

MECHANISMS FOR PROTECTION THE RIGHTS OF WOMEN REFUGEE UNDER INTERNATIONAL LAW

Sumullika DOWSUWAN¹, Juntratip SUKHUM¹ and Panuwat PANKAEW¹

¹ Faculty of Law, Thaksin University, Thailand; sumullika.d@tsu.ac.th, sumul.som@hotmail.com (S. D.); juntratip@tsu.ac.th (J. S.); panuwat.p@tsu.ac.th, poundpanuwat777@gmail.com (P. P.)

ARTICLE HISTORY

Received: 7 November 2025 **Revised:** 21 November 2025 **Published:** 9 December 2025

ABSTRACT

This research article aims to study the mechanisms for protecting the rights of women refugees under international law. The study employs a qualitative research methodology, utilizing documentary analysis. Data sources include key international instruments as follows: the 1951 Convention relating to the Status of Refugees, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), relevant United Nations High Commissioner for Refugees guidelines, and academic literature. The research finds that the 1951 Convention does not directly address gender dimensions, protection mechanisms for refugee women have been systematically developed through the progressive interpretation and integration of human rights principles. Three core mechanisms were identified as follows: 1) mechanism for the elimination of discrimination against women, it rooted in CEDAW and this focuses on achieving de facto equality in access to resources, reproductive health, and education. 2) mechanism for preventing and responding to gender-based violence (GBV), women's heightened risk of sexual violence and trafficking, this mechanism mandates the provision of safe shelters and trauma-informed support processes. 3) mechanism for recognizing gender-based persecution, it serves as the legal gateway for asylum by progressively interpreting "Particular Social Group" to encompass women facing domestic violence, forced marriage, or persecution against LGBTQ+ individuals. These mechanisms collectively form a gender-sensitive protection framework that requires serious and consistent implementation at the State level.

Keywords: Women Refugee, Mechanism, Right, International Law

CITATION INFORMATION: Dowsuwan, S., Sukhum, J., & Pankaew, P. (2025). Mechanisms for Protection the Rights of Women Refugee under International Law. *Procedia of Multidisciplinary Research*, 3(12), 32.

INTRODUCTION

Every human being, by virtue of birth, possesses inherent human dignity and is entitled to equal protection of rights without discrimination. However, current situations of intense conflict, both internal and international—such as Syria, Afghanistan, or Myanmar—have compelled massive numbers of people to abandon their homes and seek refuge in other territories for the sake of their personal safety.

Among all refugees, 'refugee women' constitute one of the most vulnerable groups. Not only do they confront the suffering of displacement shared by male refugees, but they also severely endure gender-specific risks. These risks are not only evident in forms such as sexual harassment, sexual exploitation, forced prostitution, and human trafficking, but are also structurally embedded in restrictions on access to essential resources. Examples include being denied access to necessary women's healthcare or being coerced into accepting unfair labor practices in exchange for security or sustenance.

Although the international community possesses a primary legal framework for refugee protection—1951 Refugee Convention relating to the Status of Refugees (hereinafter "the 1951 Convention")—the aforementioned instrument was drafted in a post-World War II context. Consequently, it emphasized persecution based on political grounds (e.g., political opinion) and largely reflected male experiences (Hathaway, 2005). A result, the instrument is theoretically "gender-neutral" but in practice "gender-blind," as it does not explicitly address gender-based persecution or sexual violence. This gender-blindness within the Convention has created tangible problems in its application. In its early implementation, judiciaries in many countries frequently rejected asylum claims by women fleeing domestic violence or forced marriage. The rationale provided was that such threats belonged to the "private sphere" or were "cultural" matters, and thus did not constitute "persecution" within the meaning of the Convention (Goodwin-Gill & McAdam, 2007).

According to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and notably the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), it has broadly established the principle of gender equality.

A significant legal "gap" arose concerning how to connect the principles of refugee protection as refugee law, which historically centered on political threats, with the principles of women's human rights. A crucial question thus emerges as follows: What mechanisms has international law developed to link refugee protection with women's human rights in order to achieve effective protection for female refugees? A thorough understanding of these mechanisms is imperative, serving as a basis for analyzing gaps in practice and exploring future avenues for effective protection.

This research article therefore aims to examine the mechanisms for the protection of female refugee rights under international law. It focuses on analyzing and synthesizing the conceptual frameworks, principles, and practices developed within the international legal system in order to identify and address the specific needs and risks of female refugees.

