
WOMEN AND CHILDREN LAST: STATELESSNESS, SEX, AND THE STRUCTURAL ABANDONMENT OF REFUGEE WOMEN

Lakshika Tyagi, O.P. Jindal Global University

ABSTRACT

The phrase: *women and children first*, popularised by the movie Titanic. It makes us think that in times of crisis, the most vulnerable will be the first to be saved. The contemporary reality of refugees makes this promise a fiction. More than 117 million people are forcibly displaced across the world today, and women and children form the majority of that number.¹ They are also, by every available measure, the most exposed to violence, trafficking, legal erasure, and the cruelty of existing without recognition.²

This paper examines the global refugee regime through the combined lens of feminist international law and Third World Approaches to International Law (TWAIL). It argues that the regime does not merely fail women but it is structurally designed around their exclusion, as always argued by the radical feminist school of thought, especially Catharine A. Mackinnon – law is inherently male³. Nearly 85% of the world's displaced people are hosted in the Global South and the states of the Global North have responded to this reality not with shared responsibility but with evermore legal evasion.⁴ This paper also tried to capture how entrenched racism, citizenship discrimination, xenophobia, nativism are embedded in the language used in our modern passport, Raj vocabulary and how it promotes a certain kind of neo-colonial structure with the civilising mission rationale 2.0.

¹ UNHCR, *Global Trends: Forced Displacement 2024* (UNHCR 2025) <<https://www.unhcr.org>> accessed 14 April 2026.

² *ibid* 2; see also Sir John Hope Simpson, *The Refugee Problem: Report of a Survey* (Royal Institute of International Affairs, Oxford University Press 1939) 529, whose early survey recognised the structural permanence of mass displacement long before modern legal frameworks were constructed.

³ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 161–170.

⁴ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1A(2).

I. INTRODUCTION: THE GAP BETWEEN THE LAW ON PAGES AND REALITY OF LIFE

A. Introduction

Consider what it means to have no name, no identity, no papers. No birth certificate, no nationality card, no identity document of any kind. You are no one. You are a real person but in the language of law - you barely exist. You cannot register the birth of your child, open a bank account, seek formal employment, access public healthcare, or seek redress when you are wronged. If you are a woman in this condition- you are confined to a settlement camp in a country that barely tolerates your presence and you might also navigate the world in a manner such where your body is among the very few resources available to you. That is not a metaphor. In Cox's Bazar in Bangladesh, where approximately one million stateless Rohingya live in the largest refugee settlement on earth, women without legal rights are pushed quietly into survival sex work.⁵ Not because they chose it, but because every other door was closed.

Statelessness is more than a political or legal condition. It is childhoods shaped not by possibility but by absence of necessity - no clean drinking water, no food, no education, no documentation to prove one's own existence. To be stateless is to grow up unnamed in the eyes of the law, the nation you stay in and that state you called home. These fellow human beings are not just excluded, they are treated as burdens by the very states within whose borders they survive.

They live on the margins of margins, sustained by leftovers, by acts of mercy, by the seasonal tolerance of everchanging regimes that owe them nothing because they are recognised as nothing. Statelessness strips a person not only of rights but of identity, dignity, and the ability to claim protection.

For women, this erasure is even more violent.

In refugee settlements across Bangladesh, stateless women inhabit a reality where survival itself becomes transactional. Their bodies become both social and material sites of survival in a world that denies them legal personhood. Without documentation, without recognition, they

⁵ Chakraborty and Bhabha, 'Fault Lines of Refugee Exclusion: Statelessness, Gender, and COVID-19 in South Asia' (2021) 23 *Health and Human Rights* 237, 240; Burma Task Force, *Rohingya Women in Bangladesh Camps* (Burma Task Force 2025) <<https://www.burmataskforce.org>> accessed 14 April 2026.

cannot seek protection from the law; the law turns a blind eye towards them. These women live unidentified lives, unrecorded violations, unacknowledged suffering, and unrecorded deaths.

And so, no matter how long the arms of the law may be, they never reach her.

This paper begins there, not in Geneva, and not in 1951. It begins with what the law produces when it is written for other people a specific section, in certain circumstance during certain periods. International refugee law would be a perfect example to this, even though International Refugee Law has generated an extraordinary body: conventions, protocols, guidelines, principles, jurisprudence, and institutional frameworks. It has also, for the women who need it most, for the children who lose it all, generated nothing that actual changes their living condition. The gap between the law on the pages and the life in a refugee camp is not an accident. It is the system working as designed by and for certain states, around the experiences of a paradigmatic refugee who, historically, looked nothing like a stateless Rohingya woman in Bangladesh.⁶

II. THE LEGAL FRAMEWORK: A BRILLIANT ARCHITECTURE BUILT ON SHAKY GROUND

A. The 1951 Refugee Convention: Who It Was Written For

The 1951 Convention Relating to the Status of Refugees is, by any measure, a remarkable legal achievement.⁷ Its definition in Article 1A(2) requires a well-founded fear of persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion and presence outside one's country of nationality.⁸

This person in the imagination of the Convention's drafters is *largely male, largely European and largely fleeing a communist state persecution during the early Cold War*.⁹ Short reminder, that this was not the first time Europe saw persecution. As George Stoessinger observed in his early work on refugees and the world community, the formal international apparatus for refugee protection was constructed around a very particular vision of who

⁶ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) 196.

