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5 Theorizing sexual violence against men in the Middle East and North African region as gender-related persecution under refugee and asylum law

Valorie K. Vojdik

Introduction

While international law has recognized that sexual violence against women during war may constitute gender-related persecution, sexual violence against men has been virtually invisible, both in the Middle East and North African (MENA) region and around the globe. During the Syrian conflict, for example, media reports primarily focused on the rape of women and girls, mostly ignoring the widespread rape of Syrian men and boys in detention by Syrian forces.¹ Recently, the United Nations High Commissioner for Refugees (UNHCR) has begun to recognize that men and boys are also victims of sexual violence and gender-based persecution.² Drawing on examples from Syria and the MENA region, this chapter argues that feminists and human rights advocates should similarly broaden the theoretical framework of refugee and asylum law³ to recognize and conceptualize claims of male refugees as gender-related persecution.

Both the 1951 UN Convention Relating to the Status of Refugees (1951 Refugee Convention or Refugee Convention) and the U.S. Immigration and Naturalization Act (INA) provide protection to refugees, defining refugee as a person with well-founded fear of persecution on several enumerated grounds that do not include sex or gender. Following the mass rape of women during armed conflicts in the 1990s, feminist scholars and human rights activists mobilized to persuade courts to recognize gender-related violence against women as a form of persecution that may qualify for asylum protection.⁴ In so doing, feminist advocates have tended to theorize gender-related persecution in sex-specific terms, conceptualized as harm to women perpetrated by men.

While the international community has begun to recognize gender-related claims of women as grounds for human rights protection, it has largely ignored gender-related claims of men and boys.⁵ Like women, men and boys are subjected to conflict-related sexual violence and torture by the government and military forces that is gender-related and may constitute grounds for asylum protection. The erasure of men and boy refugees from accounts of gender-based persecution not only denies them the ability to be protected as refugees but also undermines feminist efforts to eradicate the subordination of women.

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Treating gender-based persecution as a sex-specific phenomenon tends to essentialize the categories of male and female, reinforcing gender stereotypes that assume that women are victims and men are perpetrators.⁶ This in turn obscures the role of gender as a social process or institution of distinction and domination that regulates both men and women.

Focusing on international standards and asylum jurisprudence in the United States, this chapter critiques the failure to recognize gender persecution against men and boys. United Nations Security Council Resolution 2106 recognized in 2016 that men and boys are also victims of sexual violence during conflict, which can constitute a war crime, crime against humanity, and constitutive act of genocide.⁷ Concentrating on the MENA region, this chapter argues that sexual violence against men during conflict similarly may constitute gender-related persecution and grounds for refugee protection. Specifically, it argues that feminists should expand the theoretical framework of asylum law to incorporate and theorize men's experiences of gender violence and persecution.

This chapter begins with a discussion of the movement to recognize gender-related persecution of women as grounds for protection and asylum. The next section examines relevant guidance from the UNCHR and the United States examining asylum claims by women, arguing that the documents recognize that men may also suffer gender-related forms of persecution but miss the opportunity to adequately theorize such harms. The final section then examines reports of sexual violence against Syrian men in detention to illustrate the need to broaden the feminist framework to recognize and consider gender-related persecution of men under the Refugee Convention in the United States and internationally.

Theorizing gender-related persecution

Feminist scholars and human rights activists have long advocated for the recognition of gender-related persecution as a ground for asylum for women. Neither the 1951 Refugee Convention nor the U.S. INA specifically enumerates gender as a ground for persecution in their definitions of refugee. The 1951 Refugee Convention and its 1967 Protocol defines a refugee as an individual with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”⁸ The Refugee Convention does not explicitly include sex or gender as one of the five grounds of persecution for which a person may claim refugee protection.⁹

Section 208 of the INA similarly fails to include sex and gender as protected grounds. It defines a refugee as

a person who is unwilling or unable to return to her country of origin or last habitual residence because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.¹⁰