LITERATURE REVIEWS

According to the legal basis of international refugee law establishes several fundamental principles that constitute the basic rights of all refugees (Hathaway, 2005). These principles, primarily derived from the 1951 Convention relating to the Status of Refugees and customary international law. The customary international law has two elements as follows: state practice and opinion juris. However, the mechanisms under international law serve as a critical foundation upon which specific mechanisms for protecting refugee women are further developed. These principles include:

The Right to Seek Asylum is a foundational principle, famously enshrined in Article 14 of the Universal Declaration of Human Rights (UDHR) 1948 (Hathaway, 2005). While broad, it is the indispensable starting point that affirms the entitlement of women to flee from threats that endanger their life, freedom, or security.

The Principle of Non-Refoulement as it is considered the most crucial cornerstone of refugee protection (Goodwin-Gill & McAdam, 2007). It is codified in Article 33 of the 1951 Convention relating to the Status of Refugees and is simultaneously recognized as customary international law (Vachiraporn Krischaroen, 2010). For refugee women, this principle is of paramount significance because the "threats to life or freedom" they face may not stem from political persecution in the traditional sense, but from dangers such as forced marriage, female genital mutilation (FGM), or honour killings. Refoulement (or forced return) to face these conditions is likewise considered a violation of this principle.

As the Principle of Non-Discrimination, it states that under article 3 of the 1951 Convention relating to the Status of Refugees (Hathaway, 2005), although it does not explicitly stipulate "sex" or "gender" has been expanded under universal human rights law (Somchai Kasitipradit, 2011) to encompass gender. This is a critical point because, in practice, discrimination frequently occurs through neutral rules that disproportionately impact women (*de facto* discrimination). An example is the distribution of aid exclusively to "Heads of Household," who are typically men, consequently disadvantaging women traveling alone or those who are single mothers.

Furthermore, guarantee of physical safety, refugees possess the right to be protected from violence (Goodwin-Gill & McAdam, 2007). For women, this translates into an obligation for the receiving state to ensure a safe environment within refugee camps or detention centers. This mandate extends beyond protection from external violence, encompassing the prevention of sexual and gender-based violence within the premises (Jaturong Boonyarattanasoontorn et al., 2012; Amnesty International, 2018). Practical measures include, for example, the provision of gender-segregated and adequately lit sanitary facilities and sleeping areas.

As principle of family unity, this principle is recognized in the Universal Declaration of Human Rights and the guidelines of the UNHCR (Hathaway, 2005; Goodwin-Gill & McAdam, 2007). The separation of women from their families, particularly their children, during detention (Phachoenvit Saendee, 2014) not only causes psychological trauma but also dismantles their crucial support networks, rendering them vulnerable to exploitation for survival.

RESEARCH METHODOLOGY

This research article is a qualitative research study, primarily utilizing documentary analysis. This methodology is optimally suited for achieving the research objective, which focuses on analyzing legal frameworks, interpreting instruments, and synthesizing theoretical concepts to understand the evolution of protection mechanisms. It can be seen that the method of research is as follow: data collection and data analysis

Data Collection

This study is based on the collection of relevant data from secondary sources (Secondary Data). The methodology is centered on the analysis and synthesis of key documents as international instruments, soft law, guidelines principle and academic literature.

Data Analysis

The researcher employs Content Analysis of the collected documents. This involves a process of classifying, categorizing, synthesizing, and describing the "mechanisms"—both in principle and in practice—that international law has developed for the specific protection of female refugees. This process includes a comparative analysis of the evolution of the 1951 Convention's interpretation, alongside the growth of women's human rights principles.

RESEARCH RESULTS

The study findings indicate that, due to the distinct risks and vulnerabilities faced by women refugees compared to men, the international community has progressively developed gender-based protection mechanisms. These specialized frameworks are built upon a progressive interpretation of the 1951 Refugee Convention in conjunction with other core international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Goodwin-Gill & McAdam, 2007).