⁷ Hathaway J C and Foster M, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014).

⁸ Refugee Convention (n 3) art 1A(2); see Hathaway (n 7) 87.

⁹ James C Hathaway, *The Rights of Refugees Under International Law* (CUP 2005) 3–4.

deserved it and that vision was shaped far more by Cold War ideology than by any neutral assessment of human suffering.¹⁰

Persecution as traditionally understood by the Convention, is something that happens to individuals in the public sphere like dissenter jailed for her politics, the journalist targeted for her writing. Such framework privileges persecution occurring more frequently but privately against marginalised groups and private forms of violence endured by women and children everyday. The slow erosion of rights through discriminatory law, the structural violence of a state that refuses to recognise your existence, the domestic violence that the state condones through inaction, the sexual exploitation that becomes inevitable when all legal survival routes are closed: none of these map easily onto the Conventions structure.¹¹ *Women have always had to translate their experiences into a legal language that was not built to hold them.*¹²

B. The 1967 Protocol: Universal in Reach, Unchanged in Substance

The 1967 Protocol removed the Conventions' original geographic restriction, extending its application universally and without restriction to pre-1951 events.¹³ This was a significant formal step and the Protocol's near-universal ratification gives the convention system the appearance of a genuinely global framework.¹⁴ *But the Protocol did not revise the definition of a refugee. It did not address gender.* And the irony reflects in the Palestinian experience, which creates a strange paradox of refugee law and the definition as per the convention, as these Palestinian refugees are indigenous people of the land and have been legally transformed into "refugees" within their own historical homeland with ancestral ties through forced disposition and denial of return.

Further Refugee law, did not acknowledge structural violence or economic displacement. It universalised the reach of a framework that had been designed for post-war Europe and pressed it onto a world that was already producing vastly different and vastly larger displacement crises

¹⁰ Robert E Gorman and Gaim Kibreab, 'Repatriation Aid and Development Assistance' in James C Hathaway (ed), *Reconceiving International Refugee Law* (Martinus Nijhoff 1997) 35, 39; George Stoessinger, *The Refugee and the World Community* (University of Minnesota Press 1963) 114.

¹¹ Hilary Charlesworth and Christine Chinkin, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613, 614.

¹² Audrey Macklin, 'Cross-Border Shopping for Ideas' (1998) 13 *Georgetown Immigration Law Journal* 25.

¹³ Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

¹⁴ Hathaway (n 7) 96; Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, OUP 2007) 36.

rooted in colonialism, post-colonial conflict, global north sponsored wars, global north facilitated

destabilised governments in various countries leading to the ongoing structures of global inequality.¹⁵ The universalism of the 1967 Protocol is as Anghie would have it a false universalism: *the projection of a particular set of assumptions onto the whole world, while calling the result a universal standard.*¹⁶

C. UNHCR: Built for a Problem That Was Supposed to End

The office of the United Nations High Commissioner for Refugees was established in 1949 on the assumption that it would be temporary.¹⁷ The refugee crisis as it was thought was a postwar anomaly that would resolve itself within a short period. The UNHCR's mandate has been renewed year after year since then as that assumption has been proven wrong repeatedly.

Barry Stein, writing's in 1990 captured that the actions by the UNHCR's called as 'durable solution' was presented as what refugees themselves wanted, but it was equally what certain states wanted, since it offered the prospect of ending expensive and politically inconvenient protection.¹⁸ Zieck's legal analysis of UNHCR's framework demonstrated how the voluntariness requirement had been systematically reduced with refugees in conditions of desperation and legal limbo making 'choices' to return to dangerous places that were choices only in the most restrictive sense.¹⁹ Professor Chimni extended this critique into a political economy of refugee governance: *the UNHCR's drift toward repatriation at any cost reflects not humanitarian principle but the interests of the states that fund it.*²⁰

¹⁵ Chimni B S, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 Journal of Refugee Studies 350.

¹⁶ Anghie (n 8) 245.

¹⁷ UNGA Res 319(IV) (3 December 1949); Statute of the Office of the United Nations High Commissioner for Refugees, UNGA Res 428(V) (14 December 1950).

¹⁸ Barry N Stein, 'Prospects for and Promotion of Voluntary Repatriation' in Howard Adelman (ed), *Refuge or Asylum: A Choice for Canada* (York Lanes Press 1990) 190, 192; Marjoleine Zieck, 'UNHCR and Voluntary Repatriation of Refugees' (1997) examined the legal constraints on the voluntary repatriation model and found it systematically prioritised donor-state interests over refugee agency.

¹⁹ Marjoleine Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (Martinus Nijhoff Publishers 1997) 438–439.

²⁰ Chimni (n 5) 354; BS Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (2004) 23 *Refugee Survey Quarterly* 55.