These categories are called “protected grounds.”¹¹ To establish a claim for refugee status in the United States, an applicant must establish that (1) she has been persecuted in the past or that she has a well-founded fear that she will be persecuted in the future, (2) that the persecution she fears is at the hands of the government or an individual or entity the government either cannot or will not control, and (3) that the persecution is “on account of” one of the five enumerated grounds.¹² The terms “fear of persecution”¹³ and “particular social group” are not defined in the statute.¹⁴

As Karen Musalo argues, “[h]istorically, the violation of women’s rights was not seen as an issue of concern within the international human rights framework.”¹⁵ Seeking to extend the protection of asylum to female refugees, feminist scholars have criticized refugee law as being rooted in the experiences of men.¹⁶ Under this critique, refugee law reflects a male paradigm that privileges the experiences of male refugees and excludes those of women.¹⁷ Refugee law, feminists have argued, has focused on state and public forms of persecution considered more common to men and not forms of private violence experienced by women.¹⁸ As a result, persecution historically has been understood to constitute beatings, torture, and political imprisonment. In contrast, feminist scholars argue that female refugees often flee persecution within the private sphere, including domestic violence, rape, and female genital cutting, which human rights and asylum jurisprudence historically have conceptualized as private harms that occur within the home.¹⁹ These forms of persecution that women experience have been distinguished from violence committed by the state against persons (men) because of their political views, race, religion, or nationality.²⁰ Refugee and asylum law thus “failed to recognize the political nature of seeming private acts and harm to women.”²¹ Feminist advocates and scholars similarly argued that human rights and refugee law historically failed to consider rape and sexual violence against women in conflict as forms of persecution.²² As a result, feminist scholars have argued that refugee law failed to protect women from many forms of gender-related persecution.

Beginning in 1985, UNHCR began to issue guidance interpreting the Refugee Convention to protect women from gender-based persecution.²³ The Executive Committee of UNHCR issued Conclusion 39 on Refugee Women and International Protection, interpreting Article IA(2) of the Refugee Convention to recognize 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 the Convention.²⁴ In 2002, UNHCR issued more comprehensive gender guidelines, “Guidelines on International Protection No. 1: Gender-Related Persecution within the Context of Article IA(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees,” specifically to ensure proper consideration to refugee claims by women.²⁵ The UNHCR Guidelines acknowledged that the Refugee Convention covers gender-related claims.²⁶ Echoing claims by feminist activists and advocates, the Guidelines explain that refugee claims have been interpreted through a framework of male experiences, which

has failed to recognize many claims “of women and homosexuals.”²⁷ Although gender is not specifically included in the refugee definition, gender-related claims have proceeded under the protected category of social group.²⁸ The social group category, like other protected categories, is based on immutable characteristics that an asylum seeker cannot change or that is fundamental to their identity or consciousness.²⁹ Claims of gender-related persecution are recognized under the Refugee Convention because gender can “influence, or dictate” the type of persecution or harm suffered and “the reasons for this treatment.”³⁰

The UNHCR Guidelines define gender as referring to “the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination.”³¹ While “gender-related persecution” has no legal meaning *per se*, the Guidelines state that it is “used to encompass the range of different claims in which gender is a relevant consideration in the determination of refugee status.”³² The Guidelines, for example, explain that

rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation, domestic violence, and trafficking, are acts which inflict severe pain and suffering—both mental and physical—and which have been used as forms of persecution, whether perpetrated by State or private actors.³³

Gender-related persecution also includes persecution arising from the enforcement of laws such as those based on traditional or customary practices or which discriminate on the basis of sex or gender. Even where a state prohibits persecutory practices (such as female genital cutting), it may fail to protect women and/or tolerate or condone the violation, which also can constitute persecution.³⁴ Severe punishment for women who violate a law and thereby transgress social norms could also amount to persecution, even if the law is one of general applicability.³⁵ Discrimination based on sexual orientation, moreover, may also constitute persecution because “the claimant has refused to adhere to socially or culturally defined roles or expectations of behaviour attributed to his or her sex.”³⁶ The Guidelines recognize the intersectional nature of gender-related persecution, explaining that gender can intersect with other Convention grounds such as race, nationality, religion, and political belief.³⁷

While the UNHCR Guidelines state that both men and women may bring gender-related claims,³⁸ they analyze only examples of persecution of women. Paragraph 3, for example, states that “[g]ender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.” While the list is nonexhaustive, most of the examples discussed in the Guidelines are either specific to women (e.g., dowry-related violence and female genital mutilation) or assumed to be specific to women (e.g., domestic violence and sexual violence).

The UNHCR Guidelines similarly recognize that gender intersects with other enumerated grounds of persecution, yet analyze such claims as specific to women.³⁹ With respect to race, for example, the UNHCR explained that a persecutor may seek to destroy the ethnic identity of a racial group “by killing, maiming or incarcerating the men, while the women may be viewed as propagating the ethnic or racial identity and persecuted in a different way, such as through sexual violence or control of reproduction.”⁴⁰ Similarly, the Guidelines explain that persecution on the basis of nationality may “take a gender-specific form, most commonly that of sexual violence directed against women and girls.”⁴¹ This analysis, as discussed below, relies on essentialized notions of sex and gender that incorrectly assume that women are victims and men are perpetrators.⁴²

Seeking to redress the exclusion of women from the reach of refugee and asylum law, feminist advocates in the United States have sought to persuade courts to recognize gender-related violence and persecution of women under asylum law. Nancy Kelly, a clinical instructor in Harvard’s Immigration Clinic and attorney for the Women’s Refugee Project,⁴³ participated in the drafting of U.S. guidelines on asylum and gender claims. Kelly explained that the feminist campaign to recognize gender-related persecution was fueled by the international human rights movement, which sought to recognize gender-specific human rights violations directed at women because of their gender, including wartime rape, sexual abuse of women in detention, and the failure of states to protect women from private violence.⁴⁴ The systematic and mass rape of women during the Bosnian conflict, she argued, exemplified the need for “gender-specific protocols in asylum law.”⁴⁵

In collaboration with the Women’s Refugee Project and other nongovernmental organizations, in 1995, the Immigration and Naturalization Service (INS) of the United States issued nonbinding guidance for asylum officers in considering claims for asylum by women, in a memorandum titled “Considerations for Asylum Officers Adjudicating Asylum Claims from Women” (U.S. Guidance).⁴⁶ The U.S. Guidance focuses on claims by women, providing examples of gendered harms that could constitute persecution, including “sexual abuse, rape, infanticide, genital mutilation, forced marriage, slavery, domestic violence and forced abortion.”⁴⁷ It explains that certain forms of mistreatment are “primarily directed” at women and girls, including rape, mass rape (such as in Bosnia), and genital mutilation.⁴⁸ Rape of women, it concludes, is a particular kind of harm that “is unique to women or that befalls women more commonly than men” and may result in social stigmatization and social ostracism of female survivors by their communities.⁴⁹ These forms of mistreatment may constitute evidence of past persecution on the basis of one or more of the protected grounds. The U.S. Guidance recognizes that women can assert gender-related asylum claims based on other protected grounds, such as their political opinion, religion, or membership in a particular social group.⁵⁰ Like the UNHCR Guidelines, however, the U.S. Guidance analyzes gender-related persecution that is specific to women.

Considering sexual violence and gender-based persecution of men and boys

Despite the shortcomings of the UNHCR Guidelines and the U.S. Guidance, both are arguably broad enough to encompass claims of gender-related persecution against men and boys—both in the MENA region and around the globe—who have experienced sexual violence during conflict. Men also experience other forms of gender-related persecution that may trigger asylum protection, including persecution for failing to conform to gender norms and persecution on the basis of their sexual orientation and/or gender identity. Given the space constraints of this project, this chapter focuses on sexual violence against men and boys as a basis for claims of gender-related persecution.

