

ARGUMENTS FOR ADDING GENDER AS A 6th GROUND OF ASYLUM

THE 6th GROUND IS CRITICAL TO ENSURING EQUAL AND ENDURING ACCESS TO ASYLUM FOR SURVIVORS

- