

Gender-Based Asylum: Background, State of the Law, and Building a Winning Case

A webinar for Vera network providers

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CENTER FOR
Gender & Refugee
STUDIES

Roadmap

1. Background
2. State of the law
3. Legal strategy
4. Working with survivors of gender-based violence
5. Q&A



1. Background

What do we mean by gender-based asylum?

Gender refers to the social differences between males and females

- Defines the roles, responsibilities, constraints, opportunities and privileges of males and females in any context

The **form of harm and/or reason for harm** is related to gender:

- *Form of harm* unique or disproportionately inflicted because of gender
- *Reason for harm related to gender*; harm is inflicted because of gender

Background and History

1951 Refugee Convention Art 1(A)(2)
definition:

Any person who owing to well-founded fear of being persecuted for reasons of **race, religion, nationality, membership of a particular social group or political opinion**, is outside the country of **his** nationality and is unable or, owing to such fear, is unwilling to avail **himself** of the protection of that country . . .



UNHCR Guidance

UNHCR Executive Committee (EXCOM) Conclusion No. 39 on Refugee Women and International Protection (1985):

“[...] States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a “particular social group” within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention.”

UNHCR Guidelines on the Protection of Refugee Women (1991):

“the grounds for establishing refugee status do not include gender”

UNHCR EXCOM Conclusion No. 73 on Refugee Protection and Sexual Violence recommended:

“the development by States of appropriate guidelines on women asylum-seekers in recognition of the fact that women refugees often experience persecution differently from refugee men.”

UNHCR 2002 Gender-Related Persecution Guidelines on International Protection:

“Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.”

U.S. Guidance

U.S. Guidelines: Considerations for Asylum Officers Adjudicating Asylum Claims from Women (1995)

Non-binding guidance directed to Asylum Officers only

- Examples of gendered harms which could constitute persecution
- Noted that establishing a nexus between harm and a protected ground is often the most difficult aspect of gender-based asylum

D.O.J. Proposed Asylum and Withholding Regulations (2000)

- “In some cases involving domestic violence, an applicant may be able to establish that the abuser is motivated to harm her because of her gender or because of her status in a domestic relationship.”
- When evaluating whether an applicant has met his or her burden of proof to establish that the harm he or she suffered or fears is “on account of” a protected characteristic, “[b]oth direct and circumstantial evidence may be relevant to the inquiry.”

USCIS Lesson Plans addressing gender-related harm, women’s claims for asylum, and particular social group

Evolution in U.S. Jurisprudence

Sex as immutable: *Matter of Acosta*, 19 I&N Dec. 211 (B.I.A. 1985)

Repressive social mores: *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993); *Yadegar Sargis v. INS*, 297 F.3d 596 (7th Cir. 2002)

Female genital cutting: *Matter of Kasinga*, 21 I&N Dec. 357 (B.I.A. 1996); *Abay v. Ashcroft*, 368 F.3d 634 (6th Cir. 2004); *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005); *Niang v. Gonzales*, 422 F.3d 1187 (10th Cir. 2005); *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007); *Bah v. Mukasey*, 529 F.3d 99 (2d Cir. 2008)

Rape and sexual violence: *Matter of D-V-*, 21 I&N Dec. 77 (B.I.A. 1993); *Lazo Majano v. INS*, 814 F.3d 1432 (9th Cir. 1987); *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330 (3d Cir. 2008)

Bride price customs: *Ngengwe v. Mukasey*, 543 F.3d 1029 (8th Cir. 2009)

Forced marriage: *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010)

Femicide: *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010)

“Honor” killing: *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011)

Sex trafficking: *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013) (en banc)

2. State of the Law

Asylum Elements Review

- Past persecution OR well-founded fear of persecution
- Nexus (“on account of”)
- Protected Ground
 - Race, Religion, Nationality, Membership in a Particular Social Group (PSG), or Political opinion
- Committed **by government** OR someone the **government is unwilling or unable** to control
- **Internal relocation** in-country not reasonable
- No **bars** to eligibility (e.g. one-year filing deadline where applicable)

Which of these elements present the biggest hurdle(s) in gender asylum claims and why?