Sexual violence against men is a broad category of physical and mental abuse that includes rape, including anal or oral penetration with the penis or other objects; castration, which can result in sterilization and infertility; genital violence, such as blunt force trauma to the penis or scrotum; and forced circumcision.⁵¹ It also includes forced incest, where men or boys are forced to have sex with family members (brothers, fathers, daughters, sisters, or other relatives) or nonrelatives (male or female detainees or members of their community). Sometimes, the sexual violence involves humiliation or the violation of sexual or social norms, such as forced nudity, where men are forced to strip naked, often in public; forced masturbation; and other forms of sexual humiliation.⁵² Much of the abuse occurs in detention, where it often is characterized as torture rather than sexual violence or rape. The effects of the violence are enormous and severe, causing male survivors to feel extreme shame, guilt, hopelessness, anger, and suicidal ideations.⁵³

As Article B(9) of the UNHCR Guidelines explain, “international human rights and international criminal law clearly identify certain acts as violations of [Refugee Convention] laws, such as sexual violence, and support their characterization as serious abuses, amounting to persecution.”⁵⁴ While the earlier guidance from UNHCR and the United States defined sexual violence during war as specific to women, the United Nations and international law recently has recognized that men are also victims of sexual violence during conflict.⁵⁵ The gendered nature, meaning, and harm of this form of violence demonstrates how persecution against men and boys may be defined within the meaning of the Refugee Convention and under U.S. asylum law.

MENA-specific gender-related persecution of men and boys in conflict

Reports of rape and sexual violation of male civilians, detainees, and combatants recently have surfaced in dozens of conflicts in nations, including in the MENA region, such as Syria, Iraq, Libya, and Egypt.⁵⁶ The Syrian conflict, for example, illustrates use of sexual violence against men and boys in detention that, while recognized by some as torture or human rights violations, also may constitute gender-related violence and possible grounds for claims of gender-related

persecution. As in other conflicts in the MENA region and around the world, the use of sexual violence functions as a means of power and domination over particular groups of men. As the UNHCR Guidelines recognize, the violence appears to intersect with other grounds of persecution, such as political opinion, religion, and national origin, as well as membership in particular social groups.⁵⁷

During the Syrian conflict, reports of conflict-related rape and sexual violence against men and boys in Syria have been well publicized.⁵⁸ While much of the media publicity has focused on the rape of women and girls, men and boys have also been victims of widespread gender-related persecution by the Syrian forces. A study published by the UNHCR in 2017, “‘We Keep it in Our Heart’: Sexual Violence Against Men and Boys in the Syria Crisis,” concluded that men and boys in Syria are subjected to sexual violence and torture by multiple parties to the conflict, often in detention centers.⁵⁹ The study notes that sexual violence was used in Syria prior to the conflict as a form of persecution and political violence.⁶⁰ Early in the conflict, reports of rape of men and boys in detention centers surfaced. Reports of sexual violence against men have included

electric shocks to and beatings of the genitals particularly while in a stress position, rape including gang rape and rape with objects such as sticks, coke bottles, hoses, drills, and metals skewers, forced sex with family members, cigarette burns to the genitals and anus, tying of the genitals, injury to and mutilation of the penis and testes, and castration (resulting in death).⁶¹

The study states that survivors may face social ostracization, shaming, and persecution, and may be perceived as gay. Quoting an adult male survivor, “He will no longer be seen as a man.”⁶²

The UNHCR study found that multiple parties to the conflict perpetrated the violence.⁶³ Human Rights Watch (HRW), however, reported in 2012 that Syrian government forces used sexual violence to torture both men and women in detention.⁶⁴ While HRW did not have evidence that high-level Syrian officials commanded troops to commit the violence, it received information that government officials did not take action to investigate or punish offenders. Under the Refugee Convention and the Convention against Torture, a government’s unwillingness or inability to control non-state actors or acquiesce in torture obligates signatories to these Conventions to not return an individual back to their home country.⁶⁵ The abuse reportedly occurred in military intelligence branches in Damascus, Jisr al-Shughur, Idlib, and Homs, as well as political security and air force intelligence branches and the Idlib Central Prison.