These mechanisms can be broadly categorized into three core areas —Mechanism for the Elimination of Discrimination Against Women, Mechanism for Preventing and Responding to Gender-Based Violence (GBV) and Mechanism for Recognizing Gender-Based Persecution. It can be seen that as follows:

The Mechanism for the Elimination of Discrimination Against Women

This mechanism has its strongest legal foundation in CEDAW (Goodwin-Gill & McAdam, 2007), which obligates State Parties to eliminate prejudice and unfair treatment against all women within their jurisdiction, unequivocally including refugee women. According to context in displacement of refugee, this discrimination often manifests as restrictions on access to fundamental rights, such as education, healthcare, and economic opportunities (Hathaway, 2005). For instance, women in camps are frequently limited in their access to basic resources (Jaturong Boonyarattanasoontorn et al., 2012) or do not receive health services that address gender-specific needs, such as reproductive health care, access to sanitary materials, or adequate maternal care (Kanoknith Thunkunarat & Suthep Chan-Arporn, 2017). Moreover, an affirmative action requirement as mandates that states shall go beyond de jure and implement "affirmative measures" or positive action to create de facto equality in practice. This proactive approach ensures that women are able to genuinely access and exercise their rights without practical barriers.

The Mechanism for Preventing and Responding to Gender-Based Violence

Gender-Based Violence (hereinafter GBV) represents one of the most severe and pervasive threats encountered by refugee women. GBV encompasses any act resulting in physical, mental, or sexual harm or suffering caused by gender inequality (Goodwin-Gill & McAdam, 2007). Refugee women face an elevated risk of GBV across all phases of displacement. This exposure begins during flight, where they may face human trafficking (Amnesty International, 2017; Women's Foundation, 1993) or abuse by smugglers. The risks persist in receiving environments, such as camps or detention centers. Factors like overcrowding, lack of gender-segregated spaces, insufficient security patrols, and reliance on others for resource access significantly increase the risk of rape and assault (Jaturong Boonyarattanasoontorn et al., 2012; Kanoknith Thunkunarat & Suthep Chan-Arporn, 2017). This includes insidious forms of violence such as "survival sex." Consequently, this mechanism focuses on proactive prevention (e.g., gender-sensitive design of shelters), establishing confidential and non-stigmatizing reporting systems, and providing comprehensive remedy and support for survivors, including emergency medical care and essential psychosocial support.

The Mechanism for Recognizing Gender-Based Persecution

This is arguably the most critical legal mechanism, as it directly influences the Refugee Status Determination (hereinafter RSD) process for women. Progressive Interpretation of Persecution: The 1951 Convention defines a refugee based on persecution due to one of five grounds, including "membership of a particular social group" (PSG). Historically, the persecution faced by women (e.g., domestic violence) was often dismissed by receiving states as "private sphere" issues or "cultural matters," rather than political persecution (Goodwin-Gill & McAdam, 2007). As this mechanism operates through the progressive interpretation adopted by UNHCR and national court systems globally. This interpretation confirms that "gender" can serve as the foundational basis for defining a "particular social group" (Hathaway, 2005). This

legal breakthrough demolishes the arbitrary distinction between the "public" (political) and "private" (family) spheres, recognizing that persecution in the following forms can constitute valid grounds for asylum: domestic or intimate partner violence when the home state is unwilling or unable to provide protection. The reasons can claim as persecution as follows: forced marriage or child marriage, female genital mutilation, persecution against LGBTQ+ individuals (Somchai Kasitipradit, 2011).

The aforementioned mechanism is profoundly important as it transforms a woman's status from a "victim of crime" to a "refugee" entitled to international legal protection and the fundamental right of non-refoulement.

Furthermore, the research findings identifying these three core mechanisms clearly reflect the evolution of international refugee law—a jurisprudential shift away from the gender-neutral framework of the 1951 Convention toward a more gender-sensitive framework, informed by the integration of universal human rights principles. The critical jurisprudential dimension to emphasize is that the true driving force or impetus behind this evolution is not the Hard Law provisions of the 1951 Convention, which are often characterized as static and gender-blind. Rather, this progress is largely attributable to Soft Law and international standards. Specifically, the UNHCR Guidelines on the Protection of Refugee Women and the Executive Committee (EXCOM) Conclusions function as the primary mechanisms for Progressive Interpretation, thereby addressing the lacunae (gaps) in the Convention. This interpretive approach is crucial, particularly in affirming that "Gender" can legitimately serve as a foundational basis for defining a "Particular Social Group" (PSG), which is the cornerstone of the third mechanism (Recognition of Gender-Based Persecution). This development demonstrates the remarkable capacity of refugee law to adapt and respond to contemporary protection needs through the authoritative interpretation of competent international bodies, even where the original statutory text was silent or insufficient.

