



THE RIGHT TO ASYLUM UNDER INTERNATIONAL LAW

WOMEN'S RIGHTS ARE HUMAN RIGHTS

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JUNE 2021



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Introduction

The reality today in society is that women face discrimination based on their gender.³ Even though gender inequality is experienced by and between individuals, it is also a result of how societies are organised, laws are set, economies function and ideologies shaped. This is evident through the different forms of gender discrimination, which include implicit bias, sexism and sexual harassment/assault.⁴ It is for these reasons that women's rights are violated in a manner that lawmakers did not initially predict.

The saying "*Women's rights are human rights*" first arose in the early 1990s after Hilary Rodham Clinton coined it in her speech at the United Nations 4th World Conference on Women in Beijing.⁵ On the one hand, it makes perfect sense that human rights also apply to women inherently by virtue of their human nature. The universal recognition that all humans are born free and equal in dignity and rights⁶ is a profound declaration that rings true and ought to be respected. On the other hand, there are great possibilities to revolutionise the existing laws to include women's perspectives in

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³ According to the World Health Organization, the word "sex" refers to "the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs", whilst "gender" refers "to the characteristics of women, men, girls and boys that are socially constructed. This includes norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other. As a social construct, gender varies from society to society and can change over time." See World Health Organization, 'Gender and health' <https://www.who.int/health-topics/gender#tab=tab_1>, accessed 6 July 2021.

⁴ UNODC, 'E4J University Module Series: Integrity and Ethics' (UNODC 2018) <<https://www.unodc.org/e4j/en/integrity-ethics/module-9/key-issues/forms-of-gender-discrimination.html>> accessed 24 September 2020.

⁵ Fester, Gertrude, "Women's Rights Are Human Rights," Agenda: Empowering Women for Gender Equity (1994), pp. 76–79.

⁶ Universal Declaration of Human Rights 1948, article 1.

the human rights discourse and to provide new insights into the gender-based inequalities they face today.

Nevertheless, there are already several human rights laws, regulations and policies that exist to safeguard women's rights and empower them with the tools to define, analyse and articulate their experiences. The major challenge with such instruments is the need for **effective interpretation and enforcement** to prevent further violation of women's rights and achieve gender equality.

The popular slogan "*The future is female*" is not meant to demean the existence of other rights. On the contrary, it is used to show that the development of women's rights provides a common foundation for developing an expansive array of visions and concrete strategies for change.⁷ Let us have a deeper look into the evolution of women's rights to bridge the gap between historical events and the present circumstances.

Gender Equality: Evolutionary History and Why It Matters

Women have suffered from the exclusion and denial of rights throughout history because of their gender. Historical antecedents show that specific rights have been systematically denied to women since time immemorial, such as:

- **Access to education**
- **Right to vote and run for office**
- **Reproductive rights**
- **Property and land ownership rights**
- **Freedom from gender-based discrimination**

In addition, aside from gender, other factors impede women's enjoyment of their rights, such as ethnicity, race and age.

⁷ Bunch C and Frost S 'Women's Rights an introduction' (2001), <<http://wwda.org.au/wp-content/uploads/2013/12/whrintro1.pdf>>, accessed on 4 May 2020.

The Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW) recognizes and attributes the discriminatory treatment of women to stereotypes based on societal gender roles.⁸ In this regard, women and men appear to play different roles within a single-family unit. The men are viewed as breadwinners, the women are known as the caregivers. By extension, these stereotypes demonstrate to affect different aspects of daily life, such as education and career development activities. For instance, from a 2019 field experiment published in the European Sociological Review, it resulted that men are more preferred over women during job recruitment processes.⁹ The study attributes this to the deeply rooted gender stereotypes in employers rather than prejudices, which either reduce when women have higher qualifications or increase when women have children.¹⁰ These occurrences are no surprise, as they form the basis of thematic discussions today surrounding the need for women to break the glass ceiling in the professional arena.

“Why exclude them? Of the two sexes of which the species is composed, how comes all the natural right to political benefits to be confined to one?”

-Jeremy Bentham (1789)

Men are also a part of the movement to enforce and protect women's rights. For one, in the late 18th Century, Jeremy Bentham questioned the restriction of suffrage to men only. He recognized that women should have the right to vote and participate equally in the legislative and executive branches of government. His call for gender equality did not only concern the field of politics, but also education and domestic duties.

