Gender-based Persecution: Working with Female Asylum Seekers through the Refugee Status Determination Process.


Erin Bromfield, 2015 Churchill Fellow
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# INDEX

**Introduction and Acknowledgements**  
5

**Executive Summary**  
7

**Programme**  
9

**A Backgrounder: Gender-based Persecution and Women**  
11

**Churchill Journey and Disclaimer**  
20

**Themes and Observations**  
23

*Who is working on gender-based asylum cases?*  
23

*What training do these professionals have?*  
27

*What resources do these professionals have access to?*  
35

*What information do women have access to about the RSD process?*  
43

*The interview itself: trust me*  
48

*Where are the client’s children?*  
58

*Working with interpreters*  
61

*Expectations, Assumptions and Assessments*  
65

**Concluding Remarks and Recommendations**  
69

**Further Reading**  
73

**Glossary**  
75

**References**  
77
“People say I did something brave, but the girls who go through this ordeal are the ones with real courage.”

Fauziya Kassindja. Fled forced polygamous marriage and female genital mutilation in 1994. Granted asylum in the United States by the Board of Immigration Appeals in June 1996.¹

INTRODUCTION AND ACKNOWLEDGEMENTS

As a lawyer, bureaucrat or advocate working with female asylum seekers, it can be difficult to create conditions conducive to discussing claims relating to gender-based violence such as (but not limited to) sexual assault, forced marriage, domestic violence, female genital mutilation or violence based on sexual orientation. How can we ensure female clients are informed of their rights and comfortable enough to discuss gender-sensitive information? How can formal immigration interviews take place with a view to minimising (re)traumatisation? How can women’s claims for gender-based asylum be assessed in a straightforward manner when legal frameworks have traditionally been silent or ambiguous on the very issue of gender?

These are questions I began asking myself back in 2011 while working as a researcher for Australia’s then Refugee Review Tribunal (RRT). This project was born of a desire to understand how professionals involved with the formal process of assessing asylum applications, known as refugee status determination or RSD, can best meet common challenges in cases where the asylum applicant is a woman who has experienced and/or fears gender-based persecution.

I set out to gather examples of good practice and shortcomings, and develop key recommendations to assist lawyers, decision makers and others who interview and interact with women who seek refuge from gender-based persecution in Australia.

I would like to thank every organisation and individual who spoke with me, allowed me into their workplace and facilitated my research in Indonesia, Belgium, the United States and New Zealand. I would like to extend particular thanks to Valentine Audate, Gender Unit Coordinator at Belgium’s Office of the Commissioner General for Refugees and Stateless Persons, for sharing her time and her passion for gender equality.
I would like to acknowledge the work of fellow Churchill Fellow Senthorun Sunil Raj on gender identity and refugee claims, and thank him for his insights. It is both encouraging and serendipitous that Senthorun was continuing his work on emotion and the law as a visiting scholar at New York University at the time I was researching this paper.

This project would not have been possible without generous support from the Winston Churchill Memorial Trust and its Victorian Regional Committee.

Finally, to my husband Filip and our beloved son Alexander, thank you for accompanying me on this journey and adventure. This report is dedicated to you both.

Portrait of Sir Winston Churchill, Café Batavia, Jakarta.

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EXECUTIVE SUMMARY

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It is well-documented that women fearing gender-based persecution have traditionally found it difficult to become formally recognised as refugees, owing to both decision making practices which place their experiences outside of the criteria for grant of refugee status, and barriers to disclosing their fears and experiences of gender-based violence in a formal application process.3 In turn and despite the advent of gender guidelines in several jurisdictions, it can be difficult for those working with asylum seekers to know how to conduct an appropriate interview where there are gender-based asylum claims, and how to assess these claims in a straightforward manner.4

To explore these issues further I embarked on the Churchill Fellowship journey. Highlights included insights from incredibly dedicated staff at SUAKA and the UNHCR Indonesia, the Gender Coordinator at the Belgian Office of the Commissioner General for Refugees and Stateless Persons (hereinafter ‘the Commission’ or ‘the Belgian Commission’), the Center for Gender and Refugee Studies in San Francisco, and New Zealand’s Immigration and Protection Tribunal.

This report concludes that supporting a pool of professionally trained and well-resourced refugee advocates, lawyers and decision makers and an ongoing commitment to a gender-sensitive approach to assessing women’s asylum applications will ultimately help ensure that those women who are in fact eligible for refugee status do not fall through cracks in the system. Moreover, such an approach will ensure that regardless of whether they are deemed eligible in the end female asylum seekers are less likely to be retraumatised by the formal refugee application process.

A series of 28 recommendations has been developed around themes of case allocation, staff training and resourcing, information provision, data collection, working with interpreters, conducting appropriate interviews and the physical interview environment including access to child care.

While I will disseminate this report as part of an ongoing dialogue with public service peers and other stakeholders in Australia, it is also my hope that these recommendations provide cause for reflection and a base for further research and action by bureaucrats, lawyers, community organisations, academics and others coming into contact with female asylum seekers.
PROGRAMME

Indonesia

- Office of the United Nations High Commissioner for Refugees (UNHCR), Jakarta.

- SUAKA, Indonesian Civil Society Network for Refugee Rights Protection, Jakarta.

Belgium


United States

- Center for Gender and Refugee Studies, University of California at Hastings, San Francisco.

- Human Rights First, New York.

- *What this Journey Breeds* exhibition about the process of seeking asylum, at the Ildiko Butler gallery, Fordham University, New York. Featured recorded interviews with the Refugee and Immigrant Fund staff and clients.


**New Zealand**

• Immigration and Protection Tribunal, Auckland.

An Afghan asylum seeker recounts being threatened by the Taliban during an interview for the *What this Journey Breeds* exhibition in New York.\(^5\)

\(^5\) Photo credit: Erin Bromfield, August 2016.
A BACKGROUND: GENDER-BASED PERSECUTION AND WOMEN

It can come as a surprise to the casual observer that surviving a civil war or other violent situation does not, in and of itself, make a person eligible for refugee status. In October 2015 I heard an Australian radio announcer ask a guest what appeared meant as a rhetorical question as to whether all Syrians fleeing to the European Union would be granted refugee status. The announcer rationalised that, in fleeing the raging civil war in their home country, these Syrians were fleeing persecution. The guest replied in the negative – ‘fleeing persecution is you’re Jewish and the Nazis are after you’, he said. The announcer sounded uncomfortable with this response, but there it was in a nutshell. Having survived war or other trauma is not, in and of itself, enough to meet the persecution threshold and claim formal refugee status.

It has often been in a similar space to this that women with gender-based claims for refugee status have found themselves. They have survived or fear being hurt due to circumstances outside of their control, but do their claims amount to the legal definition of persecution? Thirty years ago, women fearing gender-based violence were systematically denied refugee status, largely thanks to prevailing norms regarding public/private distinctions. There has since been an emergence of case law and legislation, operational guidance and changing norms in refugee decision making that mean these women can now file an asylum application with a higher chance of success. Nevertheless, continuing scholarly work in the area notes that barriers to disclosure, instances of inconsistent or apparently arbitrary decision making, decision maker expectations regarding how a victim of gender-based persecution ‘should’ behave and prevailing norms regarding public/private distinctions.

barriers to recognising gender-based asylum claims under the particular social group ground have persisted.8

Gender-based persecution simply means persecution where gender is a relevant factor. The distinction between ‘gender’ and ‘sex’ is important, and readers unfamiliar with this distinction are referred to paragraph 3 of the UNHCR gender guidelines for clarification. Gender-based persecution is not limited to, but might take any of the forms mentioned in the UNHCR gender guidelines, namely sexual violence, family and domestic violence, coerced family planning, female genital mutilation (FGM), punishment for transgression of social mores, trafficking for forced prostitution and persecution on the grounds of sexual orientation.9 Those deciding applications for gender-based asylum need to attempt an uncomplicated assessment of the case while addressing the question of how to investigate gender-based claims without causing their client to be retraumatised.

So what is ‘enough’ to meet the persecution threshold?

The Refugees Convention of 1951 (‘the Convention’) as amended by the 1967 Protocol Relating to the Status of Refugees sets out the grounds whereby somebody meets the criteria to be recognised as a refugee. Today, these instruments are supplemented by United Nations High Commissioner for Refugees (UNHCR) guidelines on particular cohorts and issues, including the Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (‘the UNHCR gender guidelines’). This is what I

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9 United Nations High Commissioner for Refugees 2002, Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May
refer to as the original UNHCR framework for assessing claims for refugee status. Article 1A(2) of the Convention is the cornerstone of this framework, stating that a refugee is someone who:

‘owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of their country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’.

For example, an asylum applicant who fears being killed by a violent husband must demonstrate, inter alia, that she fears being hurt for reasons relating to her race, religion, nationality, membership of a particular social group or political opinion. The latter two convention grounds are, generally speaking, the most likely to relate to claims of gender-based asylum, and ‘membership of a particular social group’ being a particularly fluid beast and the ground that has been referred to as ‘the with the least clarity’ despite ‘decades of close examination and dissection’.10

This hypothetical asylum seeker would also need to meet various other criteria, such as showing that she fears harm of a type commensurate with the legal definition of ‘persecution’ and that the authorities in her home country cannot or will not protect her from experiencing this harm from her husband.11

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To demonstrate her claims for protection she would need to first be aware that they could be acceptable claims for refugee status. She would then need to articulate them in a written application, perhaps in a language she does not speak, with the assistance of legal representation if she is eligible or able to pay for it and an interpreter if required. She would highly likely be required to attend at least one interview with an immigration official to discuss, *inter alia*, her identity, asylum claims and reasons she doesn't think she can return to any part of her home country. That official would be required to accept – or believe – her claims, for it is an inconvenient truth of refugee decision making that not all claims can be believed at face value, and that credibility assessments form an important part of the RSD decision making process. If this woman has been traumatised by abuse suffered in the past, she may have difficulty recounting violent incidents in a linear fashion.

The hypothetical applicant may then be eligible for refugee status depending on the case law in her host country and the immigration official's decision, assuming that her claims are not affected by applicable cessation and exclusion provisions.

If she would otherwise be successful with her application but for lack of a Convention ground she may still be eligible for protection on the proviso that she can convince the immigration official that as a necessary and foreseeable consequence of return to her home country she would experience the death penalty, arbitrary deprivation of life or liberty, torture, cruel, inhuman or degrading treatment or punishment. This apparent safety net is known as

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13 See subheading below: ‘The Interview Itself: Trust Me’.
15 This is a very general overview as case law in each country impacts the intricacies of decision making criteria. For instance, the intention of the persecutor is irrelevant in the United States.
'complementary protection' in Australia, and many other countries maintain similar provisions.16

**Actors involved in the Australian RSD context**

Actors coming into contact with this potentially vulnerable cohort of asylum seekers in the Australian RSD context could include:

- Representatives including lawyers and registered migration agents who assist women to put forth claims for protection to the Australian immigration authorities.