Sexual violence against Syrian men and boys, unfortunately, is not an aberration. For example, U.S. military troops in Iraq sexually abused Iraqi detainees at the Abu Ghraib Prison, including inter alia keeping Muslim male detainees naked for several days, forcing them to masturbate themselves in front of others, arranging and photographing their naked bodies in sexually explicit positions, threatening them with rape, and sodomizing a detainee with a chemical light.⁶⁶ The recent conflict in Libya has been marked by sexual violence against men and

boys by the state and/or armed groups. UNHCR reported in 2016 that it had received credible reports that armed groups were committing sexual violence against women, girls, and boys with impunity.⁶⁷ Palestinian men and boys have reported being subjected to sexual violence by Israeli police and security authorities while in Israeli military custody; the allegations included threats of sexual assault, genital violence, forced nudity, and sexual humiliation.⁶⁸ UNICEF reported in 2013 that the Israeli military detention system engaged in widespread, systematic, and institutionalized ill-treatment of Palestinian children in custody, the great majority of whom are boys. Allegations of abuse included threats of sexual assault against the detainees or their families.⁶⁹

These reports of sexual violence illustrate the importance of recognizing and categorizing such allegations as complaints of conflict-related gender violence. Historically, the international community has ignored sexual abuse of men, or when it has recognized the abuse, categorized it as “abuse” or “torture,” which obscures the sexual and gender meaning and consequences of the act.⁷⁰ Reframing such abuse as conflict-related sexual and gender-related violence is critical to understand its gendered nature and meaning. Because sexual violence against men is underreported, there is an urgent need for further investigation to assess the nature and extent of these allegations.⁷¹ As a practical matter, human rights and health professionals need training to help recognize and document reports of male sexual violence, particularly because males are often reluctant to report the abuse.⁷²

On a theoretical level, examining the violence experienced by men and boys in the MENA region through the lens of conflict-related gender violence helps reveal the gendered use of power, particularly the intersection of gender with race, nationality, religion, and other forms of collective identity. Sexual violence is a gendered form of violence directed at men who are defined not only by their sex or gender but also by their age, national and ethnic identity, religion, and perhaps their political opinion. Focusing on the gendered nature of the alleged persecution explains the gendered nature of the harm experienced by individual males, as well as the larger collective to which they belong. The sexualized nature of such violence, for example, may violate social taboos and notions of honor among the male victims, which may result in humiliation and social stigma of the individual men as well as the larger ethnic, national, racial, or other collective group that they embody.⁷³ That, in fact, may be the intended consequence.

These reports of sexual violence refute the assumption that conflict-related sexual violence is specific to women. Like sexual violence against women, sexual violence against men in conflict results in serious physical and emotional harm, including loss of sexual function, infertility, anxiety, and depression.⁷⁴ Male victims suffer great social stigma and shame because of the gendered nature and meaning of the abuse.⁷⁵ Conflict-related sexual violence against men symbolically masculinizes the perpetrator as dominant and aggressive, while symbolically constructing the victim as weak and powerless, challenging his gender identity as a man.⁷⁶ The social stigma and humiliation that results means that it is vastly underreported, as male victims are often unable or unwilling to seek protection and assistance.⁷⁷ Many countries do not have criminal statutes

that prohibit rape of men, and in seventy countries, homosexuality is a crime, which deters men and boys from reporting these crimes for fear they will be presumed to be homosexual and in violation of the law.⁷⁸ Male survivors who report may face social ostracism. The UNHCR report on Syria, for example, explains that “[m]ale survivors whose sexual victimisation [sic] becomes known to the community experience debilitating social stigma and marginalization,” including “ostracisation [sic], shaming, persecution, and even death threats, and [they] may be perceived as gay.”⁷⁹

Sexual violence against men also illustrates how gender-related violence intersects with ethnicity, race, national identities, and other collective identities to harm particular men and particular groups and communities.⁸⁰ Like the rape of women, the sexual violation of men represents the humiliation and subordination of the ethnic or racial group to which he belongs.⁸¹ It thus functions as a gendered means to attack both the individual man and the larger ethnic, racial, religious, or political collective to which he belongs. As Dubraka Žarkov explained, the castration of a single man of “an ethnically defined enemy is symbolic appropriation of the masculinity of the entire group.”⁸² The reports of sexual abuse and torture of boys and men in detention, for example, symbolize the subordination of an entire group of people to which they belong. The rape of both men and women during conflict by the government or other groups serves to terrorize and displace the population. The sexual violation of male detainees not only results in physical and mental harm to the individual male victim but also serves to punish and deter political expression and protest.

Because men and boys are also subjected to gender-related persecution, such as rape and sexual violence, feminist and human rights theorists need to begin to recognize that such persecution may give rise to a claim for protection under the Refugee Convention and in U.S. asylum jurisprudence. Any claims for asylum, of course, would have to satisfy the necessary elements in the Refugee Convention or U.S. asylum law to qualify for refugee protection. Recognizing the need to broaden feminist theories of gender-based persecution, however, is a critical first step.

Incorporating men and boys as victims of gender-related violence or persecution does not undermine the gendered nature of persecution against women. Rather, it helps deepen the understanding of the ways in which gender functions to construct and enforce dominance by particular social groups and to subordinate both women and many men. Theorizing male experiences as gender-related persecution, therefore, helps better recognize and understand the relationship between gender and power. Sexual violence against men and women are not separate or distinct but interrelated. Recognizing the men may suffer gender-related persecution also helps reveal the multiple ways in which gender intersects with other bases of persecution such as race, national identity, and other forms of collective identity. Shifting from a sex-specific theory of gender persecution that tends to essentialize sex and gender, therefore, encourages a more complete understanding of gender as a social process of domination, a necessary step in dismantling larger systems of gender oppression that harm both women and many men.

Conclusion

Reports from the Syrian conflict corroborate the growing recognition that conflict-related sexual violence is not unique to women. International law has begun to recognize that men and boys are also victims and that such violence may constitute violations of international law. Feminists have led the struggle to broaden the reach of refugee and asylum law to recognize gender-related persecution of women as a ground for protection—a struggle that continues. Broadening the theoretical framework to recognize gender-related persecution of men and boys deepens our understanding of gendered power and harm, and offers a means to protect all survivors and victims, regardless of sex, gender, sexual orientation, and/or gender identity. It also helps focus attention on the intersection of gender with other forms of persecution based on nationality, religion, political opinion, and other forms of collective identity.