Which of these elements present the biggest hurdle(s) in gender asylum claims? Why?

- **Social group**: wouldn't recognizing gender persecution open the floodgates and was gender even contemplated by treaty drafters/legislators?
- **On account of**: isn't gender violence just "personal" in nature and caused by substance abuse not a protected reason?
- **Government inability and unwillingness to protect**: don't these countries have strong laws in place to protect women and girls?

Defining the SOCIAL GROUP by Gender: Helpful Case Law

Gender + nationality/ethnicity	<i>Perdomo v. Holder</i> , 611 F.3d 662 (9th Cir. 2010) (Guatemalan women); <i>Ngengwe v. Mukasey</i> , 543 F.3d 1029 (8th Cir. 2009) (Cameroonian widows); <i>Bah v. Mukasey</i> , 529 F.3d 99 (2d Cir. 2008); <i>Hassan v. Gonzales</i> , 484 F.3d 513 (8th Cir. 2007) (Somali women); <i>Mohammed v. Gonzales</i> , 400 F.3d 785 (9th Cir. 2005) (Somalian females); <i>Niang v. Gonzales</i> , 422 F.3d 1187 (10th Cir. 2005) (female members of the Tukulor Fulani tribe); <i>Fatin v. INS</i> , 12 F.3d 1233 (3d Cir. 1993) (Iranian women)
Gender + nationality/ethnicity + opposition to/flouting of social norm	<i>Sarhan v. Holder</i> , 658 F.3d 649 (7th Cir. 2011) (group of women in Jordan who had allegedly flouted repressive moral norms, and thus faced high risk of honor killing); <i>Yadegar Sargis v. INS</i> , 297 F.3d 596 (7th Cir. 2002) (Christian women opposed to wearing Islamic garb); <i>Matter of Kasinga</i> , 21 I&N Dec. 357 (B.I.A. 1996) (Young women who are members of the Tchamba-Kunsuntu Tribe of northern Togo who have not been subjected to female genital mutilation, as practiced by that tribe, and who oppose the practice)
Gender + nationality + status in a domestic relationship	<i>Matter of A-R-C-G-</i> , 26 I&N Dec. 388 (B.I.A. 2014) (married Guatemalan women unable to leave their relationships)
Gender + nationality + status as a single woman + age	<i>Cece v. Holder</i> , 733 F.3d 662 (7th Cir. 2013) (en banc) (young, Albanian women who live alone)
Gender + nationality + past victimization status	<i>Bi Xia Qu v. Holder</i> , 618 F.3d 602 (6th Cir. 2010) (women in China who have been subjected to forced marriage and involuntary servitude); <i>Gomez-Zuluaga v. Att’y Gen.</i> , 527 F.3d 330 (3d Cir. 2008) (Columbian women who escaped involuntary servitude after being abducted and confined by a guerrilla group)

Proving NEXUS in Gender Claims: Helpful Case law

Mixed motives

Bringas-Rodriguez v. Sessions, 850 F.3d 1051 (9th Cir. 2017) (en banc) (holding that even if sexual offenders motivated by “perverse desire” this does not preclude finding of protected ground as one central reason); *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010) (recognizing that girl was targeted for forced marriage and involuntary servitude both for financial reasons, to ensure debt repayment from the girl’s father, as well as for her gender within the societal context)

Circumstantial evidence

Sarhan v. Holder, 658 F.3d 649 (7th Cir. 2011) (recognizing relevance of societal attitudes and gender norms to establishing nexus); CGRS Case No. 7123 (Immigration J. 2013) (citing to El Salvador’s patriarchal system that naturalizes male subjugation of women in analyzing nexus)