Thereafter, in the 19th century, the fight for women's rights increased, beginning with the push for universal suffrage and the right to education. New Zealand then became the first country in the

⁸ CEDAW, General Recommendation No. 25, para. 7, n 1.

⁹ M J Gonzalez, C Cortina, J Rodriguez, 'The Role of Gender Stereotypes in Hiring: A Field Experiment' (2019) ESR 187, 187.

¹⁰ M J Gonzalez, C Cortina, J Rodriguez, 'The Role of Gender Stereotypes in Hiring: A Field Experiment' (2019) ESR 187, 187.

world to grant women the right to vote in the national elections.¹¹ More than two centuries after, Bentham (Saudi Arabia) allowed its women to participate in municipal elections.¹²

In addition, Nobel Laureate Amartya Sen's work on gender inequality is of seminal importance. In his essay, "The Many Faces of Gender Inequality," he states that gender inequality is not one homogeneous phenomenon but a collection of disparate and interlinked problems.¹³ Gender gaps today manifest themselves in job recruitment processes, career opportunities, sexual and reproductive health rights, access to healthcare, economic resources, time use, and decision-making power in the public and the private sphere.¹⁴

In essence, gender equality refers to the equal rights, responsibilities and opportunities of women and men as well as girls and boys. Achieving gender equality means to create a situation in which the social and cultural environment recognizes, implements and enforces both men and women as being of equal value.

Gender equality is not only a fundamental human right but also a necessary foundation of a peaceful, prosperous and sustainable world. This is why it is one of the 17 United Nations Sustainable Development Goals, as it is integral to all dimensions of inclusive and sustainable development.

Application of International Human Rights Instruments

The United Nations (UN) plays a vital role in the recognition of gender equality. The preamble of the UN Charter, which came into force in 1945, expresses the determination to:

¹¹ P O Ray, 'Woman Suffrage in Foreign Countries' (1918) APSR 469, 471.

¹² K Buchanan, 'FALQs: Saudi Arabia Municipal Elections – Women Participate for the First Time' (The Library of Congress 2015) <<https://blogs.loc.gov/law/2015/12/falqs-saudi-arabia-municipal-elections-women-participate-for-the-first-time/>> accessed 17 December 2020.

¹³ Amartya Sen, 'The Many Faces of Gender Inequality' (Harvard University 2001) <<https://scholar.harvard.edu/sen/publications/many-faces-gender-inequality>> accessed 17 December 2020.

¹⁴ Amartya Sen, 'The Many Faces of Gender Inequality' (Harvard University 2001) <<https://scholar.harvard.edu/sen/publications/many-faces-gender-inequality>> accessed 17 December 2020.

“...reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...”¹⁵



Image source: [United Nations](#)

The emphasis on women's rights is strengthened by the International Bill of Human Rights, which comprises the international documents outlined below.

I. The Universal Declaration of Human Rights

Adopted in 1948, it proclaims everyone's entitlement to equality before the law and the enjoyment of human rights and fundamental freedoms without distinction of any kind including, among others, race, colour, sex and language.

¹⁵ Charter of the United Nations and Statute of The International Court of Justice, (1945), Preamble.

II. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights

The UN General Assembly adopted them both in 1966, translating the principles of the Declaration into a legally binding form. The two Covenants state that the rights set forth apply to all persons without distinction of any kind.

In addition, each Covenant specifically binds acceding or ratifying states to undertake to ensure that women and men have an equal right to the enjoyment of all the rights they outline.

Historically, these sets of rules have focused on actions directly attributable to state agents, based on their commission or acquiescence, such as killings, torture and arbitrary detention. The obligation of states to respect human rights referred to the obligation to refrain from “directly” doing anything that could violate them. Impliedly, any wrong committed within the private sphere, without any *direct* intervention by state agents, was not regarded as a human rights issue

Subsequent developments have contributed to the understanding that States also have the duty to prevent private individuals from interfering with the enjoyment of these rights by other private individuals – including women. This change was boosted, among other factors, by the women’s rights movement that, since the 1980s and 1990s, has increasingly criticised this interpretation of human rights as perpetuating violations of women’s human rights and stemming from male bias.¹⁶

During the United Nations Decade for Women (1976-1985), women from many geographical, racial, religious, cultural, and class backgrounds took up organizing to improve the status of women. The United Nations sponsored women's conferences, which took place in Mexico City in 1975, Copenhagen in 1980, and Nairobi in 1985. These meetings were held to evaluate the status of women and to formulate strategies for women's advancement.

