

Women and Law: Gender, Interculturalism and Asylum in Ireland , Faculty of Law,  
University College Cork  
on the occasion of International Women's Day, 8 March  
2003  
Speech by: Pia Prütz Phiri, Representative UNHCR Branch Office for Ireland

Thank you.

I would like to begin by thanking University College Cork Faculty of Law, Ireland Against Racism, the British Council and Know Racism for bringing us together on the occasion of International Women's Day, to discuss a very important topic - Refugee Women and Law: Gender, Interculturalism and Asylum in Ireland. I feel privileged to be in the presence of so many distinguished experts on refugee law, gender, interculturalism and anti-racism, and I very much look forward to learning from you all about how, together, we can promote a greater gender awareness within refugee law and protection in Ireland.

Ladies and Gentlemen,

I have worked with refugees for 20 years in many parts of the world, in the early years very often as the only female professional staff member in UNHCR offices. Please allow me to share with you three significant incidents from my own experience related to today's topic.  
(Zaire/Zambia, Iran/Turkey, Somalia/Kenya)

I arrived in Ireland to take up my assignment as Head of the UNHCR office in July 2000. My first priority was to acquaint myself with the Refugee Act. I was pleasantly surprised to note that the Act's definition of membership of a particular social group includes "...membership of a group of persons whose defining characteristic is their belonging to the female or the male sex." I stand to be corrected, but I believe the Irish Refugee Act to be unique in this regard. The recognition that women can experience persecution precisely because they are women, and that such a reason for persecution is a valid refugee ground, is very progressive because it goes beyond the strict wording, though not the spirit, of the 1951 Convention relating to the Status of Refugees.

The wording of the 1951 Convention is to some extent a reflection of the Cold War climate in which it was drafted. As noted somewhat flippantly in one commentary, "*the drafters of the Geneva Convention bequeathed to history a critical, male, intellectual political activist with a high profile in the resistance movement, organised and ideologically motivated, as the classic example of the refugee.*"

As far back as 1985, UNHCR's Executive Committee recognised the need to move beyond the "accepted" reading of the Convention, to a more gender sensitive reading. Its recommendation, which at the time was ground-breaking, now seems quite timid. It said:

*"...States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1A(2) of the 1951 United Nations Refugee Convention."*

My anecdote of the Iranian women in Turkey shows that this view was not fully accepted within UNHCR at that time. It was quite refreshing then, to arrive in Ireland and discover that we didn't need to have that particular debate!

The challenge (Ladies and Gentlemen) is to make the refugee definition gender sensitive. Recognising that women may be persecuted on grounds of gender, is only one part of the sensitisation that is needed in terms of the definition. There is also a need to recognise that women may suffer gender-specific forms of persecution.

In 1993, UNHCR's Executive Committee recognised that women often experience persecution differently from men and that sexual violence is often a root cause of refugee flight. However, many States and, as you will have gathered from my stories, some UNHCR practitioners, continued to think of sexual violence as merely a regrettable act of human excess, a failure of personal judgement and not as a serious violation of fundamental rights.

The real turn-around came in the late 1990s. The International Criminal Tribunals for the Former Yugoslavia and Rwanda have taken major steps in re-defining sexual violence against women as a human rights violation. Both courts have successfully prosecuted sexual violence as a crime against humanity and a war crime. The shift in thinking is also evident in the Statute of the International Criminal Court, which includes such crimes as rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence of comparable gravity, as war crimes and crimes against humanity.

As a result of these advances in international criminal law, many States have begun to recognise that gender specific forms of harm, such as sexual violence, female genital mutilation and domestic violence, may, depending on the factual situation, constitute persecution of relevance to the determination of refugee status.

Yet another part of the sensitisation of the refugee definition, is to acknowledge that gender specific forms of persecution are not necessarily perpetrated on gender grounds but may be linked to any of the five grounds of the 1951 Convention, namely race, religion, nationality, membership of a particular social group and political opinion. For example, many women in Bosnia were raped by Serb soldiers with the aim of producing Serb babies. Because the perpetrators wanted to change the ethnic composition of the Bosnian community, this was ethnic cleansing. It was gender-specific persecution on the grounds of ethnicity, not primarily gender.

Ladies and Gentlemen,

Allow me to make a final point on making the refugee definition gender sensitive. The 1951 Convention defines those who are entitled to international protection. It also defines those who are not. In particular, persons in respect of whom there are serious reasons for considering that they have committed serious non-political crimes, war crimes or crimes against humanity are excluded from international protection, and should find no safe haven under the asylum umbrella. As mentioned already, the Statute of the International Criminal Court considers sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence of comparable gravity, as war crimes and crimes against humanity. Therefore the perpetrators of sexual violence against women are excluded from refugee protection.

Let me now say a few words about gender sensitive protection. Being recognised as a refugee is the beginning and not the end of refugee protection. In a camp situation, protection is not always meaningful for refugee women because they are under threat of sexual violence - threat from other refugees and threat from people in positions of authority in the camp. Recently, as some of you will be aware, incidents of sexual violence in West Africa were perpetrated by humanitarian aid workers. In order to counteract this problem, and to make refugee protection more meaningful for refugee women, the United Nations High Commissioner for Refugees announced five concrete commitments to refugee and displaced women in 2002, designed to ensure their protection. These commitments are:

- Through training and other activities, UNHCR offices will work to ensure the active participation of women in all management and leadership committees of refugees in urban, rural and camp settings, including in return areas, with a view to achieving equality of participation between men and women leaders;
- All refugees, men or women, will be individually registered and will receive individual documentation, so as to improve security, freedom of movement and access to essential services;
- UNHCR will develop integrated country level strategies to prevent and respond to sexual and gender based violence;
- Refugee women will be enabled to participate directly as well as indirectly in the management and distribution of food and non-food items; and
- The provision of sanitary materials to women and girls will become standard practice in all UNHCR assistance programmes.

You may be wondering what the provision of sanitary towels has to do with protection of refugee women, but let me assure you, that in camp situations where there is never enough funding or materials, items for improving the quality of life of refugee women are often the first to be cut, or never budgeted for in the first place.

I mention the High Commissioner's commitments because of the philosophy that underlies them, which is of relevance in considering protection for refugee women in Ireland too. The philosophy is one of participation and self-reliance. Too often refugees, especially refugee women, are approached as passive "recipients" of assistance more than as agents of change. Refugee women need to be facilitated in participating in decision making. The challenge is how to do this when women may be unable to participate for reasons such as family and childcare responsibilities, perceived inferior social status within their society, or simply due to a lack of experience and leadership skills.

In the Irish context, the participation of refugee women is most relevant to the area of refugee integration. Ireland now has more than 5,400 recognised refugees, many of whom are women. The time is ripe for integration initiatives which bring refugee and Irish women together around their common experiences as partners, mothers, home-makers, professionals, part-time workers, to address their shared vulnerability to gender inequality and their shared potential to contribute to their communities and partake in government.

Refugee women offer unique and valuable qualities to receiving societies and bring important resources to the process of integration. In UNHCR's experience, refugee women are key contributors to community and economic development initiatives in their host countries. In addition, refugee women commonly assume primary responsibility in the domestic and family sphere. Hence, they are a major vehicle through which refugee communities contribute their cultural perspectives and family and community relational skills to the receiving community.

Ladies and Gentlemen,

I look forward to listening to the other speakers and speaking with participants about how, concretely, this might be facilitated in Ireland.

Thank you very much.