one's choice and the right not to be subjected to coercion that impairs the freedom to have or adopt a religion or belief of one's choice.⁷⁵

Just as in claims involving political opinion or imputed political opinion, the relevant inquiry in evaluating whether an applicant has established a connection between the harm she suffered and/or fears and religion, is how the persecutor views the woman. The fact that the persecutor may target a woman because of the persecutor's religious beliefs about how a woman should behave does not, in itself, establish that the persecutor is targeting the woman because of the woman's religious beliefs or religious beliefs imputed to her. However, a woman may, through her behavior, demonstrate that her beliefs are at odds with those of the persecutor.⁷⁶

⁷² Punishment for refusal to comply with laws established in a theocracy may also constitute persecution on account of religion. See section on religion. See also RAIO Training Module, *Nexus and the Protected Grounds**, section on prosecution vs. persecution.

⁷³ See, e.g., *Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996) (finding that evidence in the record failed to establish applicant would be subject to persecution as opposed to prosecution for violating Iranian laws governing conduct and dress of women.); *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993).

⁷⁴ *Lazo-Majano v. INS*, 813 F.2d 1432 (9th Cir. 1987).

⁷⁵ Universal Declaration of Human Rights (Art. 18); The International Covenant on Civil and Political Rights (Art. 18).

⁷⁶ See *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).

Certain religions assign particular roles to women; if a woman does not fulfill her assigned role she may be viewed as having “incorrect” religious views and punished. Such punishment would be considered to be “on account of” religion.

As explained in the section above on persecution, the U.S. Court of Appeals for the Third Circuit has indicated that forced compliance with laws that fundamentally are abhorrent to a person's deeply-held religious convictions may constitute persecution.⁷⁷

6.2.4 Particular Social Group

The factors to consider in evaluating whether an applicant is a member of a particular social group and whether harm is on account of that group membership are discussed in detail in another module.⁷⁸ The purpose of this section is to focus on gender-specific issues related to particular social group.

The BIA has held that members of a particular social group must share a “common, immutable characteristic” that the members “cannot change, or should not be required to change because such characteristic is fundamental to their individual identities or conscience.”⁷⁹ The group must also reflect social distinctions, such that the persecutor is not motivated by purely personal reasons, but rather is influenced by broader social mores or factors (“social visibility” or “social distinction” element). This element can be satisfied by evidence that the society in question meaningfully distinguishes individuals who have the shared characteristic from individuals who do not have it.

Gender is an immutable trait and has been recognized as such by the BIA and some federal courts. Further, there may be circumstances in which an applicant's marital status or status within a family could be considered immutable. A father-daughter relationship, or a marriage in which a woman could not reasonably be expected to divorce because of religious, cultural or legal constraints, are examples of such immutable traits. Any intimate relationship could also be immutable if the evidence indicates that the relationship is one that the victim could not reasonably be expected to leave. Note that the particular social groups identified by the courts prior to the BIA's 2006 decision in *Matter of C-A-* emphasized a “social distinction” consideration in the analysis of “particular social group.” However, an examination of the facts reveals that the society's perception of the group members was a factor in deciding these cases.⁸⁰

⁷⁷ *Fatin v. INS*, 12 F. 3d 1233 (3d Cir. 1993).

⁷⁸ See RAO Training Module, *Nexus – Particular Social Group*.

⁷⁹ *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006).

⁸⁰ See, e.g., *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005); *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005). See also *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007).

Though some circuits have discussed gender as a basis of a particular social group, few have found an individual to be eligible for asylum on the basis of a particular social group defined solely by the applicant's gender. Generally, this is because the persecutor was not motivated to harm the applicant solely because of her gender, but because of her gender and some other characteristic she possessed.

6.2.5 Race and Nationality

A female applicant's claim may be based on persecution or feared persecution on account of her race or nationality, or a combination of race or nationality and other characteristics in the refugee definition.

The U.S. Court of Appeals for the Ninth Circuit, found an applicant who was raped by a policeman to be eligible for asylum because she had been persecuted on account of her ethnicity. The applicant testified that the Tigrean policeman had raped her because she was Amharic, her sister's testimony supported her claim, and documents submitted on her behalf also supported that conclusion.⁸¹

6.3 Internal Relocation

An applicant does not have a well-founded fear of persecution if he or she could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.⁸² You should remember that in some circumstances it is unreasonable to expect that applicants could relocate within their own country. For example, if the government is the feared persecutor, then the threat is presumed to be countrywide and it would be unreasonable to assume the applicant has the ability to relocate. The same reasoning would apply in situations where the feared persecutor is a group operating countrywide that the government is unable or unwilling to control. In assessing reasonableness, you may also consider other serious harm the applicant may face in the place of suggested relocation; any ongoing civil strife within the applicant's home country; the administrative, economic, or judicial infrastructure of that country; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties.⁸³ For a more detailed discussion, see RAIO Training Module, *Well-Founded Fear*.

