

TOWARD GREATER GENDER-SENSITIVITY IN
MIGRATION LAW: POSITIVE DEVELOPMENTS REGARDING
FEMALE REFUGEES AND DISPLACED PERSONS

*HACIA UNA MAYOR SENSIBILIDAD DE GÉNERO EN LA
LEGISLACIÓN SOBRE MIGRACIÓN: EVOLUCIÓN POSITIVA EN
RELACIÓN CON LAS MUJERES REFUGIADAS Y DESPLAZADAS*

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ABSTRACT: This paper concentrates on women in involuntary migration flows, in other words female refugees that constitute roughly 50% of the refugees worldwide. Gender-wise, we have come a long way, but have not yet reached the goal of fully gender-sensitive refugee law both on the books and on the ground. Being an optimist, I suggest that we have proceeded well beyond the point of no return. In other words, the glass of gender-sensitive refugee law and practice is more than half full, but we need to fill it up further.

KEY WORDS: Gender discrimination; gender persecution; Geneva Refugee Convention and Protocol; soft law.

RESUMEN: *Este documento se centra en las mujeres de los flujos migratorios involuntarios, es decir, en las refugiadas, que constituyen aproximadamente el 50% de los refugiados de todo el mundo. Desde el punto de vista del género, hemos recorrido un largo camino, pero aún no hemos alcanzado el objetivo de una legislación sobre refugiados que tenga plenamente en cuenta las cuestiones de género, tanto en los libros como sobre el terreno. Siendo optimista, sugiero que hemos avanzado mucho más allá del punto de no retorno. En otras palabras, el vaso del derecho y la práctica de los refugiados sensibles al género está más que medio lleno, pero tenemos que llenarlo aún más.*

PALABRAS CLAVE: *Discriminación por razón de género; persecución por razón de género; Convención y Protocolo de Ginebra sobre los Refugiados; Derecho indicativo.*

SUMMARY.- I. MAKING GENDER-INSENSITIVE DEFINITION OF “REFUGEE” GENDER-SENSITIVE.- I. Geneva Refugee Convention (1951) and Protocol (1967).- 2. Regional Systems to Protect Female Displaced Persons: Africa and Europe.- II. PROTECTION OF FEMALE REFUGEES AND DISPLACED PERSONS FROM DISCRIMINATION.- III. MITIGATING THE GENDER-BLINDNESS OF GLOBAL REFUGEE LAW.- I. UNHCR’s Guidelines and Policies 2002 – 2020.- 2. Global Compact on Refugees (2018).- 3. Female Victims of Human Trafficking and Other Gender-Based Violence.- IV. CONCLUSION: PROGRESS AND CHALLENGE REGARDING GENDER-SENSITIVITY.

I. MAKING GENDER-INSENSITIVE DEFINITION OF “REFUGEE” GENDER-SENSITIVE.

I. Geneva Refugee Convention (1951) and Protocol (1967).

At the outset, in the 1951 Geneva Convention relating to the Status of Refugees¹ and the 1967 Geneva Protocol relating to the Status of Refugees,² sex and gender were completely absent. The specific vulnerability of females as a root cause of flight and of female refugees during flight and after reception was simply ignored. This is made particularly clear by the definition of “refugee” in Art. I A, para. 2 of the Convention as someone who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [sic.] nationality” etc. That someone can be persecuted because of their sex or gender seems to have been beyond the imagination of the males who drafted that definition.³ But gender-based persecution has always been pervasive in too many countries, and it still is today in countries like Iran,⁴ Afghanistan and Saudi Arabia, even though the latter two are States parties of the Magna Carta of women’s rights, the Convention on the Elimination of All Forms of Discrimination against Women.⁵

This imperfection of the refugee definition regarding gender compels us today to qualify gender-based persecution as persecution based on membership in a

1 Of 28 July 1951, UNTS vol. 189, p. 137.

2 Of 31 January 1967, UNTS vol. 606, p. 267.

3 See ZIMMERMANN, A. and MAHLER, C.: “Art. I A, para. 2”, in *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (edited by A. ZIMMERMANN), Oxford University Press, Oxford, 2011, margin notes 457 f.

4 See AZADI, Z.: “Women, Life, Freedom: Have International Lawyers run out of words?”; EJIL Talk, Oct. 10, 2022.

5 Of 18 December 1979 (UNTS vol. 1249, p. 13). When acceding in 2000, Saudi Arabia made an impermissibly broad and unclear reservation that “[i]n case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention ...” to which many other States parties objected.

