REVIEW OF CRIME, PEACE AND SOCIETY
ISSN (O): 3079-6105, ISSN (P): 3079-6091
Vol. 3, No. 8, 2026, 191-204

Gender-Based Persecution under International Refugee Law: Rethinking Article 1A(2) of the 1951 Refugee Convention in Sexual Violence and Asylum Claims

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Abstract

Sexual violence is an ongoing issue for international refugee law because refugee laws were formulated without taking into account the experiences in which gender-based persecution is often experienced. Article 1A(2) of the Convention Relating to the Status of Refugees protects those who are outside the country of their nationality because they are unable or unwilling to obtain the protection of that country on a reasonable basis due to a well-founded fear of persecution for one of five Convention reasons. Sexual violence may be considered persecution, but rape, domestic abuse, forced marriage, sexual exploitation and conflict-related sexual violence still present challenging questions on the nature of seriousness of harm, whether a person qualifies as belonging to a particular social group, the link between persecution and Convention grounds, and whether there is effective state protection. This article uses the lens of doctrinal legal research to explore the interpretation of the Convention, UNHCR guidance, human rights instruments and comparative judicial developments.

Article History
Received 22 September 2026
Accepted 14 October 2026
Published 20 October 2026
Corresponding Author*
OPEN ACCESS
Keywords
gender-based persecution; international refugee law; 1951 Refugee Convention; sexual violence; asylum claims; particular social group; non-refoulement; refugee status determination.

1. INTRODUCTION

International refugee law is founded on the recognition that a person may require protection beyond the borders of their country when national protection is unavailable or cannot reasonably be relied upon. The central treaty framework is the *Convention Relating to the Status of Refugees*, adopted on 28 July 1951 and supplemented by the 1967 Protocol, which removed the Convention's original temporal and geographical limitations. Article 1A(2) "***defines a refugee by reference to a person outside their country of nationality who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, and who is unable or, owing to that fear, unwilling to avail themselves of the protection of that country***" (United Nations, 1951, art. 1A(2)). The wording establishes a connected legal test: "*the applicant must face sufficiently serious harm*", that harm must relate to at least one Convention ground, and the applicant must fall within the Convention's territorial and protection-related requirements.

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Gender-based persecution is serious harm that is suffered as a result of the *gender, gender identity, gender-related characteristics or social roles* and *expectations for that gender of a person,* or *if gender combines with another protected characteristic*. Gender-based harm can encompass rape, sexual slavery, forced marriage, FGM, domestic violence, forced sterilisation, trafficking for sexual exploitation, and discriminatory restrictions, which when combined, constitute persecution. It is not the idea that any act of discrimination or any act of gender-based violence per se is a refugee act. The legal significance of this is to take into account the nature of the harm, the social and institutional context where the harm occurs and the relationship between and/or connection to the harm and the Convention grounds (United Nations High Commissioner for Refugees [UNHCR], 2002).

Well-founded fear is more than just a subjective fear; it is not a fear that must be a certainty to be well-founded. It includes a determination if the applicant has a sincere fear and there is reasonable cause for the applicant to believe that persecution will occur upon return. The concept of persecution is not fully described in the Convention as it was drawn up in 1951 – it is elaborated upon in the interpretation of the Convention, in judicial decisions and in authoritative guidance. It usually consists of severe infringements upon basic human rights or a series of measures which collectively amount to a comparable level of severity. The Convention nexus is the "*legal requirement that the persecution must relate to one of the five grounds in Article 1A(2)*. ***Non-refoulement*** is the principle that mandates a refugee not to be returned to a state where his or her life or freedom would be threatened for a Convention reason, within the terms of the Convention, but also subject to the more absolute prohibitions found in international human rights law (IHL) (UNHCR, 2011).

The problem is not whether ***sexual violence*** can be serious enough to be a form of persecution. The more persistent problem is that of how to use the full refugee definition with respect to violence perpetrated by private individuals, with respect to a state's formal prohibition of the violence but its failure to protect the victim, or with respect to a social group's persecution that is tied to gender expectations of the applicant. The difficulty is particularly acute in those cases where a person has experienced sexual violence and is unable to provide documentary evidence of such violence, or delays reporting the violence, or fears disclosure of such violence will result in further violence. A legal test may seem fairly neutral in its wording but have unfair effects when applied based on assumptions about the behavior of a genuine survivor and how a state should respond (Edwards, 2010).

2. RESEARCH METHODOLOGY:

The approach of the present article is doctrinal and comparative legal, examining the main features of the Refugee Convention of 1951, international human rights instruments, UNHCR guidelines, judicial decisions, and the present-day literature. Comparative jurisprudence is applied to analyse the interpretation of GBP and sexual violence in asylum cases, focusing on Article 1A(2) and the obligation of the state to provide effective protection.

3. ARTICLE 1A(2): THE STRUCTURE OF THE REFUGEE DEFINITION

Article 1A(2) is comprised of interrelated requirements that need to be evaluated in a coherent and legal way. The applicant must be outside the country of their nationality, have a well-founded fear of persecution, be able to show that this persecution is related to one or more Convention grounds and be unable or unwilling, because of this fear, to seek the country's protection. Under the Convention, the place of former habitual residence provides a link to the stateless person for a stateless person. The legal analysis needs to be different, however, between the existence of serious harm and the reasons therefor and between the availability of protection and the existence of serious harm. It is important that no decision-maker collapses these to a single general question relating to hardship suffered by the applicant, as that is not considered to be sufficient (United Nations, 1967).

The absence of a comprehensive definition of persecution leaves room for interpretation in response to serious breaches of basic rights without unduly broadening the definition of persecution. The Supreme Court of Canada in Canada ***(Attorney General) v. Ward*** equated persecution with "sustained or systemic" violations of fundamental human rights showing a failure of state protection. While national interpretations of law will be made within the national context, the case provides an example of the need to consider the nature and context of the harm rather than the content of a closed list of prohibited acts when conducting refugee analysis. However, sexual violence may be considered as meeting the legal threshold, based on its seriousness and circumstances (Canada [Attorney General] v. Ward, 1993).

The five grounds of the Convention are exhaustive, but do not restrict the interpretation of the words used in 1951. In an individual claim, race, religion, nationality and political opinion may be combined with membership of a particular social group. For example, if the evidence and law indicate that a woman is being targeted for a forced marriage, she may be subject to persecution based on a combination of her membership in a social group, her actual or perceived political opinion, or a combination of these grounds. The question is not whether gender is named as a separate ground in Article 1A(2), but whether a case can be made that there has been persecution on one of the grounds referred to in the Convention (UNHCR, 2011).

The ***nexus requirement*** is still irreplaceable and essential. Sexual violence can be a form of violence for a Convention ground and serious criminal conduct does not automatically give recognition as a refugee. On the other hand, a perpetrator's personal motive cannot be a bar to establishing the Convention nexus if a broader group-based hostility, discriminatory social norm, or the victim's actual or imputed status have a direct impact on the perpetrator's actions. When making decisions, decision makers should consider the following: Decision makers should consider the reasons for choosing the applicant; how the applicant was viewed by the perpetrator; and whether the violence was part of a pattern of violence against a protected group. This analysis is better than the erroneous idea that sexual violence is always gender-based or a private criminal offence (Foster, 2007).

4. SEXUAL VIOLENCE AS PERSECUTION

Sexual violence can be a form of persecution because it can infringe on the *rights to bodily integrity, autonomy, physical and psychological security and human dignity*. While *rape and sexual slavery* are obvious instances of conduct that can be considered persecution, there is a need for the legal assessment to also take into account threats, repeated abuse, forced marriage and other forms of sexual coercion. There is no requirement for the applicant to establish that sexual violence occurred in conjunction with an additional violation to establish that serious harm has been suffered. The question that needs to be asked here is whether the conduct is sufficiently serious, as it happened (UNHCR, 2002).