- Advocates and staff in non-profits and other service providers.

- Interpreters – a different interpreter may be used at any given interview with an applicant’s representative and/or immigration authorities.

- Australian immigration authorities, including: those who interview the applicant when she arrives in Australia; those who interview the applicant in order to make a decision regarding her application for protection; those who might interview the applicant specifically for the purposes of establishing whether she has presented her true identity; and those who might interview the applicant for reasons relating to compliance with bridging or other visa conditions.

- Members of the Migration and Refugee Division or the Independent Assessment Authority within the Administrative Appeals Tribunal,17 who

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17 Formerly Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT) until amalgamation with the Administrative Appeals Tribunal on 1 July 2015. Whether a case goes to the Migration and Refugee Division or the Independent Assessment Authority depends on the asylum applicant’s mode and date of arrival in Australia.
conduct a de novo review often involving a hearing if the primary decision is a refusal.

- Barristers and judges, should an applicant apply for judicial review of a decision to refuse her protection. That said, barristers may receive instructions from the applicant’s lawyer and the applicant may not be required to appear in court themselves, as judicial review in Australia relates to the question of whether there has been a legal error in decision making and not the merits of an individual’s case for asylum.

- Personnel in immigration detention facilities.

Disclosure and Assessment Barriers

Women who flee their home countries in fear of gender-based violence may thus still have difficulties navigating the formal RSD processes in part because gender is not, in and of itself, a ground for persecution under the Convention (or Australian domestic law that codifies the convention). Internationally, success of such claims is thus often reliant on gender-sensitive interpretations of the Convention by signatory countries as reflected in domestic law, refugee decision-making practices and case law. It has become well-documented that gender-based claims for refugee status can be difficult to explore at interview and less than straightforward to assess. To provide a specific example, claims sets such as FGM and domestic violence remain controversial in the United States and

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outcomes of applications sometimes seemingly arbitrary despite precedential and landmark appeals decisions.\textsuperscript{20}

Moreover, as one interviewee noted, the refugee status determination process is intensive.\textsuperscript{21} It involves a formal application, perhaps at least one interview with a lawyer who constructs a written statement presenting the case, and usually a formal interview with an immigration official. Those who receive a negative decision may have a hearing with an appeals body. In Australia, this body is the Administrative Appeals Tribunal’s Refugee and Migration Division. Alternatively, and sometimes in addition, their matter can potentially be brought to court or before the Minister for Immigration for direct intervention. Interviews in the RSD process can run for significant periods of time and topics covered may be personal and sensitive in nature.\textsuperscript{22}

In 2011, the \textit{Oxford Journal of Refugee Studies} published an article by McPherson et al, highlighting difficulties with gender-based asylum cases in the Australian RSD context. The article has limitations; the methodology included interviews with refugee advocates but only one first hand account from a former asylum


\textsuperscript{21} Author’s conversation with Blaine Bookey, Center for Gender and Refugee Studies, San Francisco.

seeker, and a survey of immigration policy staff but not decision makers who actually assess refugee claims. Nevertheless, the article indicates that female asylum seekers and professionals involved in the RSD process in Australia are not immune from challenges associated with gender-based asylum cases.

Specifically, McPherson et al posit that ‘emergence barriers’ and ‘assessment barriers’ might inhibit full and effective assessment of gender-based asylum claims.

Emergence barriers are those factors that inhibit women from disclosing gender-based asylum claims such as:

- Cultural shame, or normalisation of experiences by the woman.
- A lack of awareness that gender-based asylum claims can be put forth.
- Fear of disclosing gender-based asylum claims in the presence of male interviewers and interpreters, or interpreters from a persecuting majority in her country of origin.
- The woman being a secondary applicant on a visa application, and therefore not being offered a separate interview without male relatives present. This is problematic as a decision maker may not know, from written application alone, whether a woman has strong claims for protection that are sensitive or traumatic in nature.\(^{23}\)
- A fear of not being believed, including if a decision maker displays a skeptical attitude about their claims for protection generally.

\(^{23}\) This point is explored with reference to a particular case of a Turkish woman attached to her husband’s application who turned out to have claims for asylum in her own right, relating to forced marriage and honour killing, when interviewed for the first time late in the RSD process. See Haines, R QC 2009, ‘Advancing a Gendered Interpretation of the Refugee Convention: Refugee Appeal No.76044’, Presentation for 2009 National Members’ Conference of the Migration Review Tribunal and Refugee Review Tribunal, 10 September.
Assessment barriers relate to the manner in which claims for protection are assessed, and might include:

- Discourses that dismiss the woman’s claims as either normal or not severe enough to constitute persecution, or too bizarre or shocking to be believable.

- Decision makers projecting their own assumptions about what a reasonable woman ‘should’ do in a particular situation. For example, a woman’s claims of domestic violence amounting to torture might be dismissed if she did not approach the police in her home country for assistance because the decision maker assumes that to be a rational course of action for any woman experiencing domestic violence.

- A lack of awareness on the part of the decision maker of current nuances and conditions in particular locations in the woman’s home country.  

The themes raised by McPherson et al were reflected in Fellowship interviews, as discussed further throughout the following sections. These themes also echo in Debra Singer’s account of how women can find RSD processes and credibility assessments particularly challenging, and other literature cited throughout this report.

So, as a lawyer interviewing an asylum seeker in order to put together a case, or as a RSD decision maker, it can be difficult to know how to create conditions conducive to discussing gender-based fears and experiences in the first instance. How do we draw out information about these often very personal and sensitive

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25 Singer, D 2015, ‘Falling at each hurdle: Assessing the credibility of women’s asylum claims in Europe’, in Arbel, E., Dauvergne, C and Millbank, J. (eds), Gender in Refugee Law: from the Margins to the Centre, Routledge, Chapter 4
claims for asylum? How can we interview a woman about these fears and experiences while mitigating the risk of retraumatising her?

CHURCHILL JOURNEY AND DISCLAIMER

Intent on exploring these questions, the author’s Churchill programme began in Jakarta. Indonesia is not a signatory to the 1951 Refugees Convention and its accompanying protocol, meaning that it is not a refugee-accepting country. The Indonesian government, however, allows the UNHCR to accept and assess applications for refugee status, and assist recognised refugees with resettlement in a third country. In January 2016, there were 7,616 asylum seekers and 6,063 recognised refugees (awaiting resettlement) registered with the UNHCR in Indonesia. Many of these people come from the same countries as those who seek asylum in Australia (for example Afghanistan, Iran and Sri Lanka). The author wanted to see how the UNHCR Gender guidelines were implemented, and how female asylum seekers’ claims were treated, in this ‘pure’ UNHCR context.

The next stop on the journey was Belgium, thanks to a 2012 comparative study of gender-based asylum claims and female asylum seekers published by the European Parliament. The report named several areas where Belgium had good practices, such as employing a ‘Gender Unit Co-ordinator’, routinely handing out awareness-raising literature to female clients and on-site child care. The sheer number of female asylum seekers and refugees in the United States (US),

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combined with scholarship, activism and landmark asylum decisions regarding domestic violence and female genital mutilation made the US the next stop. Finally, the author was excited to have an audience with some experienced members of New Zealand’s Immigration and Protection Tribunal, who are said to recognise gender-based asylum even in the absence of gender guidelines.29

The questions that sparked this Fellowship journey are not easily answered, and the journey is ongoing with every practitioner, scholarly source and organisation the author comes into contact with. The recommendations below should thus be treated as malleable enough to work with the existing practices and restrictions of individuals and organisations.

Below, the term ‘interviewer’ is used to refer to whoever is interviewing an asylum seeker, be it lawyer, advocate, government official not determining a visa outcome (for instance in interviews about compliance with visa conditions where asylum claims might arise), or decision maker. In turn, the term ‘decision maker’ is used to refer to those responsible for determining asylum applications at primary and review (appeals) levels.

Limitations

The author acknowledges that gender-based cases can be brought by male, transgender and intersex asylum applicants. The present project focuses on claims put forth by women due partly to the existing body of literature focusing on women in the refugee status determination context and partly due to time and resource constraints with the project generally. Readers interested in sexual orientation claims put forth by lesbian, gay, bisexual, transgender and, intersex and queer (LGBTIQ) individuals may be interested in 2012 Churchill Fellow Senthorun Sunil Raj’s report, ‘Protecting the Persecuted: Sexual Orientation and

Gender Identity Refugee Claims’. In 2016, the International Committee of Jurists published a practitioner’s guide for gender-based asylum claims and this is included in the further reading list at the end of this report.

Any explorative research with a professional development bent conducted in a short timeframe is going to have limits. This Fellowship journey comprised strategically selected interviews and site visits, and was not exhaustive in nature. In considering the questions that sparked this Fellowship journey, ideas may continue to evolve with every practitioner, academic source and organisation the author comes into contact with. The author acknowledges that extensive fieldwork with women at the centre of this process was not possible within the limits of the project and hopes that others will be inspired to explore some of the questions raised therein with female asylum seekers. The report is therefore part of an ongoing dialogue and its recommendations should be treated as general and malleable enough in nature so as to be molded to work with the existing practices and restrictions of individuals and organisations.

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THEMES AND OBSERVATIONS

Who is working on gender-based asylum cases?

An experienced member of New Zealand’s Immigration and Protection Tribunal captured the initial difficulty the author faced in prescribing recommendations for this project when he said, ‘It is difficult to come up with a set of guidelines for these cases because each case turns on its own facts’. That is to say, sometimes a decision maker will not need to quiz a client about traumatic incidents mentioned in her application, because she has another ground for asylum in her life story that is strong enough for grant of refugee status. Sometimes a woman will want to request a female decision maker or interpreter and sometimes she will feel comfortable enough with a male. Well-trained professionals who know well their client’s country conditions and the law of their jurisdiction will be better placed to exercise split-second judgements in RSD interviews as to what questions will likely yield information material to a case, and whether it is necessary to explore past violent incidents in detail. Allowing for experienced and trained professionals to take on cases with an element of gender-based violence is therefore as important as it is to continue to allow them a degree of professional discretion.

Experience is explicitly taken into account at the Belgian Commission with regard to another cohort of vulnerable asylum seekers, namely children. The Commission maintains a list of decision makers who are willing to interview children, and only those with two years’ or more experience are eligible to self-nominate for that list. The Commission’s Gender Unit Coordinator explains that some people are self-aware enough to know they do not want to interview minors for asylum, or are not suited to conducting the style of interview required, and the opt-in list means they are not pressured to take on such cases.

Senthorun Raj, a 2015-2016 visiting scholar at New York University, reminds us that an asylum interview is a dynamic and emotional space. The asylum seeker,
interpreter, lawyer and decision maker's emotions all interact with and feed from one another. In this vein, multiple interviewees raised the issue of emotional intelligence, noting that people with a high emotional quotient (EQ) are better placed to conduct sensitive and appropriate interviews in gender-based asylum cases. The Legal Aid Co-ordinator at SUAKA, Indonesia, advises ‘know when you can push a little bit further [in an immigration interview] and when you’re going to break the person in front of you’. A long-serving member of the New Zealand Immigration and Protection Tribunal stated, ‘An incredible amount will come of your demeanour’, in terms of the interview being effective, minimising re-traumatisation and building the rapport required for facilitating disclosure. An attorney from Human Rights First stated that some people will struggle to conduct an appropriate and sensitive interview even after extensive training. It appears prudent, therefore, to allow both managers of industry professionals some discretion in terms of allocating cases with vulnerable female clients and staff some power to opt in/out for cases they think they are/are not equipped to handle.

**Recommendation:** Asylum applications indicating experience or fear of gender-based violence are allocated to experienced, trained professionals who are amenable to taking them.

**Potential courses of action:** Build gender sensitivity and vulnerable witness elements into induction and refresher training for RSD professionals.

Maintain a register of professionals who opt to take on such cases similar to the Belgian register of protection officers who interview minors.

Management maintains discretion in allocating cases and allowing staff to swap cases where appropriate.
The question of male interviewers

The sex of RSD interviewers (both lawyers and decision makers) was discussed with interviewees. Overall, there was a sense that it is preferable for female RSD professionals to take on cases where there is a female client whose application clearly indicates fears or experience relating to gender-based violence. UNHCR practitioners, SUAKA volunteers, Human Rights First and the New Zealand Immigration and Protection Tribunal maintain such practices. Indeed New Zealand’s Tribunal will wait until a female member is available to hear such cases.

The Belgian Commission routinely asks female clients, including those in cases where a male relative is the ‘main’ asylum applicant, whether they would like a female decision maker and interpreter present at their primary asylum interview. This question is asked on a form as part of the asylum application process, generally some weeks prior to interview. This is noteworthy because the European Parliament indicates that while women are entitled to request female decision makers/interpreters in many jurisdictions, they are not always systematically asked for their preference.31 Late requests (on the interview day) are not accepted, although an employee at the Belgian Commission remarked that an interview would stop if the client unexpectedly disclosed gender-based violence and requested a female decision maker and/or interpreter.

When asked about instances where a woman unexpectedly discloses gender-based violence to a male staff member during her interview, staff at the Commission advised that they could suspend an interview and reallocate the case or find a new interpreter if the asylum seeker requested. They also have the Gender Unit Coordinator on call to consult on a case-by-case basis when gender-based violence is unexpectedly disclosed.

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Indeed whether it is appropriate for a male interviewer to work with a female asylum seeker with a gender-based claim at all is a matter of contention among some experienced decision makers, with members of the New Zealand Tribunal disagreeing as to whether immediately reallocating a case when gender-based violence is disclosed or allowing the female applicant some agency in that decision is preferable. While respecting that some male professionals may not wish to ask a female applicant to decide whether or not to reallocate her case, it is the view of the author that the applicant’s wishes should be paramount because, as Senthorun Raj advocates, it is her experience at the centre of the RSD process and this is often lost in literature and discussions regarding asylum seekers. Meghana Nayak notes that the RSD process itself may feel quite disempowering. Thus, opportunities for agency should be welcomed. In many cases, women will have access to legal counsel to assist them to make decisions about allocation if required.

It is thus recommended here that, in conjunction with an opt in/out system for cases where the application indicates gender-based violence, male interviewers are supported to swap or reallocate cases where gender-based persecution arises and they do not feel that it is appropriate and/or that they are equipped to continue, in consultation with the asylum seeker. Similarly, it is recommended that female asylum seekers are routinely and explicitly asked whether they would prefer a female lawyer or decision maker, for example as a question on the asylum application form.

**Recommendation:** Experienced and trained men are included in the pool of people who take on gender-based asylum cases, but that they are supported to reallocate a case to a woman should they see appropriate, in consultation with the asylum seeker concerned.

**Recommendation:** Female asylum seekers are routinely and explicitly asked as part of the application process whether they would prefer a female lawyer/interpreter/decision maker.
Potential courses of action: Routine question as part of the asylum application form/application for legal or other assistance. The question should be explicit – for instance, ‘would you prefer a female interpreter?’ rather than ‘do you have any special needs?’

Depending on organisational resourcing, allocation to a female staff member could be automatic, as suggested by McPherson et al.

What training do these professionals have?

When asked about working effectively with women who have experienced trauma, almost every organisation and individual consulted raised the importance of training from qualified psychologists and/or social workers. The comments made in this regard are reflected in McPherson et al’s advocacy that decision makers receive training from qualified psychologists.32 As decision makers are not the only people conducting in depth interviews with female asylum seekers, the author argues that this need for training applies equally to lawyers, advocates, and officials who are not decision makers but who interview asylum seekers for identity integrity or other purposes. Further, this training from qualified psychologists/social workers is crucial for reasons relating to the mechanics of the traumatised brain and conducting sound credibility assessments as discussed below.

Although his staff receive training on the UNHCR Gender Guidelines and refresher training, an RSD manager at the UNHCR in Jakarta stated that additional training regarding how the human brain works and on communicating with victims of trauma would be valuable. He also recalled receiving useful training from psychologists at a previous, better resourced

UNHCR posting. He observed that although social workers and psychologists are not interviewing for the purposes of making a refugee determination, their skills are pertinent to interviewing clients about trauma, fears and personal experiences.

The Center for Gender and Refugee Studies (CGRS) organises training on working with vulnerable clients, and its staff also receive training on this topic from qualified psychologists. The Gender Unit at the Belgian Commission has arranged specialised training from a psychologist specifically on interviewing persons claiming to be victims of sexual violence. The Unit has also arranged training on interviewing vulnerable persons and train-the-trainer style professional development via the European Asylum Support Office.

The Gender Officer at the Belgian Commission emphasised the importance of equipping staff to interview clients on sensitive and personal topics. She organises training from psychologists on this topic, as well as ‘360 degree’ training whereby people who gained refugee status off the back of a gender-based claim are invited to provide decision makers with feedback on the interview process – how it affected them, how they felt at being asked certain questions and what other questions may have been asked instead.

One recommendation from Senthorun Raj’s Fellowship report was for gender sensitivity training more generally. Since the time of its publication at least one organisation from the United States has since delivered gender sensitivity training to sections of the RSD industry in Australia. Interviewees noted the benefits of refresher training – as a member of the New Zealand Immigration and Protection Tribunal stated, ‘Just because we’ve been doing this for a long time doesn’t mean we can’t improve.’ A continuing commitment to identifying beneficial training courses and allowing for induction/refresher training will help industry professionals stay equipped to respond appropriately to gender-based persecution claims.
Credibility Concerns

One reason an interviewer might ask about past gender-based violence is to establish that the incident indeed occurred. Asylum decision making comes part and parcel with the understanding that, for a range of reasons, some clients embellish or invent incidents to enhance their chances of gaining refugee status.33

Debra Singer asserts that the chief reason women are denied asylum internationally is because ‘they are not believed’, and her work is strongly recommended reading for anyone investigating the credibility of a gender-based asylum claim brought by a woman, particularly a woman of little education or identity documentation.34 Meghana Nayak from Pace University, Robyn Barnard from Human Rights First and the SUAKA Legal Aid Coordinator all echoed one of Singer’s points, namely urging decision makers to take women’s education levels and likely knowledge of terminology into account when forming interview questions for credibility assessments.

The dangers of retraumatisation when an interviewer interrogates the credibility of a violent incident, such as a sexual assault, that turns out to be credible are clearly extreme.35 McPherson et al note that it can be stressful for all involved in a formal interview context where a decision maker tests the veracity of claims involving sexual assault and other sensitive or traumatic matters.36 As argued below under the subheading ‘The Interview Itself: Trust Me’, efforts

34 Singer D 2015, ‘Falling at each hurdle: Assessing the credibility of women's asylum claims in Europe’, in Arbel, E., Daouergne, C. and Millibank, J. (eds), Gender in Refugee Law: from the Margins to the Centre, Routledge, Chapter 2
35 Singer D 2015, ‘Falling at each hurdle: Assessing the credibility of women's asylum claims in Europe’, in Arbel, E., Daouergne, C. and Millibank, J. (eds), Gender in Refugee Law: from the Margins to the Centre, Routledge, Chapter 2
should be made to avoid asking an applicant to relive a violent incident unless utterly unavoidable.

A RSD manager at the UNHCR in Indonesia notes what is clear in literature on trauma-informed interviewing\(^{37}\) - that the principles of credibility are ‘turned on their head’ when a client has experienced trauma. This is because a traumatised witness might genuinely have trouble recalling details in the manner asked of them and behave in a similar manner to that of an uncooperative witness. In such cases, it is advisable to avoid asking for detail such as exact dates and times. The usual credibility threshold might also be relaxed somewhat if there is a medical diagnoses from a qualified professional on file of post-traumatic stress or other mental health conditions that would affect memory.

Scholarly literature has long acknowledged that the human memory cannot be relied upon to recall information in a linear and coherent fashion, and that credibility may be wrongfully impugned by supposed inconsistencies arising as asylum seekers are questioned in different ways about their claims through the RSD process.\(^{38}\) Thus, Randall and Haskell urge that lawyers and others providing services to female witnesses be trained to recognise signs of gender-based trauma and understand that this may affect the way they relate their experiences. They explain how inadequately trained interviewers may wrongly impugn women’s credibility:

As Haskell emphasizes in her work in this area, victims often are not equipped to explain their own psychological responses and


coping. They may not recognize the role of abuse-related trauma in the development of some of their own severe responses or ways of managing. What might appear as "inconsistencies" in the way a victim reacts or tells her story in a service context or a legal proceeding is actually very often a typical, predictable, and normal way of responding to life threatening events and coping with and remembering traumatic experiences.39

The Legal Aid Coordinator at SUAKA notes that a ‘just answer my question’ approach to interviewing can mistakenly impugn credibility, as some clients will leave out important detail and context that makes sense of their answers. Meghana Nayak refers to the International Criminal Tribunal for Rwanda’s methods, using female interviewers and written statements answering open-ended questions for gathering non-linear testimony from female survivors of rape, as one way to engage with victims of gender-based violence.40

**Recommendation:** Professionals interviewing female asylum seekers at all stages in the RSD process are offered training from qualified social workers and/or psychologists in appropriate interviewing techniques for working with vulnerable witnesses. This training encompasses effects of trauma on memory and subsequent behaviour.

**Potential courses of action:** Staff with carriage of learning and development actively seek out or work with partners to develop training opportunities.