DISCUSSION & CONCLUSION

These three mechanisms —mechanism for recognizing gender-based persecution, mechanism for preventing and responding to gender-based violence and mechanism for recognizing gender-based persecution — operate synergistically and are intrinsically linked in providing comprehensive protection to refugee women. The Mechanism for Recognizing Gender-Based Persecution as the "Gateway" to international protection. Its role is strictly within the Refugee Status Determination (RSD) process, establishing that the woman "is" a refugee under the meaning of the 1951 Convention. Without this mechanism, women fleeing forms of harm perceived as "private," such as domestic violence or forced marriage, risk being denied refugee status (being classified merely as victims of crime, not refugees) and potentially facing refoulement (forced return)—a direct violation of the most fundamental principle of refugee protection (Goodwin-Gill & McAdam, 2007). Conversely, the Mechanism for Recognizing Gender-Based Persecution and the Mechanism for Preventing and Responding to Gender-Based Violence as "Rights during Protection." These mechanisms establish the minimum standards of treatment that receiving states and international organizations must afford to refugee women after they enter the territory (regardless of whether their refugee status has been formally determined). They guarantee that women are able to live safely, with dignity, and be treated equally within refugee camps or detention facilities (Jaturong Boonyarattanasoontorn et al., 2012; Kanoknith Thunkunarat & Suthep Chan-Arporn, 2017). The discussion further highlights that the real challenge lies not in the theoretical existence of these mechanisms, but in the pervasive "Implementation Gap" at the State level. This gap is frequently exacerbated by several practical constraints as follows: lack of official awareness and specialized training among frontline immigration and camp personnel, resource deficits and institutional capacity limitations, and societal attitudes that stigmatize refugees (Roysai Wongsuban, 2018).

A growing tendency for States to prioritize security agendas (Securitization) over humanitarian principles (Sakkharin Niyomsilpa, 2012). Consequently, the translation of international norms as “soft law” into effective and consistent domestic practice remains the primary obstacle to realizing the full spectrum of rights for refugee women.

Based on the analysis of international legal mechanisms, the researcher proposes the following policy recommendations at the international level to ensure more effective and rights-based protection for women refugees as follow topics: policy and legal implementation recommendations, operational recommendations (in Shelters/Detention Centers), guaranteed access to essential women’s health services and capacity building recommendations. The topics will be discussed as follows:

Policy and Legal Implementation Recommendations

Integration of Legal Obligations: States must concretely integrate their obligations under the CEDAW Convention into national refugee management policies. This shift ensures that the protection of refugee women is not perceived merely as a matter of "humanitarian discretion" but is upheld as a mandatory "legal obligation" rooted in human rights law.

Gender-Sensitive RSD Procedures: States should develop and implement Gender-Sensitive Refugee Status Determination (RSD) Procedures. This includes explicitly recognizing gender-based persecution as a valid ground for asylum and requiring the provision of female interviewers and interpreters to foster trust and facilitate the disclosure of sensitive, trauma-related information by survivors.

Operational Recommendations (in Shelters/Detention Centers)

Provision of Safe and Participatory Shelters: Safe shelters must be established with clear segregation of spaces for women and children from men to prevent sexual violence. Furthermore, the design of facilities should incorporate a participatory design process by consulting with refugee women groups to ensure that spaces meet their specific safety and cultural needs.

Guaranteed Access to Essential Women’s Health Services

Access to essential health services for women must be guaranteed. This includes, specifically, reproductive health care, maternal and child care, psychosocial support for survivors of violence, and the adequate and regular distribution of sanitary materials to uphold their human dignity.

Capacity Building Recommendations

Mandatory Staff Training: Mandatory training must be provided for all relevant personnel (e.g., immigration officers, police, detention center staff). Training should focus on the rights of refugee women, GBV protection mechanisms, Trauma-Informed Interviewing techniques, and addressing the specific needs of women in displacement settings.

Empowerment through Education and Livelihoods: States and international organizations should promote education and vocational training for refugee women. This is vital for their self-reliance (Empowerment), reducing dependency, and mitigating their risk of exploitation in various forms.

Moreover, recommendations for future research, as the mechanisms and international standards analyzed in this paper serve as the ideal international standard adhered to by the global community. However, the true challenge lies in the application of these standards in specific national contexts. Therefore, these international mechanisms will be utilized as a framework to evaluate and analyze the practical challenges, legal bases, and actual protection provided to the rights of refugee women in Thailand, which constitutes the objective of the next phase of this research project.

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Data Availability Statement: The raw data supporting the conclusions of this article will be made available by the authors, without undue reservation.

Conflicts of Interest: The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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