The International Criminal Tribunal for Rwanda (ICTR) has convicted women of rape numerous times in the past, and its jurisprudence shows that international criminal law seriously considers the crime of rape in certain contexts. In ***Prosecutor v. Akayesu***, the Tribunal accepted that rape and sexual violence could be acts of genocide if committed with the specific intention envisaged in the Genocide Convention. While this judgment does not influence refugee status, which has legal elements, it has established that sexual violence cannot be "accidental" violence if it is part of a wider violence. It is legally dependent on the framework involved, the nature of the conduct established and the context of the actions (Prosecutor v. Akayesu, 1998).

International criminal law also considers rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and other sexual violence crimes as potential crimes against humanity, provided the context in which they occurred is established under the Rome Statute. Such categories are not necessarily synonymous with persecution in the sense of the Refugee Convention. However, they can help them to remember that sexual violence can be organized, systematic and linked to broader patterns of domination. Where a refugee alleges that the persecution he suffered is an individual act of sexual violence, the definition of persecution in the Convention does not require that there be a state-sponsored armed conflict or widespread attack (International Criminal Court, 1998).

Another challenge lies with cumulative harm. While a single discriminatory restriction may not count as a restriction alone, multiple restrictions may, combined, deny a person the right to an education, a job, movement, medical care and meaningful legal protections. These can help increase the likelihood or decrease the possibility of sexual violence occurring. A cumulative approach ensures that decision makers do not consider each act independently and missed the big picture of the control. It also prevents the mistake of considering any measure aimed at discrimination to be an act of persecution—without assessing its gravity and cumulative impact (European Parliament&Council of the European Union, 2011).

Domestic violence has been acknowledged by the European Court of Human Rights as an issue falling under states' obligations under human rights law, such as obligations to provide effective protection against serious abuse. In ***Opuz v. Turkey*** the Court concluded that the authorities failed to protect a woman and her mother from domestic violence and the discriminatory background of the state's response was a serious issue. The case did not relate to refugee status, but to the European Convention on Human Rights, and it demonstrates that a gender-based harm assessment cannot be limited to the identity of the person who

committed that harm. The failure to act, discriminatory treatment and repeated failure to act can be pivotal to understanding the risk faced by a survivor (Opuz v. Turkey, 2009).

5. MEMBERSHIP OF A PARTICULAR SOCIAL GROUP

In gender-related asylum cases, the particular-social-group ground has gained particular significance owing to the fact that it can include groups based on characteristics that are essential for identity and/or characteristics that set them apart in their society. In ***Matter of Acosta***, the United States Board of Immigration Appeals stated an influential reasoning that focuses on a common trait that cannot be altered or that should not be expected to be changed by Board members, as such a trait is essential to identity or conscience. The reasoning of the decision is relevant to broader issues surrounding the definition of social group, and whether its members need to be organised under a political party or organisation and act collectively. (Matter of Acosta, 1985).

In the case of ***Islam v. Secretary of State for the Home Department; R v. Immigration*** Appeal Tribunal, ex parte Shah, the United Kingdom's House of Lords heard cases of Pakistani women who sought to protect themselves against abuse but lacked adequate protection from the State. These judgements tackled the issues of women's position in a society that may subject them to persecution under discriminatory structures and where the State's reaction to domestic violence is inadequate. It is crucial that the decision is made because it illustrates how the gender and social context in which the individual lives might contribute to the identification of a particular social group, not just the lack of a formally organised group being fatal to a claim (Islam v. Secretary of State for the Home Department; R v. Immigration Appeal Tribunal, ex parte Shah, 1999).