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**A note on detention networks**

The focus of interviews for this Fellowship is the RSD assessment process itself, however it is worth noting that some asylum seekers spend time in immigration detention. There is an opportunity here for detention workers to identify victims

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40 ""Without these Women, the Tribunal Cannot Do Anything": The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda’, Signs, Winter, pp.254-277
of gender-based violence. There is also a responsibility to ensure all women, pregnant clients, nursing mothers and sexual minority clients are treated respectfully in these closed environments. In 2012 the European Parliament noted firstly that pregnant women and new mothers generally lived in appalling conditions in European immigration detention, and secondly that Belgium was the only European Union (EU) country in its comparative study to provide gender-sensitivity training to employees working in its immigration reception centre system. Employees working for FEDASIL, the agency running Belgium’s reception centres, receive in-house training on gender-related issues and identifying victims of FGM. The Gender Coordinator at the Belgian Commission confirmed that FEDASIL still runs in-house gender training as at 2016, and that they communicate with her in relation to some gender issues.

**Recommendation:** Professionals working in detention networks are provided with opportunities to complete training in gender sensitivity and working with vulnerable clients.

**Potential courses of action:** In-house training.

Actively invite staff to participate in training from external providers.

*Building gender sensitivity and vulnerable witness training into tertiary education*

A lawyer from Human Rights First acknowledged that law school does not necessarily equip graduates with the skills required to work effectively with vulnerable clients, and applauded her organisation’s employment of social workers to work with asylum applicants alongside lawyers. These partnerships can assist asylum seekers in holistic ways. For instance, seemingly simple task such as catching public transport to get to a legal appointment proved an

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obstacle for one Human Rights First client who suffered anxiety after arriving in New York. A Human Rights First social worker was able to help her past these initial obstacles and help the assigned lawyer prepare her for her asylum interview.

Meghana Nayak also commented that partnerships between lawyers, academics and social workers can be beneficial, while the Legal Aid Co-ordinator at SUAKA commented that incorporating gender sensitivity training into university refugee law courses would better equip graduates to work with vulnerable clients including women who fear gender-based persecution.

**Recommendation:** Academics teaching Refugee Law take steps to make training in gender sensitivity and working with vulnerable clients available to their students.

**Potential courses of action:**
- Employ the services of guest lecturers.
- Point students to any other training or elective units of study which cover these topics.
- Establish partnerships with social work schools.

**Guidelines**

Points relating to training and gender guidelines are included under the Gender Guidelines subheading, below.

**A note on self-care**

Senthorun Raj stresses that there is an emotional element involved for the interviewer – be it lawyer or decision maker – when they plan and ask interview questions and when they choose words for written documents pertaining to a case.
Working with vulnerable clients can be emotionally draining, as can working within an RSD system regardless of exactly how much gender-based asylum cases feature in an individual professional’s caseload. Confirmed site visits and interviews with two organisations previously keen to participate in the Churchill process dropped from the United States leg of the programme at very short notice due to staffing issues. This is perhaps indicative of the demands of working with asylum seekers in the not-for-profit sector in the United States.

To this end, the Center for Gender and Refugee Studies organises training on self-care for professionals working in the asylum space. CGRS staff have also received self-care training, delivered by psychologists, which included practical coping measures such as breathing exercises. Blaine Bookey from the CGRS stated that the social element in her workplace was also important for self-care.

**Recommendation:** *Professionals working in RSD are supported to exercise self-care.*

**Potential courses of action:** Self-care training via CGRS or other external providers with relevant expertise to offer professionals who work with victims of trauma.

Employers take steps to encourage social functions and facilitate work-life balance for employees.
What resources do these professionals have access to?

Guidelines

Meghna Nayak from Pace University in New York notes that as of 2014, 39 countries and the UNHCR maintain explicit recognition of gender-based persecution claims in domestic law or gender guidelines for decision makers.\(^\text{42}\) Canada was the first state to publish gender guidelines in 1993.\(^\text{43}\) Australia’s immigration department first published gender guidelines in 1996 and updated them in 2010. Australia’s then Refugee Review Tribunal issued its own guidelines in 2010 and updated them in 2012.\(^\text{44}\)

How then, can organisations get the most out of their gender guidelines? An RSD manager from the UNHCR in Jakarta assured me that new employees are introduced to all relevant UNHCR guidelines in their induction training and reminded of them in refresher training. Decision makers are then aware that documents including the gender guidelines and guidelines on preventing sexual violence in refugee communities are there as a ‘go-to’ resource when gender-based claims come across their desks. The Gender Unit at the Belgian Commission also provides training to new staff on the Commission’s guidelines, and specifically on sexual orientation, FGM, forced marriage and sexual violence claims.

\(^{42}\) Canada, the United Kingdom, Panama, Australia, South Africa, Switzerland, the United States, Czech Republic, Croatia, Italy, Latvia, Austria, Cyprus, Belgium, Hungary, Sweden, Moldova, the Netherlands, France, Germany, Luxembourg, Bulgaria, Ireland, Norway, Portugal, Spain, Finland, Turkey, Argentina, Colombia, Costa Rica, Chile, Mexico, Bolivia, Paraguay, Nicaragua, Uruguay and Uganda. Dr. Nayak also notes that despite lacking legislation on the issue, New Zealand recognises gender-based asylum claims in practice. See Nayak, M 2015, *Who is Worthy of Protection? Gender-based Asylum and US Immigration Politics*, Oxford University Press; p.55 and fn.34.


As McPherson et al write in the Oxford University Press *Journal of Refugee Studies*, guidelines will be of most use when they contain practical tips for interviewers linking the general concept of ‘gender sensitivity’ to specific actions or procedures.\(^{45}\)

The Belgian Commission’s guidelines contain sample questions and arguments for or against granting a visa for a particular claims set, and the Gender Unit Coordinator tracks both incoming claims sets and case law to see where guidelines might need to be updated. She is also available to decision makers who wish to discuss individual cases and/or the guidelines with her. **Having somebody act as in-house custodian and champion of gender guidelines appears to aid their currency and implementation.**

Of those countries visited, the United States is the only one to have publicly accessible gender guidance at primary decision level.\(^{46}\) The UNHCR gender guidelines are widely available and pertinent to Indonesia, while Belgium’s guidelines are not public and New Zealand does not maintain any. On the question of whether guidelines should be publicly available, Senthorun Raj agrees that it is a good idea as it allows lawyers and advocates to remind decision makers of their responsibilities. If one of the reasons gender guidelines might gather dust is workload and sheer amount of information the modern decision maker is bound to consider, then having one’s own organisation’s gender guidelines submitted by asylum seekers along with other case material might serve to reinforce their salience. Respected gender-based asylum attorney and Director of the Harvard Law School Immigration and Refugee Clinical Program Deborah Anker argues that **the United States’ gender guidelines, issued in 1995, became influential as immigration appeals bodies relied**


upon them in published decisions and attorneys referred to them in some instances.⁴⁷

Senthorun Raj also pointed to a practice in the United Kingdom Border Agency whereby managers randomly audit gender-based asylum cases to see whether guidelines have been complied with, and recommend follow up such as training for the decision maker as appropriate.

**Recommendation:** Professionals are introduced to gender guidelines (UNHCR and/or organisational) in induction training and reminded of their existence in refresher training.

**Recommendation:** Guidelines are updated regularly, specifically in response to case law, and contain sample arguments for or against common claims sets in legally acceptable language.

**Recommendation:** Guidelines have designated custodians and champions.

**Recommendation:** Gender guidelines used by decision makers are publicly accessible.

**Recommendation:** Managers randomly audit gender-based persecution cases for guideline compliance.

⁴⁷ Anker, D 2014, ‘Legal change from the bottom up: The development of gender asylum jurisprudence in the United States’, in Arbel, E., Dauvergne, C. and Millibank, J. (eds), *Gender in Refugee Law: from the Margins to the Centre*, Routledge, Chapter 2
Country of origin information

In 2011, McPherson et al argued that a sound and nuanced understanding of conditions in an asylum seeker’s home country—beyond a general commitment to check repositories of country information—is crucial for decision makers wanting to tackle assessment barriers in gender-based asylum cases.\(^{48}\)

Multiple interviewees impressed the importance of having a sound understanding of conditions in a client’s home country for constructing an effective, sensitive interview and making a sound lawful decision in relation to their asylum claim. These same interviewees, without exception, then lamented that they would like additional country of origin information resources to help them build this sound understanding.\(^{49}\) It appears many RSD professionals rely on accumulated knowledge from having worked with many applicants from a given country, corporate knowledge from their peers or on conducting UNHCR Refworld and internet searches themselves. Refworld is a valuable base repository, but there is only so much one can expect from a database. It does not automatically weigh up conflicting information. It does not synthesis, analyse and present tailored information in relation to a time-poor professional’s caseload.

Of those organisations consulted for this report, those most satisfied with the level of country information available were those with in-house research services staffed by professionals able to synthesise open source information and complement the information most easily accessible on Refworld. The CGRS provides a research service to attorneys, although it is staffed by volunteers and occasionally requests cannot be fulfilled. New Zealand Immigration and Protection Tribunal members are able to ask a research service within the

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\(^{49}\) SUAKA, UNHCR, Human Rights First, Senthorun Raj reflecting on prior professional experience.
country’s primary decision making body for open source information in relation to their cases, and some members spoke highly of this resource.

The Belgian Commission has an in-house service staffed with dedicated country of origin researchers who specialise in geographic regions. The service produces both tailored research for individual cases and a suite of background papers in relation to recurring claims sets. For some gender-based claims sets, namely FGM and sexual orientation, the Commission’s research service maintains templates with standardised tables of contents to guide researchers as to what issues should be covered when drafting a new paper. Further, the service has access to European Asylum Support Office guidance on researching some sexual minority claims, including notes on terminology, sources and potential research questions. This resource is useful as incidents of harm involving members of sexual minorities can be underreported in some countries due to stigma, poor monitoring and attacks against LGBTIQ advocates.50 The Belgian research service has received funding from the European Parliament to conduct two fact-finding missions to countries relevant to Belgium’s caseload which will further plug information gaps and bolster Belgium’s country of origin information holdings.

Additionally, the research service within the Belgian Commission has a researcher who is a designated member of the Gender Unit. This researcher keeps abreast of country information sources pertaining to gender-based persecution, attends Gender Unit and other gender-based asylum meetings, is involved in training and consultation with decision makers, and peer reviews all draft papers authored by other researchers on gender-related asylum topics.

In addition to providing open source information, the CGRS maintains a repository of ‘Expert Statements’. These are detailed, signed statements from lawyers in refugee-producing countries about conditions affecting women and members of sexual minority groups. The statements often contain information

50 European Asylum Support Office 2015, ‘EASO Researching the situation of lesbian, gay, and bisexual persons (LGB) in countries of origin, EASO Practical Guides Series’, April, p.10
pertinent to state protection such as whether certain laws tend to be implemented, accessibility of local court systems and courtroom commentary from judges that may not be published elsewhere.

To facilitate thorough understandings of both country conditions generally and gender-related issues in particular, it is recommended that professionals be encouraged not to waste any particular expertise and nominate for work on a preferred country or claims set where it becomes available.