III. THE ARCHITECTURE OF EXCLUSION: HOW GLOBAL NORTH STATES AVOID THE LAW THEY WROTE

A. Compliance in Form, Exclusion in Substance

The Global North's approach refugee law so technically just to exploit the legal loopholes is genuinely admirable. States rarely say they are violating the Convention. They have developed something far more sophisticated. They have a comprehensive structure of legal mechanisms that prevent the Convention from being triggered while maintaining on paper a full formal compliance.²¹ Gammeltoft-Hansen calls this '**remote control**' migration governance- *the outsourcing of border enforcement to spaces and agents where legal accountability is diffuse or absent*.²² Amnesty International's December 2025 analysis of the EU's revised asylum rules concluded that the new framework systematically reduced the protection obligations to states that were neither safe nor prepared thereby producing a massive southward displacement of legal responsibility and physical displacement of people.²³

B. Visa Regimes, Carrier Sanctions, and the Privatisation of the Border

Visa requirements imposed on nationals of refugee-producing countries are the most "**socially acceptable**" and least visible tool of exclusion in the Global North's armoury.²⁴ They require no coast guard operations, no detention centres, no formal refusal of entry. They simply ensure that most people who would qualify for protection can never reach the territory where they would have the right to claim it. The asylum system is territorial- *one must arrive to apply*. *Visa requirements ensure that the most vulnerable cannot arrive*.²⁵

Carrier sanctions extend this logic into the private sector, imposing financial penalties on airlines and shipping companies that transport passengers without valid documents.²⁶ The result is a privatised border enforcement system- airlines conduct pre-boarding checks that function

²¹ Maja Janmyr, '1951 Refugee Convention and Non-Signatory States' (2021) 33(2) International Journal of Refugee Law 188, 188–192.

²² Gammeltoft-Hansen (n 24) 220.

²³ Amnesty International (n 6).

²⁴ European Union Agency for Asylum (n 6) 78; Gammeltoft-Hansen (n 24) 57.

²⁵ UNHCR, Asylum-seekers <https://www.unhcr.org/in/about-unhcr/who-we-protect/asylum-seekers> accessed 2 July 2026; Susan Fratzke and others, *The End of Asylum? Rethinking Protection in a World of Expanding Mobility* (Migration Policy Institute 2024).

²⁶ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 [2001] OJ L187/45.

as immigration gatekeeping, and they are incentivised. The state achieves its exclusionary objective through the capitalistic agents, the market, all at once removing all direct legal accountability.²⁷

C. Interdiction and the Sea as Legal Void

The practice of intercepting vessels carrying asylum seekers on the high seas and returning them without any screening of their protection claims represents one of the most outrageous legal interventions of recent decades: the transformation of the ocean into a zone of consequence-free enforcement.²⁸ The US Supreme Court's 1993 decision in *Sale v Haitian Centers Council* held that the non-refoulement obligation under Article 33 does not apply extraterritorially and therefore did not constrain Coast Guard operations interdicting Haitian asylum seekers at sea.²⁹ Justice Blackmun's dissent described *this as a construction of the Convention that abandoned its most vulnerable beneficiaries at the moment of their greatest need*.³⁰ It established a template that states around the world have followed and refined.

European states have conducted equivalent operations in the Mediterranean and Aegean, relying on bilateral arrangements with Libya and Turkey that route intercepted migrants back to territories where they face documented risks of persecution, torture, and enslavement.³¹ The legal reasoning has been subjected to scholarly dismantling, but it continues to operate in practice because no binding international adjudication has definitively foreclosed it.³² Also another reason for the continuation is that the states want safeguard against basic humanitarian actions they will have to take otherwise.

D. Detention, Narrow Interpretation, and the Bureaucracy of Despair

For those who do reach state territory, the system has prepared further obstacles. *Do humans have Humanity?* No, as mandatory detention of asylum seekers serves simultaneously as a deterrent to future refugees.³³ The EU's 2025 asylum reforms expanded border procedures that

²⁷ David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2005) 159–165.

²⁸ *Sale v Haitian Centers Council* (1993) 509 US 155.

²⁹ *Sale v Haitian Centers Council* (1993) 509 US 155.

³⁰ *Sale v Haitian Centers Council* (n 26) 182–183 (Blackmun J dissenting).

³¹ Goodwin-Gill and McAdam (n 12) 253; Gammeltoft-Hansen (n 24) 102.

³² Goodwin-Gill and McAdam (n 12) 253; Gammeltoft-Hansen (n 24) 102.

³³ UNHCR, 'Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice' (UNHCR 1999) EC/49/SC/CRP.13, para 4.

confine asylum seekers to detention-like conditions at the external borders with claims determined within time limits that systematically reduce the prospects of fair assessment.³⁴

Narrow interpretation of the refugee definition further closes the protection gap. Genderbased claims, structural persecution claims, and claims from individuals who cannot produce documentary corroboration all face particular difficulties within systems that were designed around a different kind of suffering.³⁵ The accumulation of visa controls, carrier sanctions, maritime interdiction, detention, and restrictive interpretation produces not a failure of the system but the system's function: a comprehensive set of obstacles that ensures protection remains inaccessible to most of those who need it.

E. The Denial of Work and the Engineering of Dependency

Even those who reach territory and survive the determination process often find themselves denied the right to work for years, sometimes indefinitely.³⁶ This denial is not incidental. It forecloses self-sufficiency, enforces dependency on humanitarian help, and creates conditions particularly for women without other resources in which *the body becomes the primary instrument of economic survival*. When a woman in a camp cannot work legally, cannot move freely, cannot access banking, and the token humanitarian assistance, the question of how she survives is not rhetorical. The answer is often transactional sex, conducted not as a choice but as the only remaining option for survival.³⁷ This is the material consequence of the right to work existing on paper and not in practice. Gammeltoft-Hansen's observation is precise- *states avoid obligations not by violating law, but by preventing refugees from accessing it*.³⁸

F. The Language of Movement: Expatriates, Immigrants, and the

Vocabulary of Hierarchy

The architecture of exclusion is not legal, constitutional, and social. It is also linguistic. The vocabulary that a society uses to describe people who cross borders does not merely reflect

³⁴ European Union Agency for Asylum (n 6) 114.