Substance abuse

CGRS Case No. 11018 (B.I.A. June 15, 2017) (finding IJ clearly erred in finding that harm inflicted by woman’s partner was a result of his drug abuse); Declarations of Experts Nancy Lemon and Judith Herman (concluding that substance abuse does not *cause* domestic violence or incest, but rather, an abuser’s attitudes and beliefs about gender roles and expectations for women/girls in family)

Punitive intent not required

Matter of L-E-A-, 27 I&N Dec. 40 (B.I.A. 2017) (reaffirming that punitive intent is not required, but suggesting “animus” against a family would help establish nexus though without requiring or defining animus)

Proving STATE ACTION in Gender Claims: Helpful Case Law

Disjunctive test

Garcia v. Att’y Gen., 665 F.3d 496, 503 (3d Cir. 2011) (even if a government has “displayed great willingness to protect,” this willingness “sheds no light on [the government’s] ability to protect”)

Existence of Protective Laws Insufficient

Hassan v. Gonzales, 484 F.3d 513 (8th Cir. 2007) (noting fear of rape may still be well-founded even if laws prohibiting rape exist, if they’re not generally enforced); *Fiadjoe v. Att’y Gen.*, 411 F.3d 135 (3d Cir. 2005) (holding BIA erred in finding State protection perpetrators of sex slavery not prosecuted even though practice outlawed); *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (B.I.A. 1998) (finding lack of State protection despite public condemnation of anti-Semitism where government failed to prosecute claims under existing laws); *see also* UNHCR Gender Guidelines ¶ 11 (“[t]he fact that a law has been enacted to prohibit or denounce certain persecutory practices will therefore not in itself be sufficient to determine that the individual’s claim to refugee status is not valid”)

Reporting not required and no heightened burden

Bringas-Rodriguez v. Sessions, 850 F.3d 1051 (9th Cir. 2017) (en banc) (failure to report past persecution does *not* subject the applicant to a heightened evidentiary burden); *Matter of S-A-*, 22 I&N Dec. 1328 (B.I.A. 2000) (holding unable or unwilling requirement satisfied even though the child had not requested protection from the government); *In re: Jose Luis Garcia-Gonzalez*, 2011 WL 7327341 (B.I.A. Nov. 10, 2011) (affirming finding applicant “established that the Mexican police were unable and/or unwilling to help him despite the fact that [he] never sought help from the Mexican police”)

Issuance of protective orders not dispositive

Alonzo-Rivera v. Att’y Gen., 649 F. App’x 983 (11th Cir. 2016) (reversing finding that Honduran government able and willing to control where, *inter alia*, protective measures not enforced); CGRS Case No. 16602 (B.I.A. Dec. Dec. 8, 2016) (reversing denial of asylum where, although woman obtained protective orders against her ex-husband and police arrested him for a short time, the police did not effectively intervene when he violated those orders)

3. Legal Strategy

A NON-EXHAUSTIVE OVERVIEW OF COMMON GENDER CLAIMS, KEY CHALLENGES IN THOSE CASES, AND WINNING ARGUMENTS

Quantum of Harm

PERSECUTION AND TORTURE

Gender-Based Violence as PERSECUTION

Common forms of gender-based violence constitute “persecution,” particularly when considered from perspective of a child.

Domestic Violence: *Matter of A-R-C-G-*, 26 I&N Dec. 388 (B.I.A. 2014)

Rape and sexual violence: *Lazo-Majano v. INS*, 813 F.2d 1432 (9th Cir. 1996); *Matter of D-V-*, 21 I&N Dec. 77 (B.I.A. 1993)

Sex trafficking: *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013)

Forced marriage: *Bi Xia Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010)

“Honor” killing: *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011)

Although harms are to be evaluated cumulatively, even one instance of rape or gender-based violence may suffice to establish persecution. *Corado v. Ashcroft*, 384 F.3d 945, 947 (8th Cir. 2004)

Gender-Based Violence as TORTURE

Common forms of gender-based violence constitute “torture”