This is not a social group enquiry to determine if the applicant has experienced harm in their own life. In many instances, women or girls may have a shared unchangeable trait, and their social status in the country of origin and how they are treated makes them relevant to the group. In some jurisdictions, they must also take into account social distinction or particularity as well as a shared characteristic. Therefore, it is wrong to believe that all claims on behalf of women are claims under the social-group ground. Although important, the applicant's situation and country information must be considered, and the legal strategy of the relevant jurisdiction must be respected, rather than introducing further evidentiary burdens, gender must also be treated as a legally relevant factor, not as a reason for imposing further evidentiary burden (UNHCR, 2002).

The House of Lords' rulings in Secretary of State for the Home Department v. K; Fornah v. Secretary of State for the Home Department are further examples of the use of refugee law to address gender-based persecution. The issues of each of the cases were whether protection from serious harm was available and whether a claim was available on the basis of the risk of female genital mutilation. The judgments illustrate that gender-specific practices can be examples of persecution and that the specific-social-group analysis should be based on the real social context. They also affirm that it is a separate issue from the presence of a persecutory practice to whether the applicant meets the other conditions of the

refugee definition (Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department, 2006).

The European jurisprudence has further developed the discussion in recent times. The Court of Justice of the European Union (CJEU) in its judgment in ***K and L v. Staatssecretaris van Justitie en Veiligheid*** ruled that, depending on the circumstances in the country of origin, women and girls who genuinely identify with the fundamental value of equality between women and men could be considered to belong to a particular social group under the EU Qualification Directive. The recognition of a developing identity and values as pertinent to risk on return is a key fact of the judgment. But the question of its precise holding is that of EU legislation, and should not be turned into an assertion that all Convention states have to apply the same test (K and L v. Staatssecretaris van Justitie en Veiligheid, 2024).

6. STATE PROTECTION AND VIOLENCE BY PRIVATE ACTORS

The idea that refugee protection cannot be found when violence is perpetrated by a private person is not in conformity with the current interpretation of the Convention. Persecution can also happen at the hands of other actors if the state is ineffective or unwilling at providing adequate protection. Sexual-violence claims can be made against a spouse, relative, trafficker, community member, armed group or private actor. It is not enough that the perpetrator is a public official, it must be shown that the applicant is also being persecuted and that there is a possibility of meaningful protection by the relevant authorities. The formal criminalisation of the conduct is relevant, but does not necessarily mean that protection will work in practice (UNHCR, 2002).

Protection is not just about a law against rape, domestic violence, forced marriage or trafficking. Issues that might be raised include: whether complaints are treated seriously, whether survivors are able to make use of the police and courts, whether protection orders are followed, and whether officials treat a survivor differently or dismissively. Those who suffer may be at risk of serious harm despite a long and detailed legal framework due to social stigma, corruption, poverty, or government complicity. It is therefore essential for decision-makers to consider the practical implementation of protective institutions, and not take the view that the fact of legislation will suffice to address the issue (European Court of Human Rights, 2009).

The state-protection inquiry should also be no longer a pre-condition for reporting. A survivor has a reasonable right to avoid coming into contact with the authorities where they would be vulnerable to retaliation, forced reconciliation, family violence, public humiliation or abuse by the authorities again. Judgments on reasonable nonreporting depends on the specific situation and country information. It does not mean that, because an applicant did not request protection, they did not have it available or that, because a claim was not attempted, it ought to be successful. The question has been posed whether protection was feasible and safe in the circumstances of the case (Committee on the Elimination of Discrimination against Women, 2017).

There is also an associated challenge of doing internal relocation. Although the risk might be limited to one locality, relocation to another part of the country may not be reasonable or safe if the risker is found elsewhere in the country, if the authorities would not provide meaningful security, or if the risker would find herself in serious gender-based restrictions and destitution. The analysis should take into account the personal situation of the applicant and the conditions at the place of relocation. For cases of sexual violence, family networks, social stigma, economic dependence, access to housing and the risk of re-exploitation can be a material impact on whether relocation is a viable alternative to international protection (UNHCR, 2003).

7. EVIDENCE, CREDIBILITY, AND TRAUMA-INFORMED ADJUDICATION

Evidence used in sexual-violence cases often is different from that used in traditional property or commercial cases. The incident could have happened in private, where there might not have been any independent witnesses, and the applicant might not have had a medical report, a police report, or a contemporaneous complaint. This does not necessarily mean that the account is unreliable. The determination of refugee status must be done on a case-by-case basis, and the overall evidence must be assessed taking into account the testimony of the claimant, the country of origin information, any supporting evidence and the context in which the claim is submitted. It is important to consider documentary evidence carefully, but in the absence of documentary evidence, it should not be a decisive factor (UNHCR, 2019).

A survivor's disclosure can happen in a different order, in more or less detail and at a different time. Some applicants may make some initial physical description of the attack without revealing any sexual information, while others may be able to do so later in the process or once they establish trust or when they understand the questions' full meaning. A decision-maker should recognize when a true contradiction exists on matters of substance and when discrepancies may exist in peripheral details or disclosures that are reasonably attributable to trauma, shame, fear, and/or cultural stigma. Whilst trauma should not be used as a blanket explanation of every inconsistency, nor should there be a search for a "consistent narration" imposed on every survivor (World Health Organization, 2003).

Interviews may have an impact on the quality of information gathered. Questions need to be clear, non-judgemental and suitable to the type of claim; the applicant should have a meaningful opportunity to clarify apparent inconsistencies. Where practicable, the process shall consider the gender of the interviewer/interpreter, need for privacy and potential for family member/accompanying person to be involved in the risk. These are not measures that determine the results, but measures that facilitate the process of obtaining and evaluating relevant evidence (European Union Agency for Asylum, 2026).

The country of origin information should be sufficiently specific to shed light on the real risk. General reports of violence against women can create a greater pattern, but without more cannot prove the risk to an individual applicant. On the other hand, decision makers should not insist that proof of the risk that every woman faces is needed before a claim is made. Information that is relevant can relate to the treatment of women in the applicant's

region, authorities' response to sexual violence, social attitudes towards survivors, access to remedies, and consequences of declining forced marriage or other types of coercion. The assessment should relate general conditions to the situation of the applicant, but not require absolute prediction of future events (European Union Agency for Asylum, 2024).

If there is any potential that disclosure could cause an applicant to be further harmed, confidentiality is especially important. Details of sexual violence should not be exchanged with the alleged perpetrators or authorities in the country of origin in a way that puts the applicant at risk. The requirement of procedural fairness should balance with privacy, dignity and the protection of sensitive personal information. The aim is not to take sexual-violence claims out of reach of scrutiny, but to make sure that the ways of doing it do not repeat the dangers which led to the application for protection (UNHCR, 2006).

8. RECENT JURISPRUDENCE AND THE NEED FOR INTERPRETATIVE CONSISTENCY

AH and FN v. Bundesamt für Fremdenwesen und Asyl is an important recent decision on the meaning of gender-based persecution in the EU asylum system. The Court of Justice stated that the cumulative effect of discriminatory measures taken against women in Afghanistan, such as restrictions on their education and employment, on their freedom of movement, on access to health care and on protection against gender-based violence, may amount to acts of persecution as such measures affect human dignity. The Court also concluded that the judgment's facts and circumstances did not require the individual assessment to consider gender or nationality but that it may have done so in those circumstances. The judgment relates to the EU Qualification Directive, and must be interpreted within its scope, but provides a very helpful comparative reference for further discussion (Bundesamt für Fremdenwesen und Asyl and Others [Afghan women], 2024).