The crucial aspect of analyzing the internal flight alternative is an inquiry as to whether relocation would be reasonable under all the circumstances. Reasonable relocation possibilities for a woman may vary substantially from the relocation possibilities for a man from the same country.

⁸¹ *Shoafera v. INS*, 228 F.3d 1070 (9th Cir. 2000)

⁸² 8 C.F.R. 208.13(b)(2)(ii)

⁸³ *Id.*

Legal restrictions and cultural or social norms governing women's behavior must be considered in evaluating whether it would be reasonable for a female applicant to relocate within her country. Keep in mind also that women may have other vulnerabilities even in the absence of specific laws or norms restricting their movement; for example, in a very corrupt country, where a man might have to give a bribe in order to secure a residence permit, a woman may be more likely to be coerced or forced into giving sexual "favors". Likewise, in countries with high rates of trafficking, women who do not have the protection of their families or communities may be particularly vulnerable.

6.3.1 Ability to Travel

In evaluating whether it would be reasonable for a woman to relocate within her country, you must consider whether there are significant restraints on a woman's right to travel. For example:

- Saudi women may not undertake domestic travel alone, may not legally drive, and risk arrest for riding in a vehicle driven by a male who is not a close relative.⁸⁴
- If there is civil strife or war ongoing in the woman's country, she may be particularly vulnerable if she travels outside the area in which she is protected by family or clan.

You should inquire into whether there are any legal or social constraints on the applicant's ability to travel. This information should be elicited during the interview and also may be found in country conditions information.

6.3.2 Economic Circumstances

You should consider whether it would be reasonable to expect a woman to survive economically, if she were to relocate within her country to avoid future persecution. In many parts of the world, women are still economically dependent on men and availability of employment opportunities is quite restricted for women.

6.3.3 Social Circumstances

In some countries, a woman living outside the protection of her father, spouse, or clan may be vulnerable to attack and/or damaging social stigma. For example, in some countries it is assumed that a woman living on her own or with other unrelated women is a prostitute. In other countries, women are not allowed to rent an apartment, open a bank account or own property. Therefore, you must be aware of conditions for women living on their own in the applicant's country to evaluate whether internal relocation to avoid future persecution is reasonable.

7 CREDIBILITY

⁸⁴ U.S. Department of State. "Saudi Arabia." Country Reports on Human Rights Practices for 2006 (Washington, DC: U.S. Government Printing Office, Mar. 6, 2007)

Cultural differences and norms governing women's behavior, as well as the effects of trauma, may present special difficulties in evaluating credibility of female asylum and refugee applicants.⁸⁵

7.1 Detail

An applicant's gender may affect her ability to provide detailed testimony in a number of ways. In evaluating the amount of detail an applicant should be expected to provide regarding any element of a claim, you should take into account the applicant's social background and role in society. When an applicant is not able to provide detail about certain aspects of her claim, you should inquire into the reason why she is unable to do so.

Some factors that may limit a female applicant's ability to provide detail include the following.

1. Social Constraints May Limit Access to Information

Social constraints governing gender roles may restrict a woman's role in an opposition organization and she therefore may be unable to provide many details about the organization, even if she is a member of the organization. Although a woman may take great risks to further the goals of the organization, male members of the organization may limit the female members' knowledge of the detailed workings and structure of the organization.

A woman who may be at risk of persecution because of her relationship to a male family member may be unable to provide detail about the activities of the male family member that placed the family at risk. In many societies it is normal for a male family member not to discuss his "public" activities (such as political activities, or activities in a union or religious organization) with female members of the family, even with his wife.

2. Effects of Trauma

As discussed in other modules and earlier in this module, effects of trauma may have a significant impact on an applicant's ability to present details about her claim. The effect of trauma on an applicant's ability to present a credible claim is not unique to gender. However, because persecution directed against women may involve sexual harm, you need to be sensitive to the possibility that a woman is reluctant to provide detail about certain experiences because those experiences may be difficult to discuss, particularly with a male officer or through a male interpreter.