The United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. This is the main international convention

¹⁶ United Nations, ‘Women’s Rights are Human Rights’ (2014) <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>, accessed on 4 May 2020.

on women's rights. It recognizes women's unique contributions to the international human rights framework.

The CEDAW preamble explains that, despite the existence of other instruments, women **do not** enjoy equal rights with men. Here below there is a listing of some clauses of this Convention that demonstrate the problem with pre-existing women's rights:

- I. Article 2(e)** addresses the obligation of states to turn their attention to discrimination against women perpetrated by any person, organisation or enterprise.
- II. Article 2(f)** concerns the modification and abolition of discriminatory laws and regulations as well as customs and practices.
- III. Article 5(a)** requires states to modify the social and cultural patterns of conduct of men and women to eliminate prejudices and all other practices, whether customary or not, based on the idea of the inferiority or the superiority of one of the sexes or on stereotyped roles for men and women.

Former Austrian politician and judge, Rudolf Kirschlager, sums up the main problem as he points out the problematic nature of the discrepancies between the normative systems of international and individual conduct. He demands that consistency be achieved between international, national and individual principles of conduct by subordinating them to a necessary unity of normative knowledge.¹⁷

Why Is It Important to Recognize and Protect Women's Rights?

By way of example, Female Genital Mutilation (FGM) is currently recognised as a form of violence against women. In some regions, this cultural practice acts as a cruel display of the attempt to control a woman's sexuality. The practice also violates a person's rights to health, security and physical integrity; the right to be free from torture and cruel, inhuman or degrading treatment; and

¹⁷ Hans Köchler, 'The Principles of International Law and Human Rights' (1908) lecture delivered at a meeting of the International Progress Organization in Vienna, Austria, 3.

the right to life when the procedure results in death.¹⁸ The practice of FGM is considered as a criminal act in all European Union (EU) Member States,¹⁹ showing their recognition of reproductive health rights. This explains the total number of female asylum applicants to the EU increasing from 65,125 in 2008 to 93,350 in 2011.²⁰

In the struggle to protect women's rights, FGM has been made illegal in 18 African countries, a region where the practice is prevalent. In Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Ghana, Guinea, Kenya, Mauritania, Niger, Senegal, South Africa, Tanzania, and Togo, laws have been enacted to criminalize the practice regarding the implementation and enforcement of women's sexual and reproductive health rights.²¹ As of 2020, Sudan has also criminalized FGM with the Parliamentary recognition that it undermines the dignity of women.²²

It is noteworthy that around 20,000 women and girls seek asylum from FGM-practicing countries of origin in the European Union every year.²³ The UNHCR notes that this has been constant between 2008 (18,110 women) and 2011 (19,565 women).²⁴

Therefore, as a result of the enforcement of women's sexual and reproductive health rights, alongside their workplace rights, there has been a domino effect on other women's rights.²⁵ In this

¹⁸ UNHCR, 'Female Genital Mutilation and Asylum in the European Union: A Statistical Overview' (2013), UNHCR 1, 3.

¹⁹ UNHCR, 'Female Genital Mutilation and Asylum in the European Union: A Statistical Overview' (2013), UNHCR 1, 3.

²⁰ UNHCR, 'Female Genital Mutilation and Asylum in the European Union: A Statistical Overview' (2013), UNHCR 1, 5.

²¹ Center for Reproductive Rights, 'Female Genital Mutilation (FGM): Legal Worldwide prohibitions,' (Center for Reproductive Rights, 2009) <<https://reproductiverights.org/document/female-genital-mutilation-fgm-legal-prohibitions-worldwide#:~:text=African%20Nations,have%20enacted%20news%20criminalizing%20FGM.>> accessed on 17 December 2020.