Perhaps most significantly, the judgment recognizes that persecution may also arise from restrictions that are not just physical, but also from a combination of restrictions. This is particularly important for sexual-violence claims, where there is a risk of dependency on abusive relatives or partners due to impunity, movement restrictions, exclusion from education, and work restrictions. This is not to lose sight of the legal difference between discrimination and persecution, though. The severity of the combined measures and their actual effect, the context in which they are applied and the refugee definition to be applied should be the main focus of the analysis (Court of Justice of the European Union, 2024).

The framework of the Convention shall also not be superseded by complementary protection under human rights law. ***The Convention against Torture (Article 3)*** bans removal to a State where there are substantial grounds for fearing they will be subjected to torture**.** ***Human rights non-refoulement*** would therefore be applicable even if there is no Convention nexus. It does not imply that the two legal frameworks are interchangeable: refugee status and protection against removal under the Convention against Torture are based on different legal principles and have different legal elements. The nexus requirement in the Refugee Convention should not be used to dispose of a separate human rights claim

and an explicit identification of the framework of protection should be done to the benefit of decision makers (United Nations, 1984).

There is also a normative context, in the sense of the Convention on the Elimination of All Forms of Discrimination against Women. It calls on states parties to combat gender discrimination and the Committee has interpreted gender-based violence as being the form of discrimination and therefore imputing state responsibility. These obligations do not necessarily make an individual refugee status in practice. Their relevance is interpretative, that is, they help explain why, in deciding whether the state can protect an applicant from persecution, it may be relevant if violence tolerated by public authorities or discriminatory institutional practices or the denial of effective remedies is relevant (United Nations, 1979).

The Declaration on the Elimination of Violence against Women also recognizes violence against women as an expression of historically imbalanced power relations and urges to take effective action to prevent and respond to violence against women. It is not a treaty, but rather a declaration and therefore does not by itself affect Article 1A(2). It still provides a context to the wider law that shapes the understanding of ***GBV*** and works to challenge the notion that violence in the context of family and intimate relationships is always private and therefore not the issue of public responsibility (United Nations General Assembly, 1993).

9. A PROPOSED FRAMEWORK FOR GENDER-SENSITIVE REFUGEE STATUS DETERMINATION

There must be a clear plan that starts with defining the exact harm that is being feared on return. It should be decided by the decision-maker whether the claim relates to past sexual violence, to a threat of sexual violence, to forced marriage, to sexual exploitation, to gender-specific restrictions or to both. The occurrence of past persecution is relevant evidence of a future risk, but does not automatically mean that the persecution will continue. The assessment should establish who might be responsible, where the harm most often takes place, and the possibility that the applicant is subjected to other, similar forms of coercion or discrimination that will increase the risk of harm (UNHCR, 2011).

The second stage should determine if the harm is of sufficient magnitude to meet the persecution threshold. This inquiry should include, but is not limited to, the severity, duration and repetition of the conduct, and how it is affecting the physical, psychological, social and economic lives of individuals. Sexual violence should not be disregarded due to the fact that it occurred inside a marriage, the perpetrator of sexual violence was a relative or the applicant lived with the sexual violence perpetrator for some time. These facts may need to be explained, but it does not rule out the possibility of persecution. Legal test to be based on nature of harm and impact - not on suppositions about how a survivor should react (Council of Europe, 2011).

Third, it is necessary to clarify and explicitly state the Convention nexus in the decision making process. The question is whether the feared persecution is based on racial, religious, national, membership of a certain social group or political opinion. Gender may be linked to the identification of the social group or may be relevant to explaining the persecutor's motive but the argument must be based on the actual wording of the Convention. If more than one ground may apply the decision-maker should consider the possible grounds but not just refuse a claim because the applicant fails to identify the correct legal ground. The social and institutional context in which the violence is threatening and/or being carried out must be taken into account (United Nations, 1951).