³⁵ UNHCR, 'Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention' (UNHCR 2002) HCR/GIP/02/01.

³⁶ Nicholas De Genova, 'The "Crisis" of the European Border Regime: Towards a Marxist Theory of Borders' (2016) 79 International Socialism 31.

³⁷ Catherine MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 161–170.

³⁸ Thomas Gammeltoft-Hansen and James C Hathaway, 'Non-Refoulement in a World of Cooperative Deterrence' (2015) 53(2) Columbia Journal of Transnational Law 235.

existing hierarchies but creates a type of linguistic neo-colonialism. Nowhere is this more visible than in the divergence between two words that describe, in their most neutral formulation, the same factual condition: an individual living and working outside their country of origin. A white professional from the United Kingdom who relocates to Bangalore is an **expatriate**. A Bangladeshi worker who relocates to London is an **immigrant**. The legal condition is identical. The word applied is not³⁹.

The term *expatriate* colloquially expat, carries the connotation of temporariness, of choice, of cosmopolitan mobility. It signals professional status, cultural capital, and an unquestioned right of presence. The word immigrant, by contrast, carries the weight of permanence, of economic need, and of arrival from the periphery into the centre.⁴⁰ Neither word is neutral. The asymmetry between them reveals how deeply the international order has internalised the colonial hierarchy of nations: that some people move through the world as subjects while others move through it as problems. As Ndlovu-Gatsheni has argued, the postcolonial world order continues to be structured by what he terms coloniality of power — a matrix of racial, economic, and epistemological hierarchies that survived formal decolonisation and shape the distribution of rights, recognition, and mobility in the present.⁴¹

This linguistic stratification is not merely social convention. It shapes the legal and institutional frameworks within which states respond to migration. The expat navigates visa regimes with ease, receives tax concessions, and is welcomed as a contributor to the host economy. Its newest iteration the digital nomad has been rewarded with purpose-built legal instruments: over fifty states, including Portugal, Indonesia, and Thailand, have issued digital nomad visas that extend long-term

residency rights specifically to remote workers earning in foreign currencies.⁴² These visas formalise in law the very asymmetry that the expat/immigrant distinction encodes in language, that Global North mobility is a resource to be attracted and accommodated, while Global South mobility is a risk to be managed and contained. The same state apparatus that deploys carrier

³⁹ Amalia-Maria Fechter and Katie Walsh, 'Examining "Expatriate" Continuities: Postcolonial Approaches to Mobile Professionals' (2010) 36(8) *Journal of Ethnic and Migration Studies* 1197.

⁴⁰ Pauline Leonard, *Expatriate Identities in Postcolonial Organisations: Working Whiteness* (Ashgate 2010) 23–28.

⁴¹ Sabelo J Ndlovu-Gatsheni, *Coloniality of Power in Postcolonial Africa: Myths of Decolonization* (CODESRIA 2013).

⁴² Kristine K. Kofman and Remy Leveau, 'Digital Nomad Visas and the Reconfiguration of Global Mobility Regimes' (2024) 58 *International Migration* 112.

sanctions, safe third country agreements, and mandatory detention to prevent refugees from reaching territory where they might claim protection simultaneously constructs bespoke legal pathways for those whose movement is considered economically desirable. The immigrant and most acutely the refugee, who is the immigrant stripped even of the dignity of chosen departure encounters the entire apparatus of exclusion this paper has traced.⁴³ The law does not invent these categories from nowhere. It crystallises a vocabulary that was already doing ideological work, translating the assumption that some lives are more mobile, more welcome, and more legible than others into enforceable legal distinctions.⁴⁴ When refugee law struggles to see the stateless Rohingya woman in Cox's Bazar, it is not operating in a vacuum. It is operating within a world where the language used to describe human movement has already decided, before any Convention article is invoked, whose movement counts and whose constitutes a crisis.

IV. EXISTENCE WITHOUT RECOGNITION

A. Cox's Bazar and the Architecture of Containment

Cox's Bazar in Bangladesh is the largest refugee settlement in the world. It hosts approximately one million Rohingya, the substantial majority of whom are effectively stateless. Coming from Myanmar due to the 1982 Citizenship Law, unrecognised by Bangladesh, and confined to a camp system from which departure is controlled, limited, and frequently punished.⁴⁵ This is not a temporary emergency facility. It has become their life. It is for many of the people within it - the only world they have ever known. Children born in the camps have no nationality, no birth certificate that carries legal weight, no state that will claim them therefore no identity.

They are people under international law in theory, in practice they are among the most neglected people on earth.

Stoessinger's work, though written more than sixty years ago, identified this gap with unflinching clarity- the international community generates commitments to refugees on paper while abandoning them in practice particularly when those **refugees are poor, non-European,**

⁴³ Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace 1951).

⁴⁴ Pierre Bourdieu, *Language and Symbolic Power* (John B Thompson ed, Gino Raymond and Matthew Adamson tr, Polity Press 1991).