⁸⁵ As explained in the RAIO Training Module, *Credibility*, when evaluating credibility, you must consider "the totality of the circumstances" including all relevant factors, such as detail, consistency and plausibility. All of these factors may be affected by circumstances related to an applicant's gender.

3. Gender Roles

A woman's cultural and social background may also affect her ability or the ease with which she discusses her history with a stranger. In some cultures, women live secluded lives and may only rarely have contact with strangers, particularly strangers of the opposite sex. When women in such societies do encounter strangers, they may be accustomed to having male relatives speak for them. This may result in an applicant providing only short, limited answers to questions you pose.

4. Education Level

In some countries or cultures, women are denied the opportunity to obtain an education, or for a variety of reasons, may only be able to obtain a very limited education. In many refugee-producing countries, the literacy rate for women is quite low. A lack of education can affect a woman's ability to express herself or her understanding of the context of the social situation. A woman with little or no education may be unable to clearly express her claim, or may express it in a confused or halting manner creating the false impression that she is being evasive.

7.2 Consistency

Given some women's limited literacy skills, coupled with the fact that women in some societies may be accustomed to having male relatives conduct all "public" activities for them, female asylum or refugee applicants may sign or mark applications that have been completed by a male relative who did not allow them to review it for accuracy. As in any asylum or refugee case, you should always inquire into who prepared the application for the applicant and whether the applicant had an opportunity to review it for accuracy before signing.

7.3 Plausibility

You should exercise care in evaluating the plausibility of the claims by someone from a different culture when behavior or life choices are being evaluated. What may seem implausible behavior to you could be plausible in the applicant's culture, or given conditions in the applicant's country.

7.4 Demeanor

As explained in the RAIIO Training Module, *Credibility*, demeanor is often an unreliable and misleading indicator of credibility. This may be particularly true in cases involving torture or sexual violence. While some individuals who have been tortured become emotionally overcome when recalling their ordeals, others may exhibit no emotion at all. Because there are such a wide variety of emotional reactions to recounting experiences of torture, you should not expect the asylum or refugee applicant to manifest any particular emotion when recounting traumatic experiences.

In some cultures, keeping the head down and avoiding eye contact are signs of respect. For many women, making eye contact and speaking clearly and directly are considered highly inappropriate conduct and should not be viewed as indicators of lack of credibility.

8 EVIDENTIARY CONSIDERATIONS

The same evidentiary rules apply to female applicants, whether or not the claim is gender-related, as apply to male applicants. Testimony alone may be sufficient to establish eligibility if it is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. However in some cases, additional corroboration of material facts may be required. “[W]here it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's claim, such evidence should be provided or an explanation should be given as to why such information was not presented or as to why such corroboration cannot be provided.”⁸⁶

In evaluating whether an applicant should be expected to provide documentation, you must take into account the applicant's situation in the country she fled and the circumstances under which she fled. For a number of reasons, a female asylum or refugee applicant might not have access to identity documents or other documentary proof of her claim. For example, women in the applicant's country may not be afforded full rights of citizenship, or an applicant's means of support may have been dependent upon a male relative who had control over any documents pertaining to the female applicant.

It may be unreasonable to expect a woman from a refugee-producing country to have documentation of sexual violence she suffered. Because of strong cultural stigma attached to rape, “women survivors of sexual violence often are reluctant to seek medical assistance or to file police reports, because they do not want it known that they were raped.”⁸⁷

9 CONCLUSION

Understanding the role of gender and how to evaluate gender-based claims is important for all Officers within the RAIO Directorate. Although not all of the divisions will encounter gender-based issues on a routine basis, you should familiarize yourself with the types of potential gender-based issues that could arise in the course of adjudicating cases. Being familiar with the terminology and applicable laws and regulations relevant to the adjudications will help you recognize and adjudicate gender-based claims and make legally sufficient decisions.

⁸⁶ INA § 208(b)(1)(B)(ii); 8 CFR § 208.13(a); *Diallo v. INS*, 232 F.3d 279 (2d. Cir. 2000); *Matter of S-M-J*, 21 I&N Dec 722 (BIA 1997).

⁸⁷ Human Rights Watch Women's Rights Project, *The Human Rights Watch Global Report on Women's Human Rights* (August 1995) <http://www.hrw.org/sites/default/files/reports/general1958.pdf>

10 SUMMARY

10.1 Gender-Related Issues

Women often suffer types of harm unique to women or much more commonly experienced by women than men, and at times women may suffer harm solely because of their gender. In many societies, women are subject to much greater social restrictions and harsher penalties for social violations than are men.

Furthermore, social constraints placed on women in many countries pose great obstacles to accessing the protection of the state or fleeing harm.

10.2 International and National Guidelines Relating to Women Refugees

Recognizing the particular vulnerability of women, international bodies and national governments have issued several documents in an effort to enhance their protection. These documents may be helpful reference tools for you in evaluating gender-based claims, including determining whether a type of harm experienced or feared by a woman seeking protection has been condemned by the international community as contrary to international human rights norms.

Some of those instruments and documents are:

- Declaration on Elimination of Discrimination Against Women (1967)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- UNHCR Guidelines on the Protection of Refugee Women (1991)
- Declaration on the Elimination of Violence Against Women (1993)
- INS Asylum Gender Guidelines (1995)
- 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 (2002)

10.3 Types of Gender-Based Harm

The types of harm that women suffer vary across a broad range of countries, cultures, and social classes. You will confront particular types of harm in the claims of women interviewed.

10.3.1 Rape and Other Sexual Violence

Rape and other forms of sexual assault are acts of violence serving non-sexual needs or aims. Rape is based on a desire to degrade, control, and/or terrorize a victim or her community. Rape of women civilians has long been an integral part of conflict, used as a tactical weapon to terrorize civilian communities.

10.3.2 Female Genital Mutilation (FGM)

Female genital mutilation (FGM) is a custom of unknown origins involving the cutting or removal of all or part of the female genitalia. This practice can have devastating and harmful consequences for a woman throughout her life.

10.3.3 Forced Marriage

Forced marriage takes place against the victim's wishes and without the informed consent of both parties. The practice occurs throughout the world and may arise out of gender discrimination. Forced marriage constitutes a human rights violation and may constitute persecution where the applicant experiences it as serious harm.

10.3.4 Domestic Violence

Violence against women by relatives is related to the historically more powerful position of men in the family and society. In many societies, the police, the court system, and laws may condone the practice, allow for it, or may simply do nothing to prevent it or punish perpetrators. Although most battered women make efforts to avoid or resist abuse, there are many factors that make it difficult for a battered woman to leave her abuser.

10.3.5 Human Trafficking

Women and men are sometimes victims of human trafficking, a circumstance that involves their exploitation as forced laborers or prostitutes, among other types of harm. They are held against their will, either physically or psychologically. A victim of human trafficking is sometimes lured into her position by deception such as false promises of employment or under false pretenses that the trafficker is romantically interested in the victim. Traffickers often withhold their victims' passports and identity documents. More information is available in the RAIO Training Module, *Detecting Possible Victims of Trafficking*.

10.3.6 Honor Crimes

In some cultures, women are perceived to be the keepers of their families' honor. The family and society consider that a woman has brought shame on her family if she does not adhere to strict social norms of behavior and conduct. Families carry out honor crimes to restore honor to their families. Perpetrators may be members of the woman's family or her community.

Honor crimes include: stoning, abduction, imprisonment, rape, poisoning, acid attacks, disfigurement, forced marriage, murder, and attempts to coerce the victim to commit suicide. A woman may be subjected to these honor crimes for engaging in, or for being accused of engaging in, sex before or outside of marriage, even as a result of rape; refusing to agree to a forced marriage; assertiveness; or wearing inappropriate clothing. Even in countries where honor crimes are illegal, lax enforcement or lesser sentences may be given to perpetrators of these crimes.

10.4 Interviewing Considerations

Cultural factors, such as the expected role of a woman in her society, may significantly affect an applicant's testimony. Cultural norms may exacerbate a reluctance to discuss an issue or limit an applicant's knowledge on a particular subject. The presence of certain people, such as family members or interpreters, may inhibit an applicant's testimony.

You must use your utmost care to assure that the interview is conducted in a non-adversarial manner and to employ questioning techniques that both encourage testimony and put the applicant at ease.

10.5 Legal Analysis – Persecution and Agent of Persecution

The Asylum Gender Guidelines do not expand the statutory definition of a refugee. The legal criteria used to evaluate a female asylum or refugee applicant's eligibility for asylum or refugee status is the same criteria used in all other protection adjudications.

10.5.1 Persecution

When considering whether the harm that an applicant has suffered or fears rises to the level of persecution, keep in mind that rape and FGM are serious enough forms of harm to amount to persecution. According to statute, forced abortion and forced sterilization and other serious harm imposed for resistance to a coercive population control program constitute harm amounting to persecution.

