



Gender-Related Asylum Fact Sheet

Definitions of Refugees and Gender-Related Violence

- **The 1951 Geneva Convention relating to the Status of Refugees (1951 Convention) and the U.S. Immigration and Nationality Act** define a refugee as a person “outside of his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”
- While “gender” is not specified as category, women who suffer gender-related violence may fit under any of the five categories and most often fit under the social group ground. The **UN’s Guidelines on the Protection of Refugee Women** promote "acceptance of the principle that women fearing persecution or severe discrimination on the basis of their gender should be considered a member of a social group for the purposes of determining refugee status." Women who suffer gender-related violence also often fit under the political opinion and religion grounds.

Examples of gender-related violence:

1. Women often suffer harms which are either unique to their gender, such as **female genital mutilation or forcible abortion**.
2. Sexual violence, including rape, often accompanies warfare or ethnic cleansing, as in the case of Janjawid militia attacks in Darfur, Sudan.
3. Women often suffer **domestic violence** at the hands of private individuals, such as family members who threaten them with so-called **honor killings**.

**International human rights instruments recognize the above-mentioned forms of gender-related violence as human rights violations.*

Additional human rights foundations of gender-related asylum in:

- **UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)** states that “‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”
- **UN Declaration on the Elimination of Violence Against Women** states that “‘violence against women’ means any act of gender-related violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Seeking Asylum in the United States

International law prohibits the forcible return of refugees to countries where their lives or freedom would be threatened. Refugees have the right to seek asylum in other countries. Women who fear or have suffered gender-related persecution may qualify for asylum in the U.S. if their governments are unwilling

or unable to protect them. In the U.S., the following guidelines and precedent-setting cases recognize gender-related persecution as the basis for asylum.

- **INS Gender Guidelines (1995)** – Formal guidelines for asylum officers in deciding gender-related asylum cases state that gender-related persecutions such as rape, sexual violence, violation of fundamental beliefs and abuses considered to be private acts can be a basis for asylum. *While helpful, these guidelines are only suggestions and do not have the force of the law.*
- **Matter of Kasinga (1996)** - In this precedent-setting gender-related asylum case, the Board of Immigration Appeals (BIA) ruled that “female genital mutilation, which results in permanent disfigurement and poses a risk of serious, potentially life-threatening complications, can be the basis for a claim of persecution. 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, are recognized as members of a "particular social group" within the definition of the term ‘refugee’.” *Although asylum was granted in this case and opened the door to other potential claims on the basis on female genital mutilation (FGM), it did not establish FGM as a specific ground for asylum and narrowly defined the persecuted “social group.”*
- **Matter of S.A. (2000)** - In this precedent-setting gender-related asylum case, the BIA ruled that “a woman with liberal Muslim beliefs established by credible evidence that she suffered past persecution and has a well-founded fear of future persecution at the hands of her father on account of her religious beliefs, which differ from her father’s orthodox Muslim views concerning the proper role of women in Moroccan society.” *This case further opened the door to gender-related claims by recognizing gender-related religious persecution, but did not establish a broad, enforceable category for gender.*
- **Proposed INS Regulations (2000)** – This federal regulation would have established a broad analytical framework for the consideration of asylum claims based on membership in a particular social group that recognizes that victims of domestic violence may, under certain circumstances, qualify for asylum. **These regulations were drafted late in the Clinton Administration and have yet to be published in final form.**
- **Matter of R.A. (1996-present)** – In 1996, a U.S. immigration judge granted asylum to Rodi Alvarado, a Guatemalan refugee who had fled horrific domestic violence. In 1999 the BIA reversed the asylum decision. In 2001, then-Attorney General Janet Reno “vacated” the BIA decision and directed the BIA to reconsider the case when the Proposed INS Regulations became final. The regulations were never made final, so her case remains undecided. *There is still no nationwide precedent on domestic-violence-based asylum claims, thus allowing individual judges to decide these cases without centralized guidance in the forms of regulations or a precedent decision.*

Even though the Department of Homeland Security and international human rights instruments recognize gender-related violence as human rights violations, many asylum adjudicators in the United States apply a restrictive interpretation of the international definition of a refugee entitled to protection. Women with asylum cases based on gender-related violence are often denied protection in the U.S.

For more information on gender-related asylum and other women’s human rights issues, visit the Women’s Human Rights Program website at www.amnestyusa.org/women or contact us at AIUSA 5 Penn Plaza – 16th Floor, New York, NY 10001.