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particular social group or on another of the relevant grounds exhaustively set forth in Art. 1 A, para. 2 of the Geneva Convention in order to grant refugee status to affected women.⁶ The most serious examples of gender-based persecution are forced marriage, female genital mutilation, “honour” killings, domestic violence and human trafficking for the purpose of sexual or other forms of quasi-slavery.⁷ I would go further and suggest that degrading women to second-class citizens and enforcing a gender-based apartheid system also amount to gender-based persecution whose victims should be recognised as refugees without requiring proof of individualised persecution risk.⁸ But there is no international consensus in this regard yet, not least because of the sheer numbers of women concerned. It is easier to agree on the refugee status of women who are victims of intersectional persecution, such as Lesbian or transgender women.

2. Regional Systems to Protect Female Displaced Persons: Africa and Europe.

The regional treaty on refugee protection in Africa copies the definition of “refugee” from the Geneva Convention without adding persecution based on sex.⁹ The OAU Refugee Convention extends the term “refugee” to “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”¹⁰ But this provision does not specifically address gender-based persecution either.

The same holds true for Art. 2 lit. d of the European Union’s Asylum Qualification Directive which copies the refugee definition of the Geneva Convention.¹¹ Yet Art. 10 of that Directive which further defines “reasons for persecution” demonstrates gender-sensitivity in lit. d concerning persecution for membership of a particular

6 See ZIMMERMANN, A. and MAHLER, C.: “Art. 1 A, para. 2”, cit., margin notes 489 ff.; KRSTIĆ, J.: “The Recognition of Refugee Women in International Law, in *Legal Issues of International Law from a Gender Perspective* (edited by J. KRSTIĆ, M. EVOLA, AND M. I. RIBES MORENO), Springer Nature, Cham 2023, pp. 113-132.

7 See ECHR, judgment of 7 January 2010, *Rantsev v. Cyprus and Russia* (appl. no. 25965/04) and judgment of 25 June 2020, *S.M. v. Croatia* (appl. no. 60561/14) on the positive obligations deriving from Art. 4 ECHR to combat human trafficking.

8 See INELI-CIGER, M. AND FEITH TAN, N.: “Are all Afghan women and girls refugees?”, EJIL Talk, December 22, 2022; HOJBERG HØGENHAUG, A.: “Women and girls from Afghanistan to be granted asylum in Denmark and Sweden”, *Verfassungsblog*, 23 February 2023; GIEGERICH, T.: “UN Security Council Resolution 2681 (2023) on Women’s Rights in Afghanistan: How to Confront a Goyaesque Sleep of Reason and Its Nightmares”, *Saar Expert Paper of 22 May 2023* (<https://jean-monnet-saar.eu/wp-content/uploads/2023/05/Expert-Paper-The-UN-Security-Council-and-Women.pdf> [30 July 2023]).

9 Art. 1 (1) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 (UNTS No. 14691, https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau_convention_1963.pdf [30 July 2023]).

10 Art. 1 (2). See in the same sense conclusion III (3) of the Cartagena Declaration on Refugees of 22 November 1984 (<https://www.unhcr.org/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central> [30 July 2023]), which is a soft-law instrument.

11 Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection etc. (recast), OJ 2011 L 337, p. 9.

social group: “Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.”¹² According to Art. 9 lit. a and f of the Directive, acts of sexual violence as well as acts of a gender-specific nature can be regarded as acts of persecution in the sense of Art. 1 A, para. 2 of the Geneva Convention. This shows that EU asylum law has greater gender sensitivity than global refugee law. In his recent Opinion in Case C-621/21, the Advocate General confirmed that women who face the risk of being subjected to “honour” crimes, forced marriage or domestic violence when returned to their country of origin may be granted refugee status on the basis of their membership in a particular social group.¹³

Besides refugees, the Qualification Directive also extends to persons eligible for subsidiary protection, meaning those who do “not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin ... would face a real risk of suffering serious harm ... and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.”¹⁴ The “serious harm” in that sense is not gender-specific. According to Art. 15 of the Directive, it includes the death penalty, execution, torture, inhuman or degrading treatment or punishment as well as “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”. Yet, it is possible to interpret the provision in a gender-sensitive way, in particular the risk of inhuman or degrading treatment that can cover especially blatant forms of gender discrimination.