⁴⁵ Burma Task Force (n 10) 8; UNHCR (n 1) 34.

non and politically inconvenient.⁴⁶ The Rohingya in Bangladesh are inconvenient. They are Muslim, they are stateless, they are from Myanmar rather than from a country whose displacement crisis carries Cold War or geopolitical weight for western donor states, and they exist in a host country that is itself a low-income state struggling with its own resource constraints.⁴⁷

B. Statelessness, Sex Work, and Survival

Statelessness means no legal right to work in Bangladesh. It means that formal employment which would require documents, a work permit, legal recognition of existence is unavailable.⁴⁸ It means that the only income opportunities are informal, unregulated sectors. For women without male relatives who provide some form of economic protection or social standing this informal work gets reduced to sex work.⁴⁹ The Burma Task Force's 2025 report documented that the absence of the *mahram* requirement in some service queues exposes women to assault and coercion, inadequate sanitation facilities create predictable sites of sexual violence and the exclusion of women from camp governance structures means that the conditions that create vulnerability are never addressed by those with the power.⁵⁰

Statelessness does not just mean having no passport. It means having no protection against the person who assaults you because you are not even a legal person to file a complaint. It means being unable to report rape because to report is to risk detention and deportation. It means being trafficked from the camp into commercial sexual exploitation in other parts of Bangladesh or across border.⁵¹ Chakraborty and Bhabha's research on statelessness and gender in South Asia demonstrated how the intersecting vulnerabilities of refugees and gender compound each other across every dimension of health, security and economic survival.⁵²

⁴⁶ Stoessinger (n 75) 68–71, 202, identifying the gap between formal international commitments to refugees and the material reality of those communities abandoned without resources or recognition.

⁴⁷ The Conversation (n 32); UNHCR (n 1) 3.

⁴⁸ Chakraborty and Bhabha (n 10) 240; PubMed/NCBI, 'Statelessness, Gender, and COVID-19 in South Asia' (2021) <<https://pubmed.ncbi.nlm.nih.gov>> accessed 14 April 2026.

⁴⁹ United Nations High Commissioner for Refugees, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (UNHCR 2015).

⁵⁰ Burma Task Force (n 10) 4.

⁵¹ Burma Task Force (n 10) 4; UNHCR (n 1) 19.

⁵² Paula Banerjee, Anasua Basu Ray Chaudhury and Atig Ghosh (eds), *Women in Indian Borderlands* (Sage Publications 2005); Jacqueline Bhabha and Susan Forbes Martin, *Sexual Violence and Forced Migration* (Rowman & Littlefield 2011).

C. Suspended Lives and the Refugee Camp as Permanent Institution

Bauman's concept of 'wasted lives' - the condition in which individuals are denied the capacity to contribute to or belong to any social community, they fits the refugee camp with

uncomfortable precision.⁵³ Life in the camp is not just slow- it is like being held captive in a time loop. People are forced into idleness, their independence quietly eroded by systems that make them dependent. Work, choice and dignity begin to fade and time itself feels frozen.

Rogge's African case studies documented how camp residents are systematically prevented from the economic participation that would enable self-sufficiency, creating long-term dependency on humanitarian assistance while simultaneously being blamed for that dependency.⁵⁴ Malkki's anthropological analysis of how the camp functions ideologically more, stripping the refugee of political voice, reducing humans to objects of pity, denying them all.⁵⁵

V. THE CONVENTION AND THE WOMEN IT CANNOT SEE

A. The Paradigm and Its Exclusions

Women and girls constitute approximately half of the world's forcibly displaced population.⁵⁶ They have always been there: in every camp, on every boat, in every detention centre, in every asylum queue. Yet the international refugee regime was not built for them. This is not an oversight. It patriarchy ingrained in law itself, which feminist scholars from Charlesworth and Chinkin onwards have argued- is a system built around male experiences, male subjects and male institutions.⁵⁷

Charlesworth and Chinkin's foundational 1991 analysis of feminist approaches to international law identified the role of the public/private distinction in international legal. If the harms that occur in private sphere- the family, the community, the body are systematically

⁵³ Zygmunt Bauman, *Wasted Lives: Modernity and Its Outcasts* (Polity 2004) 77; Gammeltoft-Hansen (n 24) 250.

⁵⁴ John R Rogge, 'Refugees: A Third World Development Problem' (1987) 11(1) *Refugee* 8.

⁵⁵ Liisa Malkki, 'Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization' (1996) 11 *Cultural Anthropology* 377.

⁵⁶ UNHCR (n 1) 2.

⁵⁷ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *American Journal of International Law* 613.

excluded from the legal categories designed to address harm.⁵⁸ Since the harms that disproportionately affect women - domestic violence, sexual exploitation, honour-based violence, forced marriage, the denial of reproductive autonomy, the coerced sex work of the woman with no other survival route are 'private' in this a sense then international law has persistently struggled to see them as persecuted minority.⁵⁹

B. The Convention's Gender Gap and Its Consequences

The 1951 Convention does not count gender as a ground for refugee status. Women fleeing gender-based persecution should experience what fall within the Convention's existing categories meaning- 'membership of a particular social group' or 'political opinion'.⁶⁰ The UNHCR's 2002 Guidelines on Gender-Related Persecution acknowledged that gender-based persecution could be accommodated within the Convention's existing categories but these guidelines are not legally binding and have been applied.⁶¹

The practical consequence is that women fleeing forced veiling laws in Iran, forced marriage in West Africa, female genital mutilation in East Africa, or systematic sexual violence in Sudan face the additional burden of demonstrating that *their suffering qualifies as the right kind of suffering*.⁶²

C. The Body as Political Symbol: Hijabs and Hegemonies

The political treatment of refugee women in Europe is inseparable from the broader cultural politics of identity. France's April 2025 move toward a total ban on hijab in sport is a pattern in which Muslim refugee and migrant women are positioned not as rights-bearing subjects but as cultural symbols whose bodies are sites of political contestation.⁶³ The same states that claim to offer sanctuary from gender persecution impose restrictions on religious

⁵⁸ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) American Journal of International Law 613.