Notes

- 1 See, for example, Amanda Erickson, “I Screamed But No One Came,’ the Horrifying Sexual Violence Facing Syria’s Women and Girls,” *The Washington Post*, March 16, 2018, www.washingtonpost.com/news/worldviews/wp/2018/03/16/i-screamed-but-no-one-came-the-horrifying-sexual-violence-facing-syrias-girls/?utm_term=.985834cdb5a0; Human Rights Watch, “Syria: Sexual Assault in Detention,” June 15, 2012, www.hrw.org/news/2012/06/15/syria-sexual-assault-detention.
- 2 United Nations High Commissioner for Refugees Evaluation and Policy Unit, “Comparative Analysis of Gender Related Persecution in National Asylum Legislation and Practice in Europe,” May 2004, www.unhcr.org/40c071354.pdf.
- 3 The author utilizes the term refugee law to connote defining an individual who has obtained refugee status; whereas asylum law refers to an individual seeking to obtain refugee status and the legal standards associated with obtaining the status.
- 4 See, for example, Valorie K. Vojdik, “Sexual Violence against Men and Boys in Conflict,” *Nevada Law Journal* 14 (2014): 923–952; Lara Stemple, “Male Rape and Human Rights,” *Hastings Law Journal* 60 (2009): 605–647, 605, 612; Miranda Alison, “Wartime Sexual Violence: Women’s Human Rights and Questions of Masculinity,” *Review of International Studies* 33, no. 1 (2007): 75–90; C. Charli Carpenter, “Recognizing Gender-Based Violence against Civilian Men and Boys in Conflict Situations,” *Security Dialogue* 37, no. 1 (2006): 83–103.
- 5 *Ibid.*
- 6 Stemple, “Male Rape and Human Rights”; Sandesh Sivakumaran, “Sexual Violence against Men in Armed Conflict,” *European Journal of International Law* 18 (2007): 253–276, 264–265.
- 7 United Nations S.C. Res. 2106, U.N. Doc. S/RES/2106 (June 24, 2013).
- 8 United Nations Convention relating to the Status of Refugees, opened for signature July 28, 1951, Art. 1(A)(2), 19 U.S.T. 6259, 189 U.N.T.S. 137; United Nations Protocol relating to the Status of Refugees, opened for signature January 31, 1967, 19 U.S.T. 6223606 U.N.T.S. 267 (“U.N. Refugee Convention” or “Refugee Convention”).
- 9 *Ibid.*
- 10 8 U.S.C. §§ 1101(a)(42); 1231(b)(3).
- 11 *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA)(1985).
- 12 *Ibid.*
- 13 *Ibid.*, 233.
- 14 *Ibid.*, 232–233.

- 15 Karen Musalo, "Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law," *Harvard International Review* 36, no. 2 (2014): 45–48, 46.
- 16 Karla McKanders, "Morocco at the Crossroads: The Intersection of Race, Gender and Refugee Status," in *Women and Social Change in North America: What Counts As Revolutionary?* edited by Doris H. Gray and Nadia Sonneveld (New York: Cambridge University Press, 2018), 189–214, 196.
- 17 Musalo, "Personal Violence, Public Matter;" Nancy Kelly, "Gender-Related Persecution: Assessing the Asylum Claims of Women," *Cornell International Journal of Law* 26 (1993): 625–674, 630–633, <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1284&context=iclr>.
- 18 See, for example, Deborah Anker, "Refugee Status and Violence against Women in the 'Domestic' Sphere: The Non-State Actor Question," *Georgetown Immigration Law Journal* 15 (2001): 391–402, 391–392.
- 19 See, for example, Karen Musalo and Stephen Knight, "Steps Forward and Steps Back: Uneven Progress in the Law of Social Group and Gender-Based Claims in the United States," *International Journal of Refugee Law* 13 (2001): 51–70, 51–52; Heaven Crawley, "Engendering the State In Refugee Women's Claims for Asylum," in *States of Conflict: Gender, Violence, and Resistance*, 87–104, 96–100.
- 20 *Ibid.*
- 21 Kelly, "Gender-Related Persecution," 628.
- 22 See, for example, Crawley, "Engendering the State," 92–94; Rhonda Copelon, "Surfacing Gender: Reconceptualizing Crimes against Women in Times of War," in *Violence: A Reader*, edited by Caroline Bestemen (New York: NYU, 2002), 193–207; Rhonda Copelon, "Gendered War Crimes: Reconceptualizing Rape in Time of War," in *Women's Rights, Human Rights: International Feminist Perspectives*, edited by Julia Peters and Andrea Wolper (New York: Routledge, 1995), 197–214; Charlotte Bunch, "Women's Rights as Human Rights: Toward a Re-vision of Human Rights," *Human Rights Quarterly* 12 (1990): 486–498; 496–498 (explaining feminist critique and approaches to recognizing women in human rights and refugee law).
- 23 See Musalo, "Personal Violence, Public Matter," 49.
- 24 EXCOM, Conclusion on Refugee Women and International Protection, EXCOM Conclusion No. 39 (XXXVI), October 18, 1985.
- 25 UNHCR, *Guidelines on International Protection No. 1: Gender-related Persecution within the Context of Article IA(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01 (May 7, 2002).
- 26 *Ibid.*, para. 6.
- 27 *Ibid.*
- 28 McKanders, Morocco at Crossroads, 169.
- 29 *Matter of R-A-*, 22 I. & N. Dec. 906, 912 (BIA 1999), vacated, 22 I. & N. Dec. 906 (A.G. 2001).
- 30 UNHCR, *Guidelines*, 3.
- 31 *Ibid.*, para. 3
- 32 *Ibid.*, para. 1.
- 33 *Ibid.*, para. 9.
- 34 *Ibid.*, para. 11.
- 35 *Ibid.*, para. 12.
- 36 *Ibid.*, para. 16.
- 37 *Ibid.*
- 38 *Ibid.*, para. 3.
- 39 *Ibid.*
- 40 *Ibid.*, 24.
- 41 *Ibid.*, 27.
- 42 Vojdik, "Sexual Violence against Men and Boys in Conflict," 923; Rosemary Grey and Laura J. Shepherd, "'Stop Rape Now?': Masculinity, Responsibility, and Conflict-Related Sexual Violence," *Men & Masculinities* 16, no. 1 (2013): 115–135, 120.