**Recommendation:** *Country of origin research is well-resourced, and that professionals including primary decision makers and reviewers receive country research training as part of their induction.*

**Recommendation:** *Country research staff build resources to guide future research on gender-based asylum topics and dedicated background papers on gender-related claims sets for high caseload countries into their forward research programs.*

**Recommendation:** *Both country of origin researchers and decision makers are encouraged to nominate preferred caseloads where they have expertise in a particular country or claims set.*

**Data**

Meghana Nayak of Pace University commented that *it can be difficult to aggregate asylum case data because multiple officials and organisations may interact with, and make decisions affecting, a single client during the course of their seeking asylum.* The publicly accessible database at the CGRS contains data from cases the Center has assisted with as well as from cases where an asylum seeker or refugee has provided Center staff with their asylum decision or judgement. The database is searchable by country of origin, type of
persecution, decision level and decision outcome. Search results include comments regarding the claims, outcomes and points of law in individual cases. Interviewees variously commented that CGRS data was useful for building cases, gauging how certain types of cases may be treated in various jurisdictions, and for academic research. CGRS Founder Karen Musalo has lamented the lack of more consistent data collection across the US as this would be useful for tracking the impact of significant appeals decisions.

Data and access to other asylum decisions could assist both those presenting asylum cases and those deciding them. The CGRS database contains information on primary decisions, appeals court and Immigration and Asylum Board decisions (final appeal), thus making it possible for those working at the beginning of the RSD system to see how certain claims sets have been handled on appeal. The database also allows one to search by type of persecution and compare cases across states. Each decision should of course be made on its own merits, but access to data can assist decision makers in remaining aware of core issues in their caseloads and common reasons for granting appeals.

The Gender Unit Coordinator at the Belgian Commission also aggregates data on gender-based claims as cases arise and this data is used to develop a better understanding of gender-based asylum cases coming through the country's system.

**Recommendation:** Organisational systems capture data on gender-related claims by country and type of harm feared, so as to identify training, country of origin research and any specialisation/taskforce needs.

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51 The database is available at: [https://cgrs.uchastings.edu/search-cases](https://cgrs.uchastings.edu/search-cases)
52 CGRS, Human Rights First, Meghana Nayak.
A peer to consult

As mentioned above, the Belgian Commission employs a designated Gender Unit Coordinator who aggregates case data, manages gender guidelines and organises training. The Gender Coordinator liaises with a dedicated network of peers in various sections of her organisation including country research, legal and decision making. This structure allows Belgium’s Gender Unit Coordinator a vantage point whereby she has a detailed knowledge of gender-based claims sets, case law and country information relevant to the gender-based asylum case load. She is a former full time decision maker who continues to decide a few cases per year to maintain her interviewing and decision making skills.

Decision makers at the commission are able not only to call on the Gender Unit Coordinator to discuss guidelines and interview preparation, but they are also able to adjourn an interview and call on her for advice where gender-based violence has been unexpectedly disclosed. There are also two decision makers who form part of the Gender Unit, and to whom their peers might turn to discuss individual cases.

Recommendation: Professionals have a designated peer, or network of peers, to consult about interview techniques, case law and assessment and country of origin information vis-à-vis gender-based asylum claims.
What information do women have access to about the RSD process?

Information about the legal framework

Interviewees agreed on one point raised in literature on gender-based asylum; namely that many female clients do not realise their experiences give rise to claims for refugee status in the first instance. Violence against women, like many phenomena subsequently recognised as atrocities, is often normalised on the one hand, or considered too extreme and abnormal to be believable on the other. That violence against women is pervasively normalised in some countries and environments with concentrations of refugees may also have the effect of women themselves not believing that their experiences may form part of a claim for refugee status.54

In this vein, a lawyer from Human Rights First noted that normalisation of violence against women meant some of her Central American clients do not realise that the intimate partner violence or gang violence situations they have fled – for example to avoid being forced into sexual servitude to gang members who ‘claim’ women as their girlfriends - give rise to gender-based asylum claims as political opinion or membership of a particular social group. Meghana Nayak similarly noted that women will often be unaware that the gender angle might actually be their strongest case for asylum.

A member of the SUAKA Secretariat in Indonesia noted that female Rohingya clients will often state they do not need to be interviewed, saying ‘my husband will tell you everything’. Part of this reluctance may be due to traditions whereby men speak to authorities on behalf of the family, or a general fear of formal interviews with authority figures.

Whatever the explanation for any reluctance to disclose claims, where women whose life experiences give rise to claims for refugee status in their own right refuse to be interviewed these experiences stay silent through the RSD and appeals process. This becomes a particular problem if they are attached to a family application and the head of the family’s claim for refugee status is rejected. For an asylum applicant to raise a claim late – after the primary stage rejection or even after the initial application is submitted – may impugn her credibility. However this is often the way with claims involving sexual violence, and where the asylum seeker is ashamed, faces community stigma or isn’t aware enough of refugee law in her host country to realise she has a claim in the first instance.55

Interviewees in all countries visited remarked that having access to a good lawyer makes a significant difference to women presenting a gender-based asylum claim, both in terms of awareness that a claim exists and in terms of successfully presenting a case to decision makers.56 These observations are in keeping with Deborah Anker’s argument that developments in decision making recognising gender-based asylum over the past 20-30 years are thanks to ‘bottom-up’ advocacy and representation.57

At intake interview stage (before a formal asylum application is filed), Belgian authorities routinely provide women and girls with a booklet entitled Women, girls and asylum in Belgium: information for women and girls who apply for asylum. The booklet, available in nine languages, outlines the RSD procedure and

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56 Author’s conversations with the Center for Gender and Refugee Studies, New Zealand’s Immigration and Protection Tribunal, Human Rights First, Judge Katelijne Declerk, SUAKA
57 Anker, D 2014, ‘Legal change from the bottom up: The development of gender asylum jurisprudence in the United States’, in Arbel, E., Dauvergne, C. and Millibank, J. (eds), Gender in Refugee Law: from the Margins to the Centre, Routledge, Chapter 2
grounds for recognition of refugee status including a detailed account of what to expect at an asylum interview. The text emphasises the confidential nature of asylum interviews and the importance of disclosing relevant but personal information. The booklet contains statements prompting clients to think about how their experiences as women may give rise to asylum claims. For example:

Many reasons may lead a woman to flee her country. Some of these may be the same as the reasons that also make men flee their country, but other reasons, situations, acts of persecution, may specifically concern women.58

This *Women, girls and asylum* booklet has a section entitled *This may concern you...* dedicated to issues that may affect female asylum seekers in particular. This section states FGM, domestic violence and human trafficking are crimes according to Belgian law. It also provides the free call number for the Belgian police and details on family planning, HIV/AIDS and mental health services available to asylum seekers in Belgium.

The Belgian pamphlet is a low-cost measure prompting clients to think about how to relate their narratives in relation to the RSD process to help decision makers understand what it is they fear, and to talk to their lawyers59 or advocates about potential gender-based claims. It also ensures they have contact numbers for mental health providers should they wish to contact them at any time during the RSD process.

**While it is not for a decision maker to construct an asylum seeker’s case, decision makers systematically inform asylum seekers of the framework being used to assess their application. Furthermore, it is arguably more efficient to encourage all potential claims out onto the table at first instance decision stage, as opposed to leaving potentially lengthy and costly appeals processes to sort out which claims are raised late**

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59 Asylum seekers in Belgium are routinely provided with legal assistance.
ingenuously and which due to fear or lack of awareness. There is therefore already an established system for bureaucrats, including decision makers, to explain the Convention grounds, as codified in Australian domestic law, to potential refugees. Lawyers, advocates, bureaucrats and/or decision makers could potentially make use of awareness-raising material to women and girls as the Belgians have done.

Information about the interview and assessment process

Interviewees mentioned knowledge of the RSD process as a mitigating factor for client stress levels. The Legal Aid Coordinator, SUAKA, noted that even seemingly minor incidents – such as one asylum applicant being called before another when multiple UNHCR interviews are listed for the same time – can cause significant stress for asylum seekers who are not briefed on how the RSD system works.

Interviewees in the United States were concerned that some clients did not fully disclose gender-sensitive claims at so-called ‘credible fear interviews’ on the border with Mexico as they are given little information about the purpose of such interviews and refugee law, unsure about whether or how to articulate their gendered experiences, and may be recently traumatised from gender-based violence occurring on the journey to the United States. If they fail a ‘credible fear interview’, asylum seekers need to articulate their cases in an open court under cross-examination from a government attorney or face deportation.

Participants commented that interviewers can do something to reduce stress associated with an interview by explaining why they are interested in asking certain questions, how they plan to structure their interview and what will happen next in the process.

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60 Author’s conversations with SUAKA, Center for Gender and Refugee Studies, The Office of the Commissioner General for Refugees and Stateless Persons.
61 Author’s conversations with SUAKA, UNHCR Indonesia, the Center for Gender and Refugee Studies, Human Rights First
Belgium’s *Women, girls and asylum* booklet provides concrete, printed information regarding what to expect through the RSD process, including what to expect at an asylum interview, why it is important to disclose potentially sensitive information to government officials in this context and what happens if an asylum application is rejected. This booklet is available in nine languages – both of Belgium’s national languages, English and several languages relevant to the country’s caseload of female asylum seekers. One potential benefit of the booklet being small and portable is that women are physically provided with contact numbers for emergency services, and are able to refer to its contents when considering what to disclose at their RSD interview/s.

A measure resembling this Belgian publication may be a low-cost way to ensure female asylum seekers are presented with consistent information about the RSD process, and how their experiences as women relate to it regardless of whether they have legal representation.

**Recommendation:** *Written information detailing the RSD process are tailored to female asylum seekers and include contact details for social and emergency services.*

**Potential courses of action:** Centralised information distributed to all female asylum seekers at time of initial asylum claim. For instance, at arrival interview for those who arrive in Australia unlawfully, on receipt of asylum application for those who apply while in Australia holding another visa, in immigration detention for those who overstay other visa subclasses and claim asylum pre-deportation.

Legal professionals and other advocates could put together written material, particularly if there is a lack of centralised publications.

**Recommendation:** *Interviewers remain transparent about the purpose of their interview in the RSD process, and confidentiality.*
The interview itself: *trust me*

Interviewees consistently stated that **building trust and rapport is critical for an interviewer to elicit the detail about gender-based asylum claims** required to present or decide a case. Most interviewees then went on to state that doing so is difficult, particularly for those assessing asylum applications as the decision maker-client relationship does not naturally lend itself to trust and rapport. Nevertheless some practical measures were proposed to assist with this task, namely:

- Explicitly acknowledge the confidentiality of the interview space and what might be done with any record of the interview and information disclosed therein.

- Allow sufficient time for the client to express their narrative uninterrupted.

- Explain why certain topics are being discussed, and providing a ‘roadmap’ of the interview.