⁵⁹ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) American Journal of International Law 613.

⁶⁰ UNHCR, 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 (7 May 2002).

⁶¹ UNHCR, 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 (7 May 2002).

⁶² Heaven Crawley, 'Women and Refugee Status: Beyond the Public/Private Dichotomy in UK Asylum Policy' in Doreen Indra (ed), Engendering Forced Migration (Berghahn Books 1999).

⁶³ Hyphen, 'France Moves to Total Hijab Ban in Sports' (15 April 2025) <<https://hyphenonline.com>> accessed 14 April 2026.

dress that violate Muslim women's autonomy and dignity.

The western feminist frameworks when mobilised in context of restrictive immigration politics transforms into an instruments of exclusion they claim to oppose.⁶⁴ Refugee women from global south are political subjects whose experiences of persecution, survival, and resistance are prior to and independent of the frameworks that western academia uses to describe them and offer them "liberation".⁶⁵

D. The Central Feminist Insight

The overarching feminist critique can be stated plainly: international refugee law is genderneutral in form and gender-blind in effect. By constructing its framework around a paradigmatic male political subject, and by failing to name, recognise, or address the specific forms of persecution and vulnerability that women experience, the Convention does not merely fail to protect women. It actively reproduces the gendered hierarchies that make women vulnerable to persecution in the first place.⁶⁶ A woman pushed into survival sex work in Cox's Bazar has not been failed by an implementation gap. She has been failed by a system that, from its design, never adequately provided for her.

VI. CHILDREN OF NO STATE: REFUGEE CHILDREN AND THE FAILURE OF THE BEST INTERESTS PRINCIPLE

The Convention on the Rights of the Child, with its principle that best interests of the child shall be a primary consideration, commands near-universal ratification.⁶⁷ It is also, in the lived experience of refugee and stateless children, most systematically violated commitments in international legal order. Children born stateless in Cox's Bazar have no nationality. They cannot be registered in Bangladesh. They cannot access the legal benefits of citizenship. They grow up in a camp, in a country that does not want them, under a legal system that struggles to name what they are.

⁶⁴ TWAILR, 'Critical Feminist Engagements with TWAIL Workshop' (2022) <<https://twailr.com>> accessed 14 April 2026.

⁶⁵ Charlesworth and Chinkin (n 41) 620; TWAILR (n 55).

⁶⁶ Charlesworth and Chinkin (n 41) 625.

⁶⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 3(1).

The UNHCR's guidelines on unaccompanied minors establish procedural standards for the treatment of children in asylum systems, including the appointment of guardians and the conduct of age-appropriate interviews.⁶⁸ These guidelines are soft law. They are followed inconsistently. Family separation, whether by deliberate policy or administrative breakdown, inflicts documented psychological harm on children and destroys the social unit most likely to provide them protection.⁶⁹

Unaccompanied minors in particular face acute vulnerability to trafficking and exploitation. Without guardianship infrastructure, without legal identity, without a state willing to claim responsibility, they fall through every gap the system has created.⁷⁰

VII. WHO BEARS THE BURDEN: TWAIL AND THE INEQUALITY OF THE REFUGEE REGIME

A. Eighty-Five Per Cent

The figure bears repeating: approximately 85% of the world's forcibly displaced people are hosted in low- and middle-income countries of the Global South.⁷¹ Turkey hosts 3.6 million. Iran hosts 3.4 million. Bangladesh hosts one million Rohingya alone. These are countries with their own development challenges, their own resource constraints, their own populations in need of public services.⁷² They are being asked to bear a burden that wealthy states have engineered mechanisms to avoid. This is not coincidence. It is the distributional consequence of visa regimes, carrier sanctions, interdiction operations, and safe third country agreements that systematically ensure displacement stays in the South.

The 2025 US aid cuts documented by The Conversation stripped millions of dollars from humanitarian operations in Bangladesh and elsewhere at precisely the moment when funding was most critical.⁷³ The UNHCR's 2024 Global Trends report documents chronic and widening funding shortfalls that translate directly into cuts to food, healthcare, and education

⁶⁸ UNHCR, 'Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum' (UNHCR 1997).

⁶⁹ Human Rights Watch, "Like a Prison" (2017) <<https://www.hrw.org>> accessed 14 April 2026.

⁷⁰ UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (UNHCR 1997); UNICEF, Uprooted: The Growing Crisis for Refugee and Migrant Children (UNICEF 2016).

⁷¹ UNHCR (n 1) 2.

⁷² UNHCR, Global Trends: Forced Displacement in 2024 (UNHCR 2025).