II. PROTECTION OF FEMALE REFUGEES AND DISPLACED PERSONS FROM DISCRIMINATION.

Apart from the problems for women to obtain recognition as refugees for gender-related persecution, the legal status of female refugees after recognition leaves much to be desired. The terse formulation of the non-discrimination provision in Art. 3 of the Geneva Refugee Convention is particularly worrisome from a gender perspective: “The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.” Discrimination as to sex is conspicuously absent, even though the UN Charter of 1945 requires “universal respect for, and observance of, human rights

12 See DÖRIG, H.: “Chapter 20, Art. 10”, in *EU Immigration and Asylum Law* (edited by D. THYM, K. HAILBRONNER), 3rd ed., München, C.H. Beck 2022, margin note 18. See also recital 30 of the Directive’s preamble.

13 Opinion of 20 April 2023. The case is still pending. See also ZAMORA GÓMEZ, C.M.: “Forced Marriage of Afghan Girls and the Bifurcated Approach for Defining Persecution,” *Völkerrechtsblog*, 9 March 2023.

14 Art. 2 lit. f (note 11).

and fundamental freedoms for all without distinction as to race, sex, language, or religion”¹⁵ and the Universal Declaration of Human Rights of 1948 specifically addresses the “equal rights of men and women” and prohibits distinctions based on sex.¹⁶ A proposal to specifically include distinctions as to sex in the text of Art. 3 was rejected during the drafting process of the Geneva Convention.¹⁷ The African treaty on refugees does not protect them from sex discrimination either.¹⁸

It is true that the States Parties to the Geneva Refugee Convention and Protocol are now prohibited from engaging in sex discrimination also of women refugees and displaced persons by the global human rights treaties¹⁹ as well as their regional counterparts in Africa,²⁰ the Americas,²¹ the Arab world²² and Europe.²³ But refugee law as such, at least in its written form, remains blind to sex discrimination. In practice, the UN High Commissioner for Refugees, however, considers that “[d]evelopments in international human rights law also reinforce the principle that the Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination.”²⁴ There is no specific prohibition of sex discrimination in the EU secondary legal acts on refugees and subsidiary protection either, but the non-discrimination provisions of Art. 21 of the Charter of Fundamental Rights of the EU of course apply so that Union law comprehensively ensures gender equality, also with regard to refugees. There is thus no need to derive complementary protection from other legal sources outside EU law.

15 Art. 55 lit. c, 56 UN Charter.

16 5th recital of the preamble and Art. 2 sentence 1.

17 MARX, R. AND STAFF, W.: “Art. 3”, in *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol* (edited by A. ZIMMERMANN), Oxford University Press, Oxford, 2011, margin note 51.

18 Art. IV of the OAU Convention (note 9) reads as follows: “Non-Discrimination. Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.”

19 Art. 2 (1), 26 ICCPR; Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979.

20 Art. 2, 3 of the African Charter on Human and People’s Rights of 1 June 1981 (https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf [1 Oct. 2022]); Art. II of the Maputo Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa of 1 July 2003 (https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf [1 Oct. 2022]).

21 Art. 1 (1) of the American Convention on Human Rights of 22 November 1969 (http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm [1 Oct. 2022]); Inter-American Convention against All Forms of Discrimination and Intolerance of 5 June 1933 (https://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance.asp [1 Oct. 2022]).

22 Art. 3 of the Arab Charter on Human Rights of 25 May 2004 (<https://digitallibrary.un.org/record/551368> [30 July 2023]). But see, in the context of the equality of men and women, the reference to “the framework of positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments” in Art. 3 (3) of the Arab Charter.

23 Art. 14 ECHR; Art. 1 of Protocol No. 12 to the ECHR.

24 Convention and Protocol Relating to the Status of Refugees, Introductory Note by the UNHCR, 2010, p. 3 (<https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> [30 July 2022]).

III. MITIGATING THE GENDER-BLINDNESS OF GLOBAL REFUGEE LAW.

I. UNHCR's Guidelines and Policies 2002 – 2020.

Although the Geneva Convention and Protocol as points of departure are entirely insensitive to the special needs and vulnerability of females with regard to displacement and of female refugees, global refugee law has not remained gender-blind. In 2002, the UN High Commissioner for Refugees issued “Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees”.²⁵ The Guidelines advocate “a gender-sensitive interpretation of the 1951 Convention”²⁶ and also identify “[t]rafficking for the purposes of forced prostitution or sexual exploitation as a form of persecution”.²⁷ While these Guidelines are only soft law,²⁸ they are of particular importance because they were issued by the UNHCR that has a specific mandate regarding the development and implementation of global refugee law as a subsidiary organ of the UN General Assembly.²⁹

The Guideline's approach has been further refined in 2018 by the “UNHCR Policy on Age, Gender and Diversity”³⁰ that guides the agency's approach and addresses gender equality as being fundamental to the well-being and rights of all persons, central to the UNHCR's approach and relevant to every aspect of UNHCR's work.³¹ Most recently, the “UNHCR Policy on the Prevention of, Risk Mitigation, and Response to Gender-Based Violence” was issued in 2020.³² The UNHCR there recognises that gender-based violence (GBV) “can be the impetus that compels people to flee; it also occurs during flight and refuge. Regardless of the reason for displacement, the risk of GBV is heightened, especially for women and girls.”³³

25 HCR/GIP/02/01 of 7 May 2002, <https://www.unhcr.org/3d58ddef4.pdf> (2 Oct. 2022).

26 *Id.*, para. 4.

