

TABLE 2.

# THE GENDER-SPECIFIC APPROACH HAS BEEN INCORPORATED INTO THE CRITERIA AND PROCEDURES FOR REFUGEE STATUS DETERMINATION

See also Tables 3 and 4

<p><b>Why is it good practice?</b></p>	<p>Concern for a differentiated approach should have specific implications for the criteria and procedures for determining refugee status: Non-discrimination on the grounds of age, gender and diversity; individual interviews with members of the family group; the right to apply individually and have interpreters of the same sex; specialised staff for interviews with underage persons</p>
<p><b>Country</b></p>	
<p><b>Argentina, Chile Bolivia and Uruguay</b></p>	<p>Argentina Article 53 of Law No. 26165 of 2006</p> <p>In the case of <b>women or children who have been victims of violence</b>, especially if they are unaccompanied, the Commission shall endeavour to provide them with specialised psychological care and, during the procedure, shall observe <b>UNHCR's recommendations</b> set out in the Guidelines on the Protection of Refugee Women and the Guidelines on Gender-Related Persecution. In the case of minors, the guidelines on their protection and care shall be taken into account, informing the agencies with primary responsibility for policies aimed at vulnerable groups for the purposes of the efficient, rapid and effective support of these persons.</p> <p>Available in Spanish at: <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2006/4658.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2006/4658.pdf</a></p> <p>Bolivia, Law No. 251 of 2012 - Refugee Protection Act</p> <p>Article 16. (GENDER, AGE AND DIVERSITY). For the purposes of applying Article 15 of this Law (refugee definition), the gender, age and diversity of the person applying for refugee status shall be considered favourably.</p> <p>Available in Spanish at: <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8855.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8855.pdf</a></p> <p>Chile: Article 30 of Law No. 20430 of 2010</p> <p>Article 30.- Individual Interview. Even if they are not the primary applicants for the recognition of refugee status, <b>all the members of the family group</b></p>

	<p>may be interviewed individually, and separately, in order to ensure that they have the opportunity to present their case independently. All of them will be duly informed of their right to submit an application individually and to select interviewers and interpreters of the same sex, who must be specially trained in order to identify any factors of a cultural, religious, gender-related or personal nature, such as age and level of education, which may affect their ability to present their case.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/7733.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/7733.pdf</a></p> <p>Uruguay: Article 38 of Law No. 18076 - Refugee Statute of 2006</p> <p>Female asylum applicants - Even if they are not the primary applicants for the recognition of refugee status these women should be interviewed individually. The regulations shall address the characteristics of the procedure.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2007/4752.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2007/4752.pdf</a></p>
<p><b>Brazil</b></p>	<p>Brazilian legislation related to asylum makes no specific mention of the gender approach in RSD procedures, but the jurisprudence of CONARE has already established the protection of victims of gender-based persecution.</p> <p>CONARE recognises the particular vulnerability of certain social groups, defined as "at-risk groups" or "vulnerable groups", which include women, children, homosexuals and others.</p>
<p><b>Colombia</b></p>	<p>Article 16 of Decree No. 2840 of 6 December, 2013</p> <p>Article 16. Asylum applications submitted by women. When the application is submitted by women accompanied by male relatives, they will be informed privately of their right to submit an application for recognition of refugee status independently. If the application has been submitted at the country's borders, ports or airports, they will be offered the possibility of obtaining advice before submitting their application or before the extension of the application. Female applicants may be interviewed by female officials and interpreters who will have the relevant training and will, in any event, be informed of this possibility.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2014/9437.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2014/9437.pdf</a></p>
<p><b>Costa Rica</b></p>	<p>Article 31 of the General Law on Migration and Foreign Nationals No. 8764 of 2009</p> <p>5) c) In the case of administrative detention, the foreigner shall have the right to remain, during the period of detention, in a place that provides the conditions required to ensure dignified and respectful treatment, as well as gender-related , generational or disability specifics. (emphasis added)</p>