⁷³ Daniel Sullivan, 'A Closing Window: How Aid Cuts are Undermining Rohingya Possibilities' (Refugees International, 22 May 2025)

provision for the world's most vulnerable communities.⁷⁴ Gorman and Kibreab's analysis of repatriation aid identified the same structural dynamic in an earlier era: the international community funds refugee programmes at levels that reflect donor political interests rather than humanitarian need, and withdraws that funding when political interest shifts.⁷⁵

B. The Colonial Legacy in International Refugee Law

Anghie's account of imperialism and international law is foundational here: the doctrines of sovereignty, territorial integrity, and legal personality that undergird the international legal order were constructed through the colonial encounter, in ways that served European interests while denying legal subjectivity to the peoples of the colonised world.⁷⁶ The 1951 Convention bears the marks of this heritage. It was drafted at a moment of European post-war reconstruction, by states whose empires were dissolving, and its focus on individual political persecution reflected European anxieties about communism rather than any serious engagement with the mass displacements being produced by decolonisation across Africa and Asia.⁷⁷

Salomon's historical analysis of Cold War refugee politics demonstrates how fundamentally the western states' commitment to asylum was shaped by ideological calculation: refugees from communist states were welcomed because their departure was a propaganda victory; refugees from allied states in the Global South were turned away because their persecution was inconvenient to acknowledge.⁷⁸ Professor Chimni's geopolitics of refugee studies makes the same argument at a structural level- *the refugee regime's apparent humanitarianism has always been in the service of the geopolitical interests of its most powerful members.*⁷⁹

The 2024 Journal of Refugee Studies article on TWAIL and refugee law demonstrates through archival research how the Eurocentrism of the Convention's drafting process marginalised perspectives from South Asia and Africa that would go on to bear the greatest burden of

⁷⁴ United Nations High Commissioner for Refugees, Global Trends: Forced Displacement in 2024 (UNHCR 2025); UNHCR, Underfunded Report 2024 (UNHCR 2024).

⁷⁵ Robert F Gorman and Gaim Kibreab, *Refugee Aid and Development: Theory and Practice* (Routledge 1991).

⁷⁶ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004).

⁷⁷ Refugee Convention (n 3) Preamble; Chimni (n 5) 358.

⁷⁸ Kim Salomon, *Refugees in the Cold War: Toward a New International Refugee Regime in the Early Postwar Era* (Lund University Press 1991) 243, 249, documenting how Cold War political utility—not humanitarian principle—drove western asylum generosity.

⁷⁹ B S Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11(4) *Journal of Refugee Studies* 350

displacement in the post-colonial world.⁸⁰ Those perspectives were absent from the room where the law was written. Their absence is visible in every article of the instrument that followed.

C. TWAIL's Central Proposition

The TWAIL critique can be compressed into a single sentence: the refugee regime reproduces global inequality under the guise of humanitarianism.⁸¹ It legitimises the global order that produces displacement while insulating the states most responsible for that order from its consequences. It speaks the language of universal protection while engineering conditions of managed containment. The Rohingya woman in Cox's Bazar who survives through transactional sex because every legal avenue of economic survival has been closed is not on the margins of this system. She is at its centre.⁸²

VIII. CONCLUSION: THE SYSTEM IS NOT BROKEN. IT IS WORKING AS DESIGNED.

This paper has argued that international refugee law is not failing in its protective mission through incompetence or resource shortage, though both of those factors are real. It is functioning selectively and strategically in ways that serve the interests of powerful states while abandoning those the law formally claims to protect.⁸³ The formal framework of the 1951 Convention provides rights and obligations that, if genuinely implemented, would provide meaningful protection. The reality is that these rights are systematically inaccessible to the majority of those who need them, as the result of deliberate policy choices by states in the Global North to prevent refugees from accessing the territory that would trigger their protection obligations.⁸⁴

Four conclusions follow from the analysis. First: the law-practice gap is not accidental but structural, produced by the intersection of a territorial protection system with a comprehensive

⁸⁰ 'TWAIL, Archives, and Refugee Law' (2024) 37(4) *Journal of Refugee Studies* 994 <<https://academic.oup.com>> accessed 14 April 2026.

⁸¹ Anghie (n 8) 311.

⁸² Chimni (n 5) 376; Anghie (n 8) 317.

⁸³ B S Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11(4) *Journal of Refugee Studies* 350; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2004).

⁸⁴ Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Cambridge University Press 2011).

array of extra-territorial exclusion mechanisms.⁸⁵ Second: refugee law's gender-blindness reproduces rather than disrupts the hierarchies that drive displacement, and its failure to name gender as a persecution ground is not a drafting oversight but a reflection of whose experiences the Convention was built to hold.⁸⁶ Third: the 85% burden borne by the Global South is the engineered consequence of deliberate Global North policy, not an unfortunate accident of geography.⁸⁷ Fourth: the refugee regime reflects power, not justice it was designed by states in their own interests, and it continues to serve those interests.⁸⁸

The refugee crisis is not a crisis of displacement. It is a crisis of exclusion, engineered through law itself. The constitutions are thick, the books of law are many, the promises made are huge.

⁸⁵ Susan Kneebone, 'The Pacific Plan: The Provision of "Effective Protection"?' (2009) 18 *International Journal of Refugee Law* 696.

⁸⁶ Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *American Journal of International Law* 613.

⁸⁷ United Nations High Commissioner for Refugees, *Global Trends: Forced Displacement in 2024* (UNHCR 2025).

⁸⁸ Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 *Harvard International Law Journal* 201.