²² AlJazeera, 'Sudan Ratifies Law Criminalising Female Genital Mutilation' (AlJazeera 2020) <<https://www.aljazeera.com/news/2020/7/10/sudan-ratifies-law-criminalising-female-genital-mutilation>> accessed 17 December 2020.

²³ UNHCR, 'Female Genital Mutilation and Asylum in the European Union: A Statistical Overview' (2013), UNHCR 1, 5.

²⁴ UNHCR, 'Female Genital Mutilation and Asylum in the European Union: A Statistical Overview' (2013), UNHCR 1, 5.

²⁵ Refugee Council UK, 'Asylum Statistics Annual Trends' (Refugee Council UK 2020) <<https://refugeecouncil.org.uk/wp-content/uploads/2020/03/Asylum-Statistics-Annual-Trends-Feb-2020.pdf>> accessed 17 December 2020.

respect, one may consider the right to seek asylum and the circumstance that there is a dire need to examine each woman's situation to prevent them from being sent back to their home country where their fundamental rights and freedoms are not respected.²⁶

A popular illustration is the *Matter of AB*²⁷ where the United States of America Attorney General decided that domestic violence perpetrated by non-state actors should not be a qualification for asylum. Without a doubt, this decision would drive the victim back to an unsafe environment. Nonetheless, in 2018, the decision was partially overruled with:

“An applicant seeking to establish persecution based on violent conduct of a private actor must show more than the government’s difficulty controlling private behaviour. The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims.”

Later on, the Attorney General opened to the possibility of seeking asylum based on the violent conducts of private actors but affirmed a rather stringent burden of proof upon the applicant.

²⁶ Refugee Council UK, ‘Asylum Statistics Annual Trends’ (Refugee Council UK 2020) <<https://refugeecouncil.org.uk/wp-content/uploads/2020/03/Asylum-Statistics-Annual-Trends-Feb-2020.pdf>> accessed 17 December 2020.

²⁷ *Matter of AB*, US Department of Justice (2018), <<https://www.justice.gov/eoir/page/file/1070866/download>>, accessed on 4 May 2020.

LEGAL BARRIERS THAT WOMEN FACE

THE THINKING
WATERMILL SOCIETY



189 ECONOMIES

Have at least 1 gender difference in legal treatment.

68 ECONOMIES

Constrain women's decision making and freedom of movement.

75 ECONOMIES

Restrict women's right to access and own property.

133 ECONOMIES

Have at least 1 restriction to women's access to justice.

Source: The World Bank

(<https://www.worldbank.org/en/news/infographic/2018/07/30/women-business-and-the-law-2018-legal-barriers-for-women-remain-widespread>)

Conclusion: Women's Rights *are* Human Rights

We, therefore, pose this question to you: *Women's rights exist on paper but do they apply in real life?*

“The objective now is not to renegotiate our dreams, but to emphasize the accountability of all actors. We are no longer seeking promises, but are demanding action.”

-Ms. Farkhonda Hassan, UN Economic Commission for Africa²⁸

Even though the recognition for women's rights faces greater difficulties with the dynamic nature of humans, there remains a light at the end of the tunnel. Alongside the efforts of states to implement and enforce women's rights, various NGOs and UN organizations have been working tirelessly to give women the support they need today.

A recent ground-breaking achievement is the legal ban of FGM in Sudan. This should not be left unnoticed and is a great step in the right direction towards the protection of women in society.²⁹

That being said, ensuring effective protection, implementation and enforcement of women's human rights requires a comprehensive understanding of the underlying social structures and power relations that define and influence women's ability to enjoy their human rights along with states' governmental efforts to remodel their legislation to offer sufficient protection. These power structures have an impact on all aspects of life, from law and politics to economic and social policy, family and community life.

The subsequent article in this [Right to Asylum series](#) examines the history and principles of Refugee Law to better portray the issue regarding women's asylum rights.

²⁸ Gumisai Mutume, 'African women battle for equality' (UN July 2005), <https://www.un.org/africarenewal/magazine/july-2005/african-women-battle-equality>, accessed 4 May 2020.

²⁹ 'Sudan bans female genital mutilation, UNICEF vows to help support new law' (UN May 2020), <https://news.un.org/en/story/2020/05/1063122>, accessed on 4 May 2020.