Fourth, the assessment should identify if effective state protection exists. Questions that need to be considered are: Is the harm likely to be prevented; is the applicant able to be protected safely; were any previous interventions effective; and does a discriminatory attitude or complicity by the authorities prevent protection of the applicant? Formal legal prohibition does not constitute proof, it is a proof. Likewise, the non-reporting should be seen in the context of the whole, not as a "no report" rule. The analysis will be directed to ascertaining the possibility of the applicant securing protection from the persecution to which he or she is exposed (UNHCR, 2002).

Fifth, it is vital that sexual-violence cases be assessed in a way that upholds fairness, including by acknowledging the specific evidentiary challenges of sexual-violence cases. Applicants should be provided with an opportunity to explain significant discrepancies and limitations in their disclosure, to consider the supporting evidence in the context of the disclosure, and to avoid stereotypical assumptions about disclosure delay, emotional presentation of disclosure, or ongoing contact with an alleged perpetrator. The standard should continue to be firmly based on the law, but rigour must not be confused with the requirement for evidence that the survivors are unlikely to have. The information about the country and the individual testimony should be taken together and uncertainty should be dealt with transparently (European Union Agency for Asylum, 2026).

Lastly, the reasoning behind each individual material element should be explained. It should contain a clear statement of whether the alleged harm is sufficiently serious to represent persecution, the Convention ground(s) being engaged, the evidence used to support the risk assessment and whether protection and/or internal relocation is reasonably available. Where the refugee status is denied, the refusal should take into account any separate claim made in respect of any applicable complementary-protection and/or human-rights provisions. This will ensure consistency and allow for the outcome to be reviewed, but will also make it less likely that a claim will be denied because there was an unstated conclusion that the violence was simply private or poorly documented (Goodwin-Gill&McAdam, 2021).

10. CONCLUSION

Article 1A(2) of the Refugee Convention, 1951 can continue to provide protection to survivors of sexual violence, but this is contingent on how the Convention's requirements

are understood and put into action. The main legal obstacle is not the lack of a gender-specific ground, but the unequal use of the current grounds, when discrimination against men and women on the basis of gender is not sufficiently visible in the context of historical perceptions of privacy, family life, credibility and state responsibility. Thus, a gender-sensitive approach needs to stay true to the Convention, and needs to acknowledge the actual situation of sexual violence and the institutional conditions that allow it to exist (UNHCR, 2002).

The analysis led to four conclusions. First, the harm inflicted by sexual violence can breach the threshold of seriousness and, therefore, of persecution (cumulative and contextual analysis should be used in assessing this). Second, the Convention nexus needs to be developed based on a reasoned analysis of the grounds of protection, such as the particular-social-group ground (where relevant). Third, the state protection inquiry should consider the efficacy of the protection provided not just in terms of legal prohibitions. Fourth, a procedure for determining credibility should acknowledge the challenges involved in proving a case of sexual violence, but not neglect individual evaluation or the legal test for refugee status (Hathaway&Foster, 2014).

Judgments in recent years have shown that gender related claims are getting the attention of judges in an increasingly explicit way, especially when discriminatory actions take place cumulatively or when gender and social identity are connected to the risk of persecution. All these developments should be considered carefully from a doctrinal perspective: EU asylum law has its own provisions and does not apply to all states applying the 1951 Convention automatically. However, comparative law may reveal shortcomings of restrictive methods and show how the present legal principles can be more effectively implemented (Nicolosi&Ertuna Lagrand, 2026).

The overall recommendation is to introduce a gender-specific, structured approach by states, courts, and refugee status decision-makers in order to consider the issues of harm, nexus, state protection, evidence, and internal relocation separately. This framework must not assume that all women are refugees, nor impose any further criteria on a woman survivor of sexual violence that is not required by the Convention. It should rather be used in accordance with the existing legal test, taking into account the facts, the country context and - most importantly - the protective purpose of the Convention. The legitimacy of refugee law does not depend on the extension of its definition beyond anything, but on the fact that its definition is used without gender blind spots.

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