Rape and sexual violence: *Avendano Hernandez v. Lynch*, 800 F.3d 1072 (9th Cir. 2015); *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330 (3d Cir. 2008); *Zubeda v. Ashcroft*, 333 F.3d 463 (3d Cir. 2003)

Honor violence: *Bhatt v. Att’y Gen.*, 608 F. App’x 93 (3d Cir. 2015)

FGC: *Tunis v. Gonzales*, 447 F.3d 547 (7th Cir. 2006)

Domestic violence: CAT General Comment No. 2 ¶ 18

Common Claims

FOCUS ON PARTICULAR SOCIAL GROUP GROUND

Domestic Violence

Matter of A-R-C-G-, 26 I&N Dec. 388 (B.I.A. 2014) (recognized PSG defined by gender, nationality and relationship status – “married women in Guatemala who are unable to leave their relationship”)

Post-*A-R-C-G* : PSG Interpretive Issues

Non-marital Relationships

Matter of D-M-R-, (B.I.A. June 9, 2015) (granting withholding, clarifying *A-R-C-G* does not require that applicants seeking asylum from domestic violence have been married to their abusers); *cf. Vega-Ayala v. Lynch*, 833 F.3d 34 (1st Cir. 2016) (distinguishes *A-R-C-G* finding Salvadoran women in intimate relationships with partners who view them as property not immutable or socially distinct)

“Ability to leave”

Alvarado-Garcia v. Lynch, No. 15-71138 (9th Cir. Nov. 16, 2016) (reversed BIA determination woman was able to leave relationship where even after she attempted to leave he continued to abuse and control her); CGRS Case #11333 (B.I.A. Nov. 1, 2016) (reversing IJ finding woman was able to leave where abuser continued to stalk and harm her even after no longer living together); *cf. Marikasi v. Lynch*, 840 F.3d 281 (6th Cir. 2016) (holding evidence supports finding applicant failed to prove that she could not leave relationship or not relocate)

Domestic Violence: Intimate Partner Claims Approach

Gender + Nationality + Relationship Status + Other immutable characteristics

- Married women in [country X] who are unable to leave their relationship
- [Nationality] women in **domestic relationships** who are unable to leave
- [Nationality] women who are viewed as property by virtue of their positions within a domestic relationship
- Other: ethnicity, partner's status as a police officer or gang member, fundamental belief, etc.

CGRS Case No. 11612 (Immigration J. Dec. 11, 2015) (recognizing PSG of “Honduran women who take concrete steps to challenge the authority of their gang member boyfriends”)

CGRS Case No. 1382 (Immigration J. Feb. 21, 2006) (recognizing PSG of “a child of [x] family in Guatemala” where child was survivor of domestic violence by father)

Domestic Violence: Child Abuse Claims Approach

Age/childhood/youth status +
Gender – Nationality – Family – Ethnicity – Disability –
Lack of parental protection – Sexual orientation, etc.

Successful PSGs include

- [Nationality] children unable to leave the familial relationship
- [Nationality] children viewed as property in a domestic relationship
- Children of [nationality] women in domestic relationships they are unable to leave
- Family-based
- Female children . . .
- Children on their own
- Disability-based
- Orphans
- Adopted children or stepchildren
- Indigenous children
- LGBT children
- Children born out of wedlock, perceived as illegitimate, or with contested paternity

Hui v. Holder, 769 F.3d 984 (8th Cir. 2014) (IJ recognized PSG of “Chinese daughters viewed as property by virtue of their position within a domestic relationship”)

Note on claims involving FORCED RELATIONSHIPS

Being forced into a marriage or other union is itself a form of persecution (even apart from the attendant harms usually present these sorts of relationships).

The persecutor in these cases could be considered the family members who forced the girl into the relationship and/or the husband/partner, and the protected ground may differ depending on the persecutor's reasons for targeting the girl.