	<p>(...)</p> <p>7) All foreigners subject to immigration control and procedures must be informed of the reasons for their detention, and offered the possibility of communication, including that required for consular assistance, and access to an independent lawyer; furthermore, they should have access to an interpreter, if necessary, as well as full access to the administrative file. In the case of <b>detention</b>, they shall have the right to be guaranteed decent and adequate treatment, taking into account <b>gender-related</b>, age, disability and other specifics.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2009/7261.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2009/7261.pdf</a></p> <p>Regulations for Refugees, Decree No. 36831-G of 2011</p> <p>Article 10. <b>Differentiated approach</b>. In implementing these Regulations, the national authorities shall promote and apply a differentiated approach in the handling of cases based on and taking into account the individual considerations and needs of stateless persons, unaccompanied minors, victims of trafficking, female and male victims of gender-based violence, and applicants for refugee status. <b>This approach should permeate all stages of the administrative procedure</b> from the moment these persons enter the country up until their effective economic, social, legal and cultural integration.</p> <p>Article 11. <b>Gender Approach</b>. The Migration Authorities, in particular, and the officials noted in the Asylum Subprocess are obligated to apply the <b>Gender Approach</b> in their procedures, which is characterised by the observance of reality based on sex and gender variables and their manifestations in a specific geographical, ethnic and historical context.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2011/8171.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2011/8171.pdf</a></p> <p>National Women's Institute  2012-2014 Plan of Action of the National Policy for Equality and Gender Equity/National Women's Institute. - 1st ed. - San Jose: National Women's Institute, 2011. (Collection of Public Policies for Equality and Gender Equity, No. 4, Public Policy Strategies and Instruments, No. 4)  Action  13. Incorporation of the gender and diversity approach in the Access to Justice Commission, in order to guarantee access to justice and the effective protection of the rights of <b>indigenous and elderly women, and female migrants, refugees and victims of violence</b>.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2013/9139.pdf?view=1">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2013/9139.pdf?view=1</a></p>
<p><b>Ecuador</b></p>	<p>Organic Law on Human Mobility (2017)</p> <p>Article 99.- Due process safeguards</p>

	<p>(...)</p> <p>2. An individual interview will be conducted and the applicant may choose the sex of the interviewer in cases of gender-based violence;</p> <p>(...)</p> <p>8. <b>Priority will be given to processing</b> applications submitted by children and adolescents who are unaccompanied or separated from their legal representatives, who are victims of torture, or victims of sexual abuse or gender-based violence, and others in priority attention groups;</p> <p>Article 122.- Care and protection measures. The competent authority for providing care for the victims of trafficking in persons and the smuggling of migrants shall provide the care, protection, assistance and relief provided for in this Act in accordance with the protocols that are to be developed for that purpose, taking into account the gender, intergenerational and intercultural approach and the principle of specialised attention. The victims of trafficking in persons or smuggling of migrants will receive the emergency protection provided for in international human rights instruments. In order to fulfill this obligation, the leading immigration control authority may be assisted by the cooperation of other public and private institutions as well as other sectors of civil society.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/fileadmin/Documentos/BDL/2017/10973.pdf">http://www.acnur.org/fileadmin/Documentos/BDL/2017/10973.pdf</a></p> <p>Decree No. 1182 of 2012 - Regulations for the application of the right to asylum</p> <p>Article 36.- Once admitted to application processing, the Commission's Technical Secretariat shall call the applicant in order to conduct the confidential interviews it deems necessary and, where possible, <b>shall guarantee the applicant the right to choose to be interviewed by a male or female official.</b></p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8604.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8604.pdf</a></p>
<p><b>Mexico</b></p>	<p>Refugee and Complementary Protection Act (2011)</p> <p>Article 20. <b>During the procedure</b>, the Secretariat shall take the necessary steps to ensure the provision of institutional assistance to applicants requiring special attention, as well as <b>pregnant women, girls</b>, boys and adolescents, the elderly, the disabled, the chronically ill, victims of torture or other cruel, inhuman or degrading treatment or punishment, victims of sexual abuse and gender-based violence, and victims of trafficking in persons or any other person who may be in a situation of vulnerability in accordance with the legal provisions that are applicable in each area.</p> <p>When an applicant in a vulnerable situation has been admitted provisionally or is held at a migration station, the Secretariat will evaluate the measures that best favour the applicant, according to the case's circumstances. In the case of children and adolescents, their best interests should be determined.</p>