Discrimination and harassment may amount to persecution if the adverse practices or treatment accumulate to the level of persecution, or is so serious that it leads to consequences of a substantially prejudicial nature. Some case law has also indicated that being compelled to engage in conduct that is abhorrent to an individual's deeply-held beliefs may constitute persecution.

10.5.2 Agent of persecution

As in any other asylum or refugee claim, in order to establish persecution, the applicant must demonstrate that the persecutor is the government (including agents of the government) or an entity that the government is unable or unwilling to control. The

persecutor may be a rebel group, a clan, a tribe, or a family member, such as a brother, father, or husband.

In evaluating whether a government is unwilling or unable to control the infliction of harm or suffering, you should consider whether the government provides reasonably effective protection. Factors to consider include whether the government takes reasonable steps to control the infliction of harm or suffering and whether the applicant has reasonable access to existing state protection.

Evidence that the government does not respond to requests for protection is a strong indication that state protection is unavailable. In some cases, an applicant may establish that state protection is unavailable even when she did not actually seek protection.

Keep in mind also that, while the existence of laws on the books criminalizing domestic abuse and government agencies or initiatives devoted to addressing the problem are factors which may serve to indicate a willingness and ability to protect victims of domestic violence, they are not in and of themselves proof that such protection exists and is effective.

10.6 Legal Analysis – Nexus

The “nexus” requirement applies equally to female and male applicants and to all claims, including those in which gender is an element.

When examining claims based on female applicants’ political opinion, you must remember that in addition to expressing political opinions in the traditional sense of actively participating in political institutions within a country, women also express their political opinion in more non-traditional ways, such as cooking or providing food to rebel forces. Women also express political opinions when they oppose or challenge institutionalized discrimination or restrictive social norms.

The BIA has recognized gender as an immutable trait that could form the basis of a particular social group, as have a few federal courts. However, most courts analyzing gender-related social groups consider gender along with other characteristics.

10.7 Legal Analysis – Internal Relocation

Determinations regarding whether a female applicant could avoid future harm through internal relocation must take into consideration the legal restrictions and cultural or social norms governing women’s behavior. This includes a woman’s ability to travel, her economic circumstances, and her social circumstances.

10.8 Credibility

Cultural differences and norms governing women’s behavior, as well as the effects of trauma, may present special difficulties in evaluating credibility of female asylum and

refugee applicants. For example, social constraints controlling access to information, the effects of trauma, or customs of social interaction may limit a woman's ability to provide detailed testimony about certain aspects of her claim. Also, as women from certain countries are less likely to be literate than their male compatriots, they may not have the ability to review the asylum or refugee application for accuracy.

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The BIA has recognized gender as an immutable trait that could form the basis of a particular social group, as have a few federal courts. However, most courts analyzing gender-related social groups consider gender along with other characteristics.

10.7 Legal Analysis – Internal Relocation

Determinations regarding whether a female applicant could avoid future harm through internal relocation must take into consideration the legal restrictions and cultural or social norms governing women’s behavior. This includes a woman’s ability to travel, her economic circumstances, and her social circumstances.

10.8 Credibility

Cultural differences and norms governing women’s behavior, as well as the effects of trauma, may present special difficulties in evaluating credibility of female asylum and

PRACTICAL EXERCISES**Practical Exercise # 1**

- **Title: Analysis of Harm in a Gender-Related Claim**
- **Student Materials: Gender Fact Pattern**

Applicant is a 22-year old woman from country X, which is engaged in a civil war between the government and rebel forces. When she was about 9 years old in 1993, rebel forces began going to Applicant's village and demanding that men join them. They often would kidnap men to join their forces, and men who resisted were killed. The rebel forces took about 20 men from the village, which was about 1 per family.

A few years later, the military began coming to the village. They would beat men, women and children. They also would rape women. Over the next several years, soldiers raped someone in village every 8 – 15 days. Applicant claimed that the military targeted the village and retaliated against residents based on the mistaken belief that the villagers had voluntarily joined the rebels and therefore the village supported the rebels.

When Applicant was 19, soldiers came to her home at night. They beat her father and mother. The soldiers told her father that they wanted to "eat and to be with a woman." They tied Applicant's father behind the house and forced her mother into the kitchen to cook. Applicant was then left alone with three soldiers who beat and raped her. After the soldiers left, the Applicant's parents sent her to stay with an aunt in a nearby village. Fearing further harm, Applicant fled her country.