The fact a woman or girl was forced into a relationship only further highlights her inability to end the relationship that exists (since its inception) on the man's terms. In these cases, a social group defined by status as property in the relationship may be applicable.

Honor Violence

“Honor” crimes encompass violent acts, including murder, committed against an individual, usually a woman/girl, who is thought to have brought “dishonor” upon her family.

These claims are often based on gender-defined **social group** membership:

Gender + Nationality + Status in the family relationship + Age +
Past act or fundamental belief that brings “dishonor”

- *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011) (recognizing group of women in Jordan who had allegedly flouted repressive moral norms, and thus faced high risk of honor killing); *Al-Ghorbani v. Holder*, 585 F.3d 980 (6th Cir. 2009) (recognizing group of people who opposed Yemeni cultural and religious marriage customs); CGRS Case No. 7457 (Immigration J. Dec. 6, 2011) (recognized PSG of single Pakistani women of marrying age); CGRS Case #6981 (Immigration J. May 13, 2010) (recognizing group of women who choose their own husbands in defiance of their family’s wishes); cf. *Ba-Alawi v. Holder*, 409 F. App’x 843 (6th Cir. 2010) (in claim involving male applicant, rejected for lack of immutable characteristics, social group of persons targeted for “honor based violence”)

Other grounds, such as **religion**, may also apply. *Matter of S-A-*, 22 I&N Dec. 1328 (B.I.A. 2000); CGRS Case #6949 (Immigration J. Sept. 1, 2010) (finding that Nepali woman who converted to Islam and married a Muslim man would face persecution from her Hindu family on account of her religion)

Gang Violence (Non-DV)

No positive, published case law.

- *Granada-Rubio v. Lynch*, 814 F.3d 35 (1st Cir. 2016) (finding PSG women with children whose husbands live and work in the US and it is known to society as a whole that the husbands live in the U.S. is not socially distinct in an extortion context); *Rivera-Barrientos v. Holder*, 666 F.3d 641 (10th Cir. 2012) (rejecting PSG of women in El Salvador between the ages of 12 and 25 who resisted gang recruitment); *Mendez Barrera v. Holder*, 602 F.3d 21 (1st Cir. 2010) (rejecting PSG of young women recruited by gang members who resist such recruitment”)

However, there are unpublished or analogous cases to rely on.

- *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330 (3d Cir. 2008) (recognizing social group of women who escaped involuntary servitude after being abducted/confined by FARC); CGRS Case #11394 (Immigration J. Jan. 20, 2015) (recognizing PSG of single Salvadoran women who are working professionals); CGRS Case # 6090 (Immigration J. May 2, 2011) (finding Salvadoran woman suffered past persecution on account of imputed political opinion as well as PSG of Salvadoran women who are viewed as gang property); CGRS Case # 4541 (Immigration J. Nov. 8, 2006) (recognizing PSG of young women who refuse to be victims of violent sexual predation of gang members); CGRS Case #14391 (B.I.A. April 18, 2016) (remanding to consider PSG of working class, single women in Michoacán)

Gang Violence: PSG Approach

Gender + Nationality + Childhood/Youth

+ Lack of parental protection, Living in female headed household,
Living in a particular neighborhood + Other Immutable Characteristics (e.g.
sexual orientation/gender identity)

Female Genital Cutting (FGC)

Female genital cutting is a custom involving the cutting or removal of all or part of the female genitalia.

Factors that allow for the continued practice of FGC include traditional beliefs, superstition, the role of women in the society and the belief that FGC will suppress and control sexual behavior.

It may be performed on infants, children, adolescents, single, married, pregnant, or post-partum women, and corpses.

Past FGC – *Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005); *Hassan v. Gonzales*, 484 F.3d 513 (8th Cir. 2007); *Bah v. Mukasey*, 529 F.3d 99 (2d Cir. 2008); *Matter of A-T-*, 24 I&N Dec. 617 (B.I.A. 2008)

Fear of FGC – *Matter of Kasinga*, 21 I&N Dec. 357 (B.I.A. 1996)

Fear for Child FGC – *In re A-K-*, 24 I&N 275 (B.I.A. 2007)

Sex Trafficking

TVPPRA defines “trafficking of persons” as:

- a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform the act has not yet attained 18 years of age, or
- b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery Pay careful attention to detail with regards to things like legal definitions or quoting statutes.