	<p>Article 23. (...) Taking into account the applicant's social and cultural context, as well as their age, gender and other specific circumstances, the Secretariat will personally conduct the interviews that are deemed necessary, in order to compile elements for the analysis of the application.</p> <p>Article 42. Taking into account the social and cultural context of the refugees, as well as their age, gender and other specific circumstances, the Secretariat shall personally interview them in order to obtain the information required in order to be able to resolve the cessation, withdrawal or cancellation of the recognition of refugee status.</p> <p>Article 54. Within the scope of its powers, the Secretariat shall take the necessary measures to provide institutional assistance to refugees, as well as assist them in facilitating their integration into the country, taking into account the social and cultural context which they are coming from, as well as whether they are children, adolescents, elderly, disabled persons, pregnant women, chronically ill, victims of torture or other cruel, inhuman or degrading treatment or punishment, victims of sexual abuse and gender-based violence, or victims of trafficking in persons or any other person that could be in a state of vulnerability.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/8150.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/8150.pdf</a></p>
<p><b>Nicaragua</b></p>	<p>No. 655 Refugee Protection Act (2008)</p> <p>Article 10 No administrative or penal sanction          (...)          C) In the case of applicants for refugee status with special needs, such as victims of sexual or gender-based violence, the elderly, persons who have suffered extreme violence or torture, unaccompanied or separated children, disabled persons, or persons with a physical or mental illness, they cannot be detained and shall be immediately transferred to an institution that can provide them with the necessary assistance (emphasis added).</p> <p>Article 13 Humanitarian interpretation of the Law          This Law shall be interpreted and applied with due consideration of the special protection needs that persons may have on the grounds of age, sex, gender, disability, sexual violence, torture, physical or mental illness, or any other condition of vulnerability. Likewise, the procedures contemplated therein shall be adjusted to the flexibility of the cases for humanitarian reasons (emphasis added).</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2008/6435.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2008/6435.pdf</a></p>
<p><b>Panama</b></p>	<p>Article 34 of Executive Decree No. 23 of 1998</p>

	<p>During the procedure for gathering information and the initial assessment of the alleged facts, confidential interviews shall be conducted by an interviewer of the same sex, if the applicant so wishes.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2001/0069.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2001/0069.pdf</a></p>
<b>Paraguay</b>	<p>Article 32 of General Act No. 1938 related to Refugees, of 2002</p> <p><b>The principle of the most favourable treatment for unaccompanied women and children seeking asylum in the Republic of Paraguay shall apply.</b> To this end, the Commission will arrange for the participation of the competent bodies in this field, in order to provide these persons with protection, employment opportunities, training, health and education.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2002/1565.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2002/1565.pdf</a></p>
<b>Brazil Declaration (2014)</b>	<p>Quality Assurance Initiative  (...)   b) Adopt or revise domestic legislation in order to incorporate high standards of protection of international refugee and human rights law, including provisions on specific protection needs based on age, gender and diversity.</p> <p><a href="http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&amp;docid=5487065b4&amp;skip=0&amp;query=Brazil%20Declaration%20(2014)">http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&amp;docid=5487065b4&amp;skip=0&amp;query=Brazil%20Declaration%20(2014)</a></p>

Compiled by the Regional Legal Unit of the Bureau for the Americas, UNHCR