- 43 Kelly, "Gender-Related Persecution," 630–633.
- 44 *Ibid.*
- 45 *Ibid.*
- 46 U.S. Immigration and Naturalization Service, *Considerations for Asylum Officers Adjudicating Asylum Claims from Women* (1995), www.state.gov/s/1/65633.htm. The Office of the Immigration and Naturalization Service no longer exists; asylum officers are now trained through the Department of Homeland Security.
- 47 *Ibid.*
- 48 *Ibid.*
- 49 *Ibid.*
- 50 *Ibid.*
- 51 Monica Adhiambo Onyango and Karen Hampanda, "Social Constructions of Masculinity and Male Survivors of Wartime Sexual Violence: An Analytical Review," *International Journal of Sexual Health* 23 (2011): 239–240, 237.
- 52 *Ibid.*
- 53 Pauline Oosterhoff et al., "Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret," *Reproductive Health Matters* 12, no. 23 (2004): 68–77, 74; R. Charli Carpenter, "Recognizing Gender-Based Violence against Civilian Men and Boys in Conflict Situations," 95.
- 54 UNHCR, Guidelines, art. B(9).
- 55 U.N., Report of the Secretary-General Pursuant to Security Council Resolution 1820 (2008), U.N. Doc. S/2009/362 (August 20, 2009), para. 6.
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- 65 UNHCR, "Summary Conclusion- Gender Related Persecution," Global Consultants on International Protection San Remo Expert Roundtable September 6–8, 2001, no. 6.
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- 68 Weisburd, "Sexual Torture of Palestinian Men"; UNICEF, Children in Israeli Military Detention.
- 69 UNICEF, Children in Israeli Military Detention, 1, 11.
- 70 Sandesh Sivakumaran, "Sexual Violence against Men"; Weishut, "Sexual Torture of Palestinian Men," 78–79.
- 71 See Weishut, Sexual Torture of Palestinian Men, 84.
- 72 *Ibid.*
- 73 *Ibid.*, 78–79.
- 74 Oosterhoff et al., "Sexual Torture of Men," 74.

- 75 Onyango and Hampanda, "Social Constructions of Masculinity and Male Survivors of Wartime Sexual Violence," 241
 ("[M]en who become helpless and are overpowered by other males may be judged to have failed in their masculine duty. Therefore, compared with female survivors, males become more stigmatized, ashamed with their situation, and less likely to report the incident or seek help.")
- 76 See Alison, "Wartime Sexual Violence," 81; Carpenter, "Recognizing Gender-Based Violence against Civilian Men and Boys in Conflict," 94; Sivakamaran, "Sexual Violence against Men in Armed Conflict," 265–272.
- 77 UNHCR, "Summary Conclusions Gender Persecution."
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