And “Sex Trafficking” as:

the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

Sex Trafficking: Case Examples

Cece v. Holder, 733 F. 3d 662 (7th Cir. 2013) (en banc) (young Albanian women living alone)

Paloka v. Holder, 762 F.3d 191 (2d Cir. 2014) (young Albanian women)

CGRS Case #216 (B.I.A. 2003) (children who have been abandoned by their parents and have not received a surrogate form of protection)

CGRS Case #364 (B.I.A. March 30, 2001): (women in China who oppose coerced involvement in government sanctioned prostitution)

Cf. Rreshpja v. Gonzales, 420 F.3d 551 (6th Cir. 2005) (rejecting social group of young (or those who appear to be young), attractive Albanian women who are forced into prostitution)

Sexual Violence or Femicide (Non-DV)

Femicide is a crime involving the violent and deliberate killing of a woman because of her gender.

Estimated 66,000 femicide victims each year from 2004-09.

El Salvador has the **highest** murder rate of women in the world.

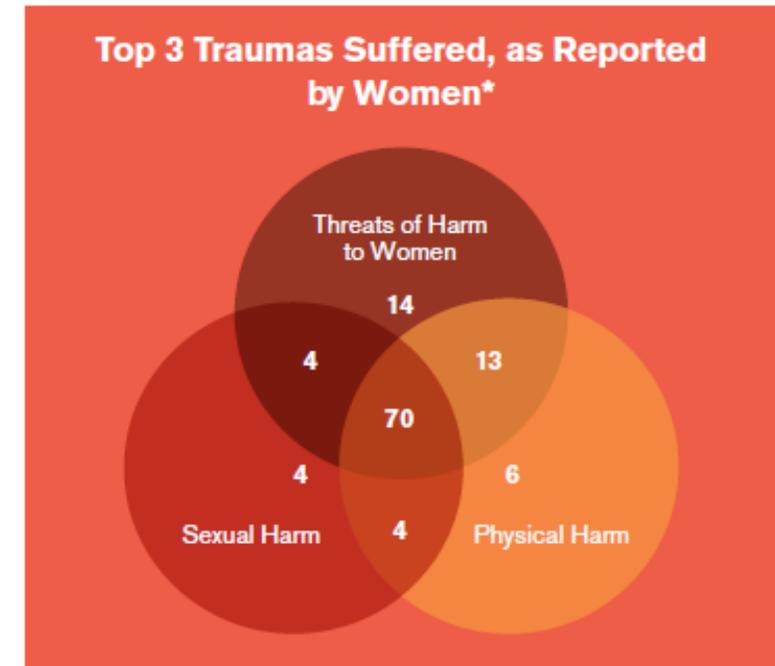
Honduras is **second** in the world.

Guatemala is **fourth** in the world.

Source: Geneva Declaration on Armed Violence and Development, *Global Burdens of Armed Violence 2015*

The Caribbean, southern Africa, and Russian Federation all recorded very high femicide rates.

The majority of perpetrators of femicides are male.



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

Sexual Violence or Femicide: Case Examples

(List not exhaustive)

Perdomo v. Holder, 611 F.3d 662 (9th Cir. 2010) (Guatemalan women)

Marynenka v. Holder, 592 F.3d 594 (4th Cir. 2010) (remanding due to IJ error – rape by 4 police officers for political opinion, membership in Belarusian youth organization opposing the government)

Uwais v. Atty. Gen., 478 F.3d 513 (2d Cir. 2007) (Sri Lankan police officer detained, sexually assaulted, beat and attempted to rape applicant because of Tamil ethnicity and imputed political opinion that she supported the Tamil Tigers)