When asked why she thought she and her family were assaulted, Applicant testified, "I think they were attacking us because the guerrillas had taken my brother away, so they thought we were in favor of the guerrillas." When asked why she believed there was a connection between her brother's kidnapping and her rape so many years later, she responded, "Because the guerrillas continued to kidnap people from the town. So for the same reason, the military soldiers thought that all the persons they took away, that they were in agreement with the guerrillas."

Analyze whether the harm Applicant experienced was persecution on account of a protected characteristic. What additional information would be helpful in making this determination?

Practical Exercise # 2

- **Title:** Interviewing a Gender-Related Case
- **Student Materials:** Excerpt of Interview Notes; Country Conditions Information

- Q. Why are you afraid to return to Pakistan?
A. I would be killed absolutely.
- Q. Who would kill you and why?
A. My brothers. They would kill me. I have shamed them.
- Q. Why would they kill you?
A. I have dishonored them. Brought shame on my family.
- Q. What do you mean? How have you dishonored them?
A. They will say that I had intimate relations and I am not married.
- Q. Why will they think that?
A. My neighbor violated me. He made me submit. I didn't want to and now I am pregnant and no one will believe me.
- Q. What do you mean when you say no one will believe you?
A. My neighbor, he will deny it. He will say he didn't touch me – or he will say I asked for it.
- Q. I know this is difficult to talk about, but I must ask you, did he rape you?
A. Yes. (Applicant begins to cry).
- Q. Describe to me what happened.
A. They will say I have dishonored the family.
- Q. When did your neighbor harm you?
A. It was in October – last October.
- Q. Why do you think your brothers would harm you because of this?
A. I am not married. It is illegal. They won't believe me that I was forced.
- Q. Have you told anyone in your family what happened?
A. No.
- Q. Why not?
A. It is too shameful.
- Q. Did you tell the police?
A. No. They would arrest me. No one will believe me.
- Q. Do you know any other women who have been raped?
A. No. But my cousin got pregnant when she was not married and she died.
- Q. How did she die?
A. They said it was an accident, that she fell down the stairs. But I know that she was killed by my uncle and his sons.
- Q. How do you know this?
A. After she died, my oldest brother said that her family did the right thing, that they saved the family honor.

Q. Why does this mean she was killed?

A. What else could it mean? My brothers had been very upset when they learned she was pregnant. They said terrible things about her. Called her terrible names. They talked to my cousins who were also very upset. They said she brought shame upon the entire family and that something had to be done. Then she suddenly had an accident. I don't believe it was an accident.

Q. Was there an investigation?

A. There never is.

After reviewing the excerpt from the notes above, answer the following questions:

- 1. What other questions should be asked?**
- 2. Are there better ways to have asked any of the above questions?**
- 3. On these facts and, in light of country conditions, can the applicant establish eligibility for asylum?**

OTHER MATERIALS

There are no other materials for this module.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

READING

Required

1. Weiss, Jeffrey L., Office of International Affairs, *Gender Guidelines for Overseas Refugee Processing*, Memorandum to all Overseas District Directors (Washington, DC: 23 February 2001), 2 pp. plus attachment.

2.

Recommended

1.

2.

SUPPLEMENTS

RAD Supplement – 1

There are no RAD supplements.

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

READING

Required

- 1.
- 2.

Recommended

1. Melville, Rosemary, Asylum Division, Office of International Affairs, *Follow Up On Gender Guidelines Training*, Memorandum to Asylum Office Directors, SAOs, AOs, (Washington, DC: 7 July 1995), 2 p. plus attachments.
2. Weiss, Jeffrey L., Office of International Affairs, *Gender Guidelines for Overseas Refugee Processing*, Memorandum to all Overseas District Directors (Washington, DC: 23 February 2001), 2 pp. plus attachment.

SUPPLEMENTS

ASM Supplement – 1

There are no Asylum supplements.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

READING

Required

- 1.
- 2.

Recommended

- 1.
- 2.

SUPPLEMENTS

IO Supplement – 1

There are no IO supplements.

Nexus

* The persecutor is motivated to persecute the applicant because the persecutor perceives the applicant to possess a protected characteristic

* Determining whether the abuser believes he has the authority to abuse and control the victim "on account of" her status in the relationship

* Where other evidence shows that the persecutor harms the victim because of her status within the relationship, the absence of a motivation to harm others with that trait does not undermine a finding of nexus

* Issues with mixed motives (one central reason)

"Gender-Related Claims"

2-21-17



56

368