27 *Id.*, para. 18.

28 According to their preface (*id.*, p. 1), the Guidelines “are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field”. On international soft law in general, see THÜRER, D.: “Soft Law”, in: Max Planck Encyclopedia of Public International Law (OUP online edition).

29 Statute of the UNHCR (annex to UN General Assembly Resolution 428 (V) of 14 December 1950, <https://www.unhcr.org/3b66c39e1.html> [4 Oct. 2022]) and Art. 35 of the Geneva Convention. See FELLER, E., KLUG, A.: “United Nations High Commissioner for Refugees (UNHCR)”, in: Max Planck Encyclopedia, *cit.*

30 <https://www.unhcr.org/5aa13c0c7.pdf> (3 Oct. 2022).

31 *Id.*, p. 12.

32 UNHCR/HCP/2020/01, <https://www.unhcr.org/5fa018914/unhcr-policy-prevention-risk-mitigation-response-gender-based-violence> (3 Oct. 2022).

33 *Id.*, p. 5 (footnotes omitted).

2. Global Compact on Refugees (2018).

Enhanced gender sensitivity in the refugee context has gone far beyond the UNHCR. This is indicated by the Global Compact on Refugees that was developed by the UNHCR and affirmed by the UN General Assembly by a vote of 181 against 2, with 3 abstentions.³⁴ The Compact underscores the need to promote gender equality as well as end gender-based violence and trafficking in persons.³⁵ The pertinent UN General Assembly Resolution affirms “the importance of ... gender ... mainstreaming in analysing protection needs ... [and] the importance of according priority to addressing discrimination, gender inequality and the problem of sexual and gender-based violence, recognizing the importance of addressing the protection needs of women ...”.³⁶ This gender-sensitive refugee policy mirrors the enhanced gender responsiveness of migration policy in general, as reflected in the Global Compact for Safe, Orderly and Regular Migration.³⁷

3. Female Victims of Human Trafficking and Other Gender-Based Violence.

Victims of human trafficking are protected by hard law and soft law. The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime³⁸ establishes a link between the mostly female victims of human trafficking and the granting of asylum. Art. 6 of the Palermo Protocol requires States Parties to provide victims with assistance and protection. According to Art. 7, “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases”, while giving appropriate consideration to humanitarian and compassionate factors. The formulation is soft, staying clear of outright requiring States to recognise those victims as refugees. On the contrary, Art. 8 of the Palermo Protocol considers it as normal for victims to be returned to their country of origin. But Art. 7 at least encourages States Parties to permit victims to remain in the country. In addition, the savings clause in Art. 14 (1) reserves their rights under international humanitarian law, international human rights law and international refugee law, and in particular the principle of non-refoulement. Moreover, Art. 14 (2) requires that the treatment of victims “shall be consistent with internationally recognized principles of non-discrimination”, which cover sex discrimination.

³⁴ A/RES/73/151 of 17 December 2018, para. 22 ff.

³⁵ Global Compact on Refugees, <https://www.unhcr.org/5c658aed4> (3 Oct. 2022), para. 13; reaffirmed by para. 3 of the Progress Declaration of the International Migration Review Forum, annex to UN General Assembly Resolution 76/266 of 7 June 2022.

³⁶ Note 34, para. 40.

³⁷ See Annex to UN General Assembly Resolution 73/195 of 19 December 2018, para. 15 lit. g.

³⁸ Of 15 November 2000, UN General Assembly Resolution 55/25.

On the regional European level, Art. 20 (3) and (4) of the EU's Asylum Qualification Directive kicks in here, recognising victims of human trafficking as vulnerable persons, just like pregnant women and persons who have been subjected to rape or other serious forms of sexual violence, provided, however, that they are "found to have special needs after an individual evaluation of their situation". While there thus is no general qualification of trafficking victims as vulnerable, their victim status at least enhances their chances of being granted asylum. This mostly benefits women and girls who constitute the large majority of trafficking victims.³⁹

Art. 14 (1) of the Council of Europe Convention on Action against Trafficking in Human Beings⁴⁰ goes somewhat further than Art. 6 of the Palermo Protocol in requiring parties to issue a renewable residence permit to victims, but only "if necessary". Art. 40 (1) of that so-called Warsaw Convention leaves further obligations under other conventions unaffected and Art. 40 (4) reserves the rights of victims under international humanitarian law, international human rights law and international refugee law, and in particular the principle of non-refoulement, along the lines of the Palermo Protocol. Moreover, according to Art. 17 of the Convention, "[e]ach Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures."

The reference to international human rights law in Art. 40 of the Warsaw Convention directs our attention to the Convention on the Elimination of All Forms of Discrimination of Women (CEDAW)⁴¹ which is most relevant for our topic. Art. 6 of CEDAW requires States Parties to "take all appropriate measures ... to suppress all forms of traffic in women and exploitation of prostitution of women." The Committee on the Elimination of Discrimination against Women as the competent treaty body issued General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration⁴² in which it identified "[s]ex-specific or discriminatory migration and asylum policies" as one of the root causes of that kind of trafficking because they heighten women's and girls' vulnerability to all forms of exploitation.⁴³ The Committee also recognized "that gender-based violence ... is one of the major forms of persecution experienced by women and girls that may be grounds for granting refugee status and asylum

39 "Nearly three quarters (72%) of all victims in the EU and 92% of the victims trafficked for sexual exploitation are women and girls." Communication from the Commission on the EU Strategy on Combatting Trafficking in Human Beings (COM(2021) 171 final of 14 April 2021), p. 12 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0171&from=EN> [3 Oct. 2022]).

40 Of 16 May 2005 (CETS No. 197).

41 See above note 5.

42 CEDAW/C/GC/38 of 20 November 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/324/45/PDF/N2032445.pdf?OpenElement> (3 Oct. 2022).

43 Id., para. 24.

and/or residence permits on humanitarian grounds. Trafficking in women and girls breaches specific provisions of the Convention relating to the Status of Refugees and should therefore be recognized as legitimate grounds for international protection in law and in practice, in specific cases. Furthermore, refugee women and girls are highly vulnerable to trafficking and are in need of international protection, especially against refoulement.”⁴⁴

A brief final look at the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence⁴⁵ is justified because Chapter VII of this so-called Istanbul Convention specifically deals with migration and asylum. Pursuant to Art. 59, parties are required to issue a renewable residence permit to victims, but only “if necessary”, which retraces Art. 14 of the Warsaw Convention. However, Art. 60 of the Istanbul Convention on gender-based asylum claims introduces new gender-specific elements to regional refugee law in Europe. In para. 1, it requires parties “to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, (A)2, of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.” Pursuant to Art. 60 (2), parties “shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds ...” Art. 60 (3) requires parties “to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.”

The most recent set of soft-law rules issued by the Council of Europe consists of Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls.⁴⁶ The recommendation prompts Member States “to ensure that migrant, refugee and asylum-seeking women and girls do not face discrimination on any grounds” and to apply an intersectional approach.⁴⁷ Member States should also protect these women and girls from violence, trafficking, hate speech and sexism as well as sexual exploitation.⁴⁸ Regarding asylum, Member States should “adopt and implement age- and gender-sensitive asylum standards, practices and procedures.”⁴⁹ In particular, they should “should ensure a gender-sensitive

44 *Id.*, para. 25.

45 Of 11 May 2011 (CETS No. 210). For the global level, see Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence (CEDAW/C/GC/35) of 26 July 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/231/54/PDF/N1723154.pdf?OpenElement> (3 Oct. 2022).

46 Of 20 May 2022, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a69407 (3 Oct. 2022).

47 Appendix, II.5, 6.

48 *Id.*, III.31 – 33.

49 *Id.*, IV.54.

interpretation of the 1951 Convention, notably with respect to the grounds for asylum and with respect to the recognition of gender-based violence, including trafficking in women and girls, as a possible form of persecution within the meaning of Article 1A, paragraph 2, of the 1951 Convention.”⁵⁰

IV. CONCLUSION: PROGRESS AND CHALLENGE REGARDING GENDER-SENSITIVITY.

All in all, gender sensitivity and gender mainstreaming have gradually been extended to global and regional international refugee law. The Council of Europe and the European Union are most advanced in this respect. This is a positive development. The challenge now is to ensure that the gender-sensitive hard and soft law on the books is adequately implemented on the ground by gender-sensitive law-school graduates. This again requires gender-sensitive legal education.

50 Id., IV.57.

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