Zubeda v. Ashcroft, 333 F.3d 463 (3d Cir. 2003) (remanding CAT claim based upon rape of soldiers and consideration of asylum based upon applicant's tribal identity)

Shoafera v. INS, 228 F.3d 1070 (9th Cir. 2000) (rape motivated by applicant's Amharic ethnicity)

Matter of D-V-, 21 I&N Dec. 77 (B.I.A. 1993) (activist member of pro-Aristide church group was gang-raped by soldiers on account of political opinion and religion)

Women's Rights Advocates

Particular Social Group

Gender + nationality + other characteristics (religion, fundamental beliefs, past action/experience, etc.)

Yadegar-Sargis v. INS, 297 F.3d 596 (7th Cir. 2002) (recognizing social group of Christian women in Iran who do not wish to adhere to the Islamic female dress code); *Safaie v. INS*, 25 F.3d 636 (8th Cir. 1994) (recognizing social group of Iranian women who advocate women's rights or who oppose Iranian customs relating to dress and behavior)

Political Opinion

E.g., feminism, opposition to government policy(ies)

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993) (recognizing feminism as a political opinion); CGRS Case #11938 (Immigration J. Aug. 26, 2015) (holding DRC woman activist who was raped, beaten, and threatened due to her activism); *Cf. Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996); CGRS Case #8227 (Immigration J. Feb. 4, 2014) (recognizing political opinion the belief that women in Guatemala should be treated as equal partners in marriage)

Other grounds may apply as well!

Is it reasonable to expect a woman/girl to RELOCATE?

- Generally unreasonable for children
- Family not supportive of woman's decision to leave abusive relationship and family attempts to reunite woman with abusive partner
- Strong family/community bonds and need for family support to survive ensure woman maintains contact with family and they know her whereabouts
- Corruption and bias against women compel government authorities, including police, to assist male friends/relatives find women who have left
- Women lack economic resources to relocate
- Limited number of shelters in country and shelter only temporary

Humanitarian Asylum

Available when all past persecution elements are met, but future fear has been rebutted. CANNOT be granted just because case is “compelling.” 8 C.F.R. § 208.13(b)(1)(B)(iii).

Must demonstrate:

1. **“Compelling reasons”** for being unwilling/able to return due to the severity of the past persecution – past harm “severe and atrocious”

- *See Matter of Chen*, 20 I&N Dec. 16 (B.I.A. 1989)
- *Matter of S-A-K- and H-A-H*, 24 I&N Dec. 464 (B.I.A. 2008) (FGC)

OR

2. **“A reasonable possibility of other serious harm”** upon removal

- No nexus required
- “Other serious harm” = persecution
- *Matter of L-S-*, 25 I&N Dec. 705 (B.I.A. 2012)

Convention Against Torture Protection

Reminder: Gender-based violence has been found to constitute torture. Do NOT waive CAT where there is a viable argument. It can be especially important in cases with a difficult nexus.

Acquiescence often presents a key challenge in gender CAT cases.

- Acquiescence does not require actual knowledge, but has been interpreted (by most jurisdictions) to require “willful blindness.” Moreover, an applicant need not show the entire government acquiesces, only that a public official would do so. *See, e.g., Avendano-Hernandez v. Lynch*, 800 F.3d 1072 (9th Cir. 2015); *Madrigal v. Holder*, 716 F.3d 499 (9th Cir. 2013)

CAT: Acquiescence

The **CAT Committee** has recognized that failure of the State to exercise due diligence to protect victims of gender violence constitutes acquiescence (and there is federal court support for this notion as well).