BIBLIOGRAPHY

Primary Sources

International Instruments

Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

Universal Declaration of Human Rights, UNGA Res 217A(III) (10 December 1948).

Statute of the Office of the United Nations High Commissioner for Refugees, UNGA Res 428(V) (14 December 1950).

Cases

Sale v Haitian Centers Council (1993) 509 US 155.

R v Immigration Officer at Prague Airport and another, ex parte European Roma Rights Centre and others [2004] UKHL 55, [2005] 2 AC 1.

UNHCR Documents

UNHCR, *Global Trends: Forced Displacement 2024* (UNHCR 2025) <<https://www.unhcr.org>> accessed 14 April 2026.

UNHCR, 'Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention' (UNHCR 2002) HCR/GIP/02/01.

UNHCR, 'Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum' (UNHCR 1997).

UNHCR, 'Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice' (UNHCR 1999) EC/49/SC/CRP.13.

Secondary Sources

Books

Anghie A, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005).

Bauman Z, *Wasted Lives: Modernity and Its Outcasts* (Polity 2004).

Charlesworth H and Chinkin C, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000).

Foucault M, *Discipline and Punish: The Birth of the Prison* (Penguin 1991).

Gammeltoft-Hansen T, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (CUP 2011).

Goodwin-Gill G and McAdam J, *The Refugee in International Law* (3rd edn, OUP 2007).

Gorman R E and Kibreab G, 'Repatriation Aid and Development Assistance' in Hathaway J C (ed), *Reconceiving International Refugee Law* (Martinus Nijhoff Publishers 1997).

Hathaway J C, *The Rights of Refugees Under International Law* (CUP 2005).

Lyon D, *Surveillance Society: Monitoring Everyday Life* (Open University Press 2001).

Rogge J R, 'Repatriation of Refugees' in Allen T and Morsink H (eds), *When Refugees Go Home: African Experiences* (United Nations Research Institute for Social Development 1994).

Salomon K, *Refugees in the Cold War: Toward a New International Refugee Regime in the Early Postwar Era* (Lund University Press 1991).

Simpson J H, *The Refugee Problem: Report of a Survey* (Royal Institute of International Affairs, Oxford University Press 1939).

Stein B N, 'Prospects for and Promotion of Voluntary Repatriation' in Adelman H (ed), *Refuge or Asylum: A Choice for Canada* (York Lanes Press 1990).

Stoessinger G, *The Refugee and the World Community* (University of Minnesota Press 1963).

Journal Articles and Chapters

Bascom J, 'The Dynamics of Refugee Repatriation: The Case of Eritreans in Eastern Sudan' in Gould W T S and Findlay A M (eds), *Population Migration and the Changing World Order* (John Wiley and Sons 1994).

Boshyk Y, 'Repatriation and Resistance: Ukrainian Refugees and Displaced Persons in Occupied Germany and Austria, 1945–1948' in Marrus M R and Bramwell A C (eds), *Refugees in the Age of Total War* (Unwin Hyman 1988).

Chakraborty S and Bhabha J, 'Fault Lines of Refugee Exclusion: Statelessness, Gender, and COVID-19 in South Asia' (2021) 23 *Health and Human Rights* 237.

Charlesworth H and Chinkin C, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613.

Chimni B S, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 *Journal of Refugee Studies* 350.

Chimni B S, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (2004) 23 *Refugee Survey Quarterly* 55.

Macklin A, 'Cross-Border Shopping for Ideas: A Critical Review of United States, Canadian, and Australian Approaches to Gender-Related Asylum Claims' (1998) 13 *Georgetown Immigration Law Journal* 25.

Malkki L, 'Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization' (1996) 11 *Cultural Anthropology* 377.

Sepulveda D C, 'Challenging the Assumptions of Repatriation: Is it the Most Desirable Solution?' (1996) unpublished paper.

'TWAIL, Archives, and Refugee Law' (2024) 37(4) *Journal of Refugee Studies* 994.

Reports and Online Sources

Al Jazeera, 'RSF Systematic Sexual Violence in Sudan' (12 December 2025) <<https://www.aljazeera.com>> accessed 14 April 2026.

Amnesty International, 'EU: New Rules on Asylum Undermine Refugee Protection' (17 December 2025) <<https://www.amnesty.org>> accessed 14 April 2026.

Burma Task Force, *Rohingya Women in Bangladesh Camps* (Burma Task Force 2025) <<https://www.burmataskforce.org>> accessed 14 April 2026.

European Union Agency for Asylum, *Asylum Report 2025* (EUAA2025) <<https://www.euaa.europa.eu>> accessed 14 April 2026.

Hyphen, 'France Moves to Total Hijab Ban in Sports' (15 April 2025) <<https://hyphenonline.com>> accessed 14 April 2026.

Norwegian Government, Department of Immigrant and Refugee Affairs, *Refugees and Repatriation: Our Current Knowledge on the Subject* (Oslo 1994).

TasteRay, 'Refugee Movies That Shatter Stereotypes' (15 February 2026) <<https://www.tasteray.com>> accessed 14 April 2026.

The Conversation, 'How International Aid Cuts Erode Refugee Protections in Global South' (9 September 2025) <<https://theconversation.com>> accessed 14 April 2026.

TWAILR, 'Critical Feminist Engagements with TWAIL Workshop' (2022) <<https://twailr.com>> accessed 14 April 2026.