- Avoid asking for gratuitous detail of traumatic incidents.

- Pay attention to the physical environment.

- Refer to resources such as interviewing guidelines, and in the case of Belgium the Gender Coordinator as needed.

Interviewees in Indonesia agreed that assuring clients of confidentiality where it applies is critical for establishing enough trust and rapport for clients to discuss gender-sensitive claims. The Legal Aid Coordinator at SUAKA stated that during an interview with a client, where she takes a record of their experiences and
fears, she will generally assure them three times throughout that everything said in the room is confidential.

**Interviewees repeatedly stated that allowing adequate time for interviews where a client has experienced gender-based violence was crucial for getting relevant testimony from that client while minimising the risk of re-traumatisation.** The Belgian Commission’s general interview guidelines specifically state that fifteen minute breaks should be taken after every ninety minutes of interviewing, with more frequent breaks for traumatised asylum seekers. New Zealand’s Immigration and Protection Tribunal place significant emphasis on not rushing witnesses, with members there running hearings over more than one business day if required. SUAKA representatives advised against rushing interviews, particularly in cases where there are mental health concerns. Senthorun Raj advises that asking open-ended questions such as ‘What drew you to this country?’ can encourage asylum seekers to disclose claims in a way they are comfortable with. During these conversations, interviewees that the idea behind allotting adequate time is to allow clients the time and space to relate their narrative without the pressure of tight interview timeframes and the interviewer constantly cutting them off before important detail is disclosed.

When asked what, based on her years of experience hearing women’s cases, she would tell decision makers to do to run a good interview with a woman whose case clearly indicates past gender-based violence, Judge Katelijne Declerck of the Belgian immigration appeals court responded, ‘Don’t rush them. Let them tell their story in their own time,’ adding, ‘and don’t pry’. Some things do not need to be said in a formal interview environment, and some things are not material to an asylum decision. That Judge Declerck advised allowing sufficient time when the workload for a Belgian immigration judge can involve hearing 20 cases in a single morning speaks volumes for the importance of her point.

Judge Declerck’s comments relate to a second issue raised by multiple members of New Zealand’s Immigration and Protection Tribunal, namely that asking a client to recount a traumatic incident such as a sexual assault should be avoided
if possible. An RSD manager at the UNHCR in Indonesia advised, in accordance with the UNHCR gender guidelines, that asking about the circumstances surrounding a traumatic event is preferable to asking for a description of the event itself. It was generally agreed that if it is possible to grant asylum without asking about such an incident, this is preferable for the sake of the client’s mental health.

Blaine Bookey from the Center for Gender and Refugee Studies noted that asylum interviews are part of an intensive process. They can intrinsically be retraumatising, and sometimes a lawyer or decision maker cannot help but ask for details about a traumatic event. Providing a roadmap upfront regarding how an interview will run, what topics will be covered and when the interviewer is planning to ask about the incident in question can be useful for mitigating the client’s stress.62 Ms Bookey also commented that explaining why certain issues are of interest is an important way for interviewers to build rapport. At the time of the author’s conversation with her, Blaine had recently interviewed a survivor of domestic violence. She described emphasising the client’s agency vis-à-vis their contract, particularly her status as a signatory with the power to cancel her representation, as one way of building self-esteem, trust and encouraging the client to speak out.

Opportunities for asylum seekers to share their narratives prior to, or outside of formal interview processes can be valuable. Senthorun Raj talked about community groups bringing asylum seekers in the United Kingdom together. These groups allow asylum seekers to tell their stories in a more relaxed manner than in a formal interview. This allows clients to become used to talking about their fears and experiences before the stress and pressure of a formal immigration interview occurs. Given that clients may not have disclosed their fears, sexuality or past trauma to many or indeed anybody in the past, these early opportunities to speak out in front of a like-minded audience make it easier to discuss personal and sensitive matters in front of decision makers later in the

62 Author’s conversations with the Center for Gender and Refugee Studies, the Office of the Commissioner General for Refugees and Stateless Persons, UNHCR Indonesia, SUAKA
Decision makers in turn may have a more successful interview in terms of the client disclosing sensitive information pertinent to their case. Meghana Nayak similarly commented that it was important for vulnerable women to have opportunities outside of formal interviews in the RSD process to talk with others about their experiences.

**Recommendation:** Interviewers are permitted flexible time limits for cases where a client’s application indicates gender-based violence.

*Separate interviews*

Whether or not female applicants for asylum are routinely interviewed varied between organisations consulted for this project. SUAKA routinely interviews female clients without the presence of family members, regardless of whether they are the ‘main’ applicant on their family’s asylum claim. This is in part to establish whether they have strong claims for protection in their own right. The UNHCR in Indonesia will often only interview a female applicant who is attached to her husband’s asylum application if there are credibility concerns, or if it appears as though the husband’s claim for asylum may not be strong enough to meet the criteria for grant of refugee status. This essentially appears to the author to be a time-saving measure.

In the Belgian system, all family members attached to an asylum application (with the exception of young children) are routinely interviewed separately at primary decision stage. Furthermore, each family member receives a separate written decision as to the outcome of their asylum application, which they can have mailed or pick up in person. At appeals stage too, women will be asked to appear as witnesses before the immigration appeals court even though they may not be the main applicant on an asylum application. Separate decisions are also issued to each family member at appeals stage.

The Belgian approach to separate interviewing may be time intensive, particularly at primary decision stage. Some women may undergo an
immigration interview when not strictly necessary. However, the author concludes that the thoroughness of the Belgian approach is desirable for the following reasons:

- Women can disclose experiences and fears they may be reluctant to discuss in front of family members. These experiences and fears may give rise to strong asylum claims irrespective of the strength of other family members’ claims.

- In cases where a primary asylum applicant’s refugee status is revoked, family members with claims for asylum in their own right need not fear *refoulément* if these claims have been heard and assessed.

- As noted above, there are potential efficiencies to be gained later in the RSD process from encouraging all claims for asylum out onto the table early on.

- Decision makers and lawyers may potentially identify victims of domestic violence. They may take any such information into account for the purposes of the RSD assessment (for instance, where a woman claims authorities in her home country will not protect her from the perpetrator) and attempt to connect clients with external services as appropriate.

- **This approach ensures women’s experiences do not remain invisible through the RSD process and in associated asylum decisions, guidelines and potentially case law.**

Interviewees stated that, including in cases where there are potential domestic violence concerns, clients are usually amenable to being interviewed separately.
when informed separate interviews are standard process and/or helpful for their credibility assessments.63

Experienced and trained staff should be permitted to maintain a degree of professional discretion. For instance, an exception may be in an asylum interview where a lawyer states they have already interviewed a female applicant without male relatives present, the woman concerned confirms that she has no claim for asylum in her own right and does not wish to have a separate interview and the decision maker sees no reason to proceed with a separate interview (for instance, if the male primary applicant’s claims are very strong).

**Recommendation:** Interviewers offer female applicants for asylum a separate, private interview.

**Recommendation:** Where a woman requests a female interpreter without notice while being interviewed separately, options for engaging telephone interpreters are explored.

**Interior matters**

Multiple interviewees raised the issue of room set-up. When it comes to creating conditions conducive to discussing gender-based violence, the physical environment matters.

**Physical comfort is conducive to an effective interview.** Meghana Nayak suggests asking a client outright what would make her comfortable enough to discuss past violent incidents, acknowledging any requests to alter the physical environment and either obliging or explaining why changes cannot be accommodated.

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63 Author’s conversations with SUAKA, New Zealand Immigration and Protection Tribunal, the Office of the Commissioner General for Refugees and Stateless Persons
When interviewing a client in a detention centre she knew to be kept at a cool temperature, lawyer Blaine Bookey from the Center for Gender and Refugee Studies took a scarf along with her supply of tissues and water. She tried to find a quiet place to conduct her interview. These items help the client feel physically comfortable enough to provide a detailed statement while also building trust with her lawyer. Acknowledging shortcomings where optimal physical conditions cannot be reached is another way to build rapport with clients.64

The New Zealand Immigration and Protection Tribunal hearing rooms are designed so that the tribunal member is seated at an equal height to the asylum seeker. One member commented that she thought this was important to building the trust and rapport necessary for disclosing and discussing gender-based violence. Another member recalled trying to organise hearings with unaccompanied children in a less formal venue than the Tribunal offices, as wherever the client feels most comfortable is most conducive to a successful hearing.

The Center for Gender and Refugee Studies proposed that the protocols it recommends for room setup when interviewing children could apply to interviewing other vulnerable clients including women who have experienced gender-based violence. Specifically, this guidance recommends seating arrangements that facilitate eye contact between the interviewer and asylum seeker unless culturally inappropriate (see figures 1 and 2 for examples). Additionally, informing clients that doors to interview rooms are not locked and that they are free to leave at any time can help mitigate stress and build rapport with clients who have come to fear government officials or formal interviews. The Belgian Commission’s interview guidelines also advise eye contact between the interviewer and asylum seeker.

64 Author’s conversation with Meghana Nayak, Center for Gender and Refugee Studies
Judge Katelijne Declerck from the immigration appeals court in Brussels provides an example of working within existing constraints to provide the best-possible physical environment for appealants whose files indicate violent incidents that are crucial to the case. Judge Declerck works within an open court system where multiple appeals cases will be listed for the same session. Katelijne simply leaves these gender-sensitive cases until last so that parties involved in other cases have left the courtroom. She feels that with an empty courtroom and a female interpreter, women will speak up for themselves.

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An accurate record of what is said

It was noted that of those countries visited only New Zealand routinely takes audio recordings of asylum interviews. This occurs at primary decision and appeals levels. In other countries, decision makers at primary decision stage are responsible for compiling a written record of asylum seekers’ testimony at interview.

This is arguably onerous for the decision maker and stressful for the asylum seeker as they watch the decision maker’s interpretation of their every word jotted down. This approach mandating that decision makers must create a written transcript also arguably hampers decision makers’ ability to use body language such as eye contact to show they are actively listening which could help build rapport.

Moreover, these transcripts are sometimes made available to appeals bodies. In Belgium it was noted that the immigration appeals court receives some transcripts that include behavioural comments, such as whether or not an applicant appeared angry or reluctant to answer questions. Further, it is not made clear to the appeals court that the decision makers themselves are the authors of these comments. Although interviewees spoke highly of United States primary decision makers in general, bias and selective content in interview transcripts were also identified as issues with some cases.\textsuperscript{66} In any event, an accurate recording of interview is surely useful in instances where there is a dispute upon appeal regarding what exactly was said at interview.

\textsuperscript{66} Author’s conversations with Human Rights First, Center for Gender and Refugee Studies.
One officer in Belgium noted that written records of intake interviews (brief interviews with asylum seekers prior to their formal asylum interview) are sometimes ambiguous, contain anomalies and potentially contain errors. A lack of audio recording makes it difficult for decision makers to determine whether an anomaly in an applicant’s biographical information at intake interview indicates they have provided inconsistent identity information, for instance, or whether the person conducting the intake interview has made a mistake on the paperwork.67

It is proposed that relevant organisations in Australia continue to record asylum interviews, both to resolve disputes at administrative review or judicial review and to reduce the note-taking burden on decision makers so that they may focus on listening, making the notes that will be most useful to them later and building rapport for an effective interview. It is the view of the author that organisations should continue to inform asylum seekers of the purpose of recording the interview, provide reassurance that the interview is confidential, and ask for informed consent for the recording.

**Recommendation:** Australian officials continue to record asylum interviews at arrival, primary decision and appeals stages.

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67 Author's conversation with a Belgian Commission employee who is a former decision maker.
Where are the client’s children?

According to the UNHCR, female refugees who are pregnant or heads of households are considered particularly vulnerable, and in 2012 the European Parliament identified availability of child care as a factor for achieving a gender-sensitive assessment of women’s claims. Interviewees generally spoke about the likelihood of women being included on a family application for asylum with their spouse and any children. The question of where these children go while their mother or carer is being interviewed is therefore pertinent as female clients may not wish to speak as frankly or disclose traumatic incidents in front of children.

The children’s needs should also be taken into account. One member of the New Zealand Immigration and Protection Tribunal noted that she would ask breastfeeding mothers whether they wished to keep young infants with them during interviews as firstly infants require milk at short intervals and secondly there is ‘nothing worse’ than having a client stressed and unfocused in an interview because her baby is potentially crying in the waiting room. The Belgian Commission’s interview charter specifically addresses the issue of infants and again the theme of professional discretion:

Unless they are under 12 months of age, children are not allowed to be present during the interview...Under exceptional circumstances justifying the presence of the child during the interview...the protection officer may authorize the child to remain present. If both parents are

present, one of them may be asked to take care of the child outside the interview room while the other parent is being interviewed.\textsuperscript{70}

**Interviewees noted that female clients with children are advised it is best not to bring children to an asylum interview. However it was also acknowledged that sometimes asylum seekers do not have alternative care options.\textsuperscript{71}** In 2012 the European Parliament noted that, of countries included in its report only Belgium and the United Kingdom provided on-site child-care for asylum seekers attending a primary interview.\textsuperscript{72} At the time of the author’s visit there was still a child-friendly room with toys attached to the general waiting area at the Commission, but no qualified carer on site. While the author was assured during her visit that Commission staff regularly look in on the room, there was a sign on the door stating that children should not be left unattended.

At the very least, the Commission continues to provide a space that is more child-appropriate than the confines of a standard waiting room where families can sit and play with children while adult parties are interviewed.

The New Zealand Immigration and Protection Tribunal also maintains a selection of children’s toys that clients’ children can entertain themselves with in the waiting area, or in very rare cases at the back of a hearing room if no parent or carer is able to supervise them while their primary carer is interviewed.

In cases where the client is an unaccompanied female minor who has experienced gender-based violence, the Center for Gender and Refugee Studies maintains specific guidance in their *Child Asylum Manual*. This Manual is

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\textsuperscript{70} Office of the Commissioner General for Refugees and Stateless Persons, 2011, 'Interview Charter', p.8

\textsuperscript{71} Author’s conversations with UNHCR Indonesia; Office of the Commissioner General for Refugees and Stateless Persons, Belgium; New Zealand Immigration and Protection Tribunal

available from the Center by application. The author recommends referring to this manual in conjunction with UNHCR and domestic guidelines on interviewing children where appropriate.

Although not all pregnant asylum seekers will have gender-based asylum claims, treatment of pregnant asylum seekers is pertinent to a gender-aware approach to interviewing asylum seekers. According to the Center for Gender and Refugee Studies, it is a common occurrence for pregnant asylum seekers to be granted continuances in the asylum process on the basis of their pregnancy. The author urges that gender and interviewing guidelines pay explicit attention to the physical needs of pregnant asylum seekers and allow for flexibility with interview scheduling.

**Recommendation:** Organisations create child-friendly waiting areas where possible and communicate their existence to clients.

**Potential courses of action:** Organisations provide a selection of toys or activities to engage children who are waiting for parents to be interviewed. Soft toys and toys without sharp edges can be provided if agencies have security or safety concerns.

Establishment of formal childcare, or funding existing staff to undergo formal child care training, if there is demand to support this.

**Recommendation:** Professionals discuss child care needs with clients prior to formal interviews commencing.

**Recommendation:** Mothers of infants aged under twelve months are permitted to keep their children with them during formal asylum interviews. Breastfeeding mothers are provided with breaks and privacy as needed to feed their children, and interviewers remain mindful that these breaks may be unscheduled.
Recommendation: Gender and interviewing guidelines pay attention to the physical needs of pregnant asylum seekers.

Working with interpreters

The Center for Gender and Refugee Studies proposes that many practices in its Child Asylum Manual apply to interviewing women and girls who have experienced gender-based violence. The Manual advises that to build the trust and rapport for an effective interview, interviewers should avoid referring to asylum seekers in the third person or talking to the interpreter directly.73 Again, eye contact between the interviewer and interviewee is generally best practice.74 With reference to recommendations about country information, the author proposes that interviewers with nuanced understandings of client’s home countries will have a more detailed understanding of when abundant direct eye contact might not be culturally appropriate.

The United States Citizenship and Immigration Service gender guidance warns that interpreters may ‘dilute’ an interviewer’s question or asylum seeker’s testimony in order to make themselves feel more comfortable. For instance, they may substitute the word ‘harm’ for ‘rape’.75 Some interviewees agreed that this was a potential issue when working with interpreters.76 In 2012, the Gender Unit at the Belgian Commission organised gender-awareness training sessions specifically for interpreters working on asylum cases, and another round of training was scheduled for shortly after the author’s visit to Belgium.

73 Center for Gender and Refugee Studies 2016, Children’s Asylum Manual: A Resource for Practitioners, April, p.88
74 Center for Gender and Refugee Studies 2016, Children’s Asylum Manual: A Resource for Practitioners, April, pp. 85-88
76 Senthorun Raj, Center for Gender and Refugee Studies; Conversations at the Office of the Commissioner General for Refugees and Stateless Persons, Belgium
Regardless of the availability of interpreter training, remaining mindful of the potential for diluted testimony - particularly in cases where there are minor credibility issues or a client’s testimony at interview does not seem to match the nuances in their written application - may be the most practical course of action for interviewers to follow. Follow up questions and reminders to the interpreter that they need to interpret verbatim may also be useful.

Senthorun Raj notes that although they may be professionals, interpreter’s emotions and reactions to what is said at an asylum interview contribute to the emotional dynamic in the room just as those of the other participants do. Mr Raj adds that interviewers should remain mindful that certain words might have derogatory connotations in a client’s home language. *When these words - such as the word for ‘gay’ in some languages, for instance – go through an interpreter, that derogatory connotation reaches the client.* This in turn damages rapport between the interviewer and client, and potentially limits the level of detail the client is willing to disclose in the moment. Asking open ended questions, or asking the question ‘How did you come to realise that you were different?’ instead of ‘How did you come to realise that you were gay?’ can help an interviewer avoid this pitfall.

In all jurisdictions visited, women were able to request a female interpreter if they wished. In Belgium, women are routinely asked some weeks prior to their primary interview whether they would like a female interpreter.

It is noted that, in an article cited extensively toward the beginning of this report, MacPherson et al name disclosing in front of interpreters from a persecuting majority as one barrier to gender-based claims for asylum emerging. On this point, the author acknowledges that interviewers are prevented from requesting accredited organisations provide an interpreter from a particular ethnic background or locale for anti-discrimination reasons. To deny a qualified interpreter paid work based on their ethnic or geographic background would be to impute them with certain opinions and also be blatantly unlawful under equal
opportunity legislation. The author suggests that the most appropriate course of action is for interviewers to explicitly remind everyone concerned of the confidentiality and professionalism required in RSD interviews.

One significant drawback with the United States system vis-à-vis professionalism and interpreters is that asylum seekers are not provided with interpreters for their primary asylum interviews. In fact, as made clear in interviews with the Refugee and Immigrant’s Fund displayed at the What this journey breeds exhibition, asylum seekers in the United States do not receive any services or support from the state until they have gone through the RSD process and their refugee status has been confirmed. When an asylum application is lodged in the United States, the asylum seeker receives a formal notice to provide his or her own interpreter. Asylum seekers sometimes use family members or friends, as they don’t have the means to employ the services of a professional interpreter. The risk that a client may not fully disclose her fears or experiences, particularly where these fears and experiences involve taboo topics, in front of a family member is obvious. Even for lawyers in the field, finding qualified, available interpreters at a reasonable price can be problematic in the US.

The aforementioned Women, girls and asylum in Belgium booklet emphasises that all parties including interpreters are bound by confidentiality in an asylum interview. The Legal Aid Coordinator at SUAKA emphasises that everything said in the room is confidential, an approach that implicitly includes the interpreter.


78 Nayak, M 2015, Who is Worthy of Protection? Gender-based Asylum and US Immigration Politics, Oxford University Press, Ch.2

79 Authors Conversations with Meghana Nayak, Human Rights First, Center for Gender and Refugee Studies.
Whichever approach is taken, it is recommended that the confidentiality of the asylum interview space be emphasised in a language the client understands. This may mean the interviewer relying on the interpreter’s accurate interpretation of this point to the asylum seeker, but if professional and accredited interpreters are used there should be minimal concern that the asylum seeker is accurately conveying the confidentiality of the space.

**Recommendation:** Interviewers avoid referring to asylum seekers in the third person or maintaining eye contact only with the interpreter, and that these points be written in to interviewing guidelines.

**Recommendation:** Asylum seekers and interpreters are both reminded, in a language the asylum seeker understands, that the interview space is confidential.

**Potential courses of action:** Professionals continue to inform asylum seekers of the confidential nature of asylum interviews.

Such information could be included in any written material provided to asylum seekers about the RSD process.

Appeals hearings where the interpreter is sworn in allow for the interpreter to explain this part of proceedings to the asylum applicant.
Expectations, Assumptions and Assessments

As Michelle Foster noted in 2012, assessing gender-based claims within required legal frameworks can be less than a clear-cut matter.80 Some experienced decision makers interviewed did not think assessing gender-based violence claims against the Particular Social Group ground was a convoluted task.81 Others, namely lawyers and advocates, noted that they would present cases under alternative Convention grounds if possible.82 The particular social group ground still appears to be seen as being open to more interpretation and therefore a less certain bet for the client.

Meghana Nayak’s book *Who is Worthy of Protection? Gender-based Asylum and U.S. Immigration Politics* raises some valuable points about the assumptions interviewers have when presenting or deciding asylum cases. Dr. Nayak utilised data from immigration decisions in the Center for Gender and Refugee Studies database and spoke with industry professionals, analysing the language used in gender-based persecution cases. She found that asylum seekers are more likely to have their applications approved if they present their narrative to fit certain types of ‘frames’, while those who do not are more likely to be assessed as having credibility problems. In other words asylum seekers with gender-based claims need to look like the right kind of victim in order to get a positive credibility assessment, in keeping with decision makers’ expectations of what a person in the asylum seeker’s place should do. Women who have been trafficked, for instance, have a stronger chance of receiving a positive credibility assessment and ultimately being recognised as a refugee if they were rescued by government agencies than if they escaped their traffickers. Victims of domestic violence are more likely to be granted asylum if they make strong statements.

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81 Author’s conversations with UNHCR Indonesia, New Zealand Immigration and Protection Tribunal
82 Author’s conversations with SUAKA, Human Rights First
completely denouncing their family and culture than those who express a reluctance to cut ties with their roots.83

Dr Nayak calls these narratives the ‘worthy victim frames’. Their major drawbacks for asylum seekers are first that asylum seekers who do meet the criteria for grant of refugee status but whose narratives do not fit the frames may have their credibility impugned, and that secondly some may alter the truth to fit the narrative and in turn have their credibility impugned anyway if they are found to have inconsistencies or implausibilities in the altered part of their narrative.

McPherson et al similarly argue that in the refugee context, a polarisation of normalisation of violence against women on the one hand versus certain presumptions of how a rational woman should act on the other may result in RSD decision makers either dismissing gender-based asylum claims as too normal in their presumed social context to constitute persecution, or too unusual to comprise a believable set of claims.84

Randall and Haskell caution that women's responses to trauma may be counterintuitive to everyday wisdom regarding how victims 'should' react and behave, and again urge adequate training of lawyers and other service providers as follows:

Understanding **these complexities of victim responses to traumatization, which are often counterintuitive to popular beliefs about how "real" victims should behave**, is one of the fundamental challenges the crimes of child sexual abuse, sexual assault, and domestic violence pose for the criminal justice system.' As Haskell argues elsewhere, the onus is and should be on the service provider to be

trained to screen for abuse and violence in women’s lives and grasp the complex effects and dynamics this most likely entails.

**Assaulted women’s “victim” responses are often perceived as counterintuitive and this affects their credibility in legal proceedings**, as well as how they are responded to within legal and other systems, phenomena which are well documented in the research and legal literature.\(^{85}\)

Dr Nayak’s work suggests those with sexual orientation claims who do not exhibit expected stereotypical behaviours may find their credibility impugned.\(^ {86}\) Senthorun Raj agrees on this last point, stating that some asylum seekers assume that they need to present evidence of sexual activity in order to be perceived as credible witnesses.

Dr Nayak agrees that self-awareness is key to minimising the damaging effect of assumptions on the part of the decision maker. **All professionals interviewing asylum seekers should constantly be engaging in critical self-reflection and asking themselves why they expect an asylum seeker to present a certain narrative or why they disbelieve something.** Allowing decision makers space to discuss these cases with one another, and potentially with other parties such as social workers or people who have been granted asylum, is one method Dr Nayak suggests for encouraging self-reflection. The Belgian Commission has facilitated discussions between recognised refugees and decision makers, whereby the former are able to provide feedback on the interview process and how they felt about the lines of questioning used.

Senthorun Raj notes that interviewers should do their best to be aware of their own assumptions and stereotyping in relation to sexual orientation claims in particular. Interview questions should therefore be about loving relationships,

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not sexual activity. This point was echoed by an experienced member of the New Zealand Immigration and Protection Tribunal.

**Recommendation:** *All professionals interviewing asylum seekers are encouraged to continually engage in critical self-reflection in relation to identify biases and assumptions in gender-related cases.*

**Potential courses of action:** Gender-sensitivity training as recommended elsewhere in this report.

Establishing forums for professionals to discuss gender-based asylum cases, with one another and with external stakeholders.

Managers randomly audit gender-based asylum cases as recommended elsewhere in this report.
CONCLUDING REMARKS AND RECOMMENDATIONS

The journey thus far has allowed the author to have insightful conversations with advocates, lawyers, academics and decision makers regarding best practice in uncovering gender-based asylum claims, interviewing female asylum seekers about their fears and experiences of gender-based violence, and assessing gender-based asylum cases.

The recommendations that follow stress that an industry foundation of professionally trained and well-resourced advocates, lawyers and decision makers, with access to support from psychologists or social workers and specialised sources of guidance for gender-based asylum cases, is required for effective and appropriate assessment of gender-based asylum claims.

At the same time, seemingly simple measures like creating child-friendly waiting areas and stressing confidentiality where it applies can assist a client to feel comfortable enough to disclose sensitive information.

Continued commitment to a gender-sensitive approach to assessing women’s asylum applications will ultimately help ensure that those women who are in fact eligible for refugee status do not fall through cracks in the system.

The author hopes that by sharing this journey and its resultant recommendations with lawyers, decision makers, advocates, academics and other RSD professionals in Australia, organisations will consider how the recommendations might work with their existing practices. The author acknowledges that RSD professionals may already be implementing some of the points below; she hopes that this report encourages them to look for further training partnerships, guideline champions and other ways to incorporate a renewed commitment to working with female asylum seekers in a gender-sensitive manner.
Recommendations

Guidelines

1. RSD professionals are introduced to gender guidelines (UNHCR and/or organisational) or in induction training and reminded of their existence in refresher training.
2. Guidelines are updated regularly, specifically in response to case law, and contain sample arguments for or against common claims sets in legally acceptable language.
3. Guidelines have designated custodians and champions.
4. Gender guidelines used by decision makers are publicly accessible.
5. Operational guidelines regarding asylum interviews explicitly address the physical environment.
6. Gender and interviewing guidelines pay attention to the physical needs of pregnant asylum seekers.
7. Managers randomly audit gender-based persecution cases for guideline compliance.

Case Allocation

8. Asylum applications indicating experience or fear of gender-based violence are allocated to experienced, trained professionals who are amenable to taking them.
9. Experienced and trained men are included in the pool of people who take on gender-based asylum cases, but that they are supported to reallocate a case to a woman should they see appropriate, in consultation with the asylum seeker concerned.
10. Female asylum seekers are routinely and explicitly asked as part of the application process whether they would prefer a female lawyer, interpreter and decision maker.

Training and Resourcing

11. Academics teaching Refugee Law take steps to make training in gender sensitivity and working with vulnerable clients available to their students.
12. All professionals interviewing asylum seekers are encouraged to continually engage in critical self-reflection in relation to identify biases and assumptions in gender-related cases.

13. Professionals have a designated peer, or network of peers, to consult about interview techniques, case law and assessment and country of origin information vis-à-vis gender-based asylum claims. These resources could double as guideline custodians/champions.

14. Professionals interviewing female asylum seekers at all stages in the RSD process are offered training from qualified social workers and/or psychologists in appropriate interviewing techniques for working with vulnerable witnesses. This training encompasses effects of trauma on memory and subsequent behaviour.

15. Country of origin research is well-resourced, and that professionals including primary decision makers and reviewers receive country research training as part of their induction.

16. Country research staff build dedicated background papers on gender-related claims sets for high caseload countries into their forward research programs.

17. Both country of origin researchers and decision makers are encouraged to nominate preferred caseloads where they have expertise in a particular country or claims set.

18. Professionals working in RSD are supported to exercise self-care.

19. Professionals working in RSD are provided with formal and informal opportunities to exercise self-care.

**Information Provision**

20. Written information detailing the RSD process are tailored to female asylum seekers and include contact details for social and emergency services.

**Interviewing**

21. Australian officials continue to record asylum interviews at arrival, primary decision and appeals stages.
22. Interviewers offer female applicants for asylum a separate, private interview.

23. Interviewers are permitted flexible time limits for cases where a client’s application indicates gender-based violence.

24. Mothers of infants aged under twelve months are permitted to keep their children with them during formal asylum interview processes if they wish. Breastfeeding mothers are provided with breaks and privacy as needed to feed their children, and interviewers remain mindful that these breaks may be unscheduled.

Interpreters

25. Where a woman requests a female interpreter without notice while being interviewed separately, options for engaging telephone interpreters are explored.

Data

26. Organisational systems capture data on gender-related claims by country and type of harm feared, so as to identify training, country of origin research and any specialisation/taskforce needs.

The Client’s Children

27. Professionals discuss childcare needs with clients prior to formal interviews commencing.

28. Mothers of infants aged under twelve months are permitted to keep their children with them during formal asylum interviews if they wish. That breastfeeding mothers are provided with breaks and privacy as needed to feed their children, and that interviewers remain mindful that these breaks may be unscheduled.
FURTHER READING

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87 cgrs@uchastings.edu


United Nations High Commissioner for Refugees 2002, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/ or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/02/01, 7 May

**Credibility and identity integrity assessments:**


**Gathering non-linear testimonies:**

Koomen, J 2013, ‘“Without these Women, the Tribunal Cannot Do Anything”: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda’, *Signs*, Winter, pp.254-277

Malone, R and Strand, R W 2015 ‘Forensic Experiential Trauma Interview (FETI)’, White Paper, United States Army Criminal Investigation Command Forensic Behavioral Science, 30 August
GLOSSARY

Decision maker: Official who decides whether to grant refugee status to an asylum seeker. Used in this report to describe both those who decide applications at first instance and those who decide appeals.

EQ: Emotional quotient, or emotional intelligence.

Female Genital Mutilation (FGM): as defined by the World Health Organisation, procedures involving partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. Sometimes referred to as ‘female genital cutting’.

Gender-based persecution: A term describing cases where persecution as defined in international and domestic law, which the victim cannot seek effective protection from in their home country, occurs for reasons involving a person’s sex or gender.

Gender-based violence: A term describing cases where violence is perpetrated against a person for reasons of their sex or gender.

Honour Killing: murder of a family or social group member due to the belief that the victim brought dishonor upon their family or community. The death is seen to restore the family or community’s honour.

Interviewer: Used in this report to describe persons interviewing asylum seekers during the RSD process. For example, asylum lawyers and decision makers.

LGBTIQ: Acronym used to refer to lesbian, gay, bisexual, transgender, intersex and queer members of asylum seeker communities.
**Persecution**: Serious harm as defined by law, for reasons of a person’s race, religion, nationality, membership of a particular social group, or political opinion.

**Refoulement**: Under international law, the forcible return of a person to a country where they are liable to be persecuted.


**Refugee Status Determination (RSD)**: The application process whereby it is decided whether somebody meets criteria to be granted refugee status.

**RSD professional**: Used in this report to describe actors actively working on refugee status determination, namely lawyers, asylum decision makers and immigration judges.

**SUAKA**: Indonesian language word for asylum. Name of the Indonesian Civil Society Network for Refugee Rights Protection.

**UNHCR**: United Nations High Commissioner for Refugees.
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88 Photo credit: Erin Bromfield, August 2016.