- *Gomez-Zuluaga v. Att’y Gen.*, 527 F.3d 330, 351 (3d Cir. 2008) (ordering BIA to consider as relevant to acquiescence evidence that the “authorities have been especially slow to end abuses against women or bring perpetrators to justice” and that “[t]here is also very little support for women who have been abused”); *Ali v. Reno*, 237 F.3d 591, 598 (6th Cir. 2001) (noting that where “authorities ignore or consent to severe domestic violence, the [CAT] appears to compel protection for a victim”)
- *Cf. Fuentes-Erazo v. Sessions*, 848 F.3d 847, 853 (8th Cir. 2017) (no acquiescence of Honduran government to domestic violence focusing on applicant’s failure to report past harm to authorities); *Ordonez–Tevalan v. Att’y Gen.*, 837 F.3d 331 (3d Cir. 2016) (no acquiescence of Guatemalan government where evidence local government did not condone domestic abuse); *Garcia-Milian v. Holder*, 755 F.3d 1026 (9th Cir. 2013) (evidence did not compel the Guatemalan government acquiesces in violence against women)

CAT: Case Examples

CGRS Case #15033 (Immigration J. Aug. 4, 2014) (granting CAT to DRC woman who suffered no past persecution looking to widespread rape and abuse of women)

CGRS Case #8787 (Immigration J. June 2012) (granting CAT to indigenous Guatemalan woman who suffered years of abuse at hands of husband who parents had forced her into relationship with when she was a child; asylum had been denied for timeliness and withholding for nexus, but she prevailed at the BIA and case now on remand for reconsideration of asylum denial)

CGRS Case #6649 (Immigration J. Sept. 15, 2009) (granting CAT to Honduran woman who suffered severe abuse at hands of father of child where police took no action in response to report; asylum denied for lack of nexus)

CGRS Case #3704 (Immigration J. Dec. 28, 2006) (granting CAT to Guatemalan girl at risk of femicide or other gender violence; asylum denied for failure to establish membership in gender-defined social group)

CGRS Case #2705 (Immigration J. July 15, 2003) (Eritrean girl granted CAT where feared conscription into the military and sexual abuse of women widespread; asylum denied for failure to demonstrate nexus to gender-defined social group)

CGRS Case #275 (Immigration J. Feb. 7, 2000) (granting CAT to young Ukrainian woman who had been gang raped by the mayor and police chief; asylum denied for lack of nexus)

4. Working with Survivors of Gender-based Violence

What are the challenges?

- High levels of trauma among asylum seekers, including high incidence of PTSD leads to avoidance of speaking about traumatic events
- Highly personal and humiliating nature of gender-based violence, which often involves rape and sexual degradation, strongly contributes to reluctance to disclose
- These should be taken into consideration in assessing credibility
 - Address inconsistencies in record (border interviews and later submissions about experiences of past persecution)

What are the strategies and resources available to you?

- Read CGRS, Child Asylum Manual general (April 2016) that has helpful step-by-step outline of key considerations when working with children or survivors of trauma.
- Expert declaration on file with CGRS addressing psychological impact of trauma on ability to disclose various aspects of that trauma
- Forensic psychological evaluation of asylum seeker.
 - HealthRight International – [Information](#) for Attorneys Representing Survivors of Torture and Abuse
 - Physicians for Human Rights – [Resources](#) for Asylum Seekers
 - CGRS Asylum Expert Witness Database (scheduled late 2017)

Resources

CGRS, Forthcoming Gender-Based Asylum Claims Practice Advisory (stay tuned!)

UNHCR, Representing Women from Central America: Leveraging International Law to Strengthen Asylum Claims (March 10, 2017):
<https://www.youtube.com/watch?v=z2mn3OeYgao>

USCIS, Refugee, Asylum and International Operations (RAIO) Combined Training Lesson Plans: <https://tinyurl.com/yax3z9pu>

USCIS, Asylum Officer Basic Training Course: available in FOIA reading room and on file with CGRS

Request Assistance

CGRS provides expert consultation to attorneys representing asylum seekers across the United States, including legal consultation, country conditions evidence, and expert witness referrals and declarations.

To request assistance from CGRS, visit <http://cgrs.uchastings.edu/assistance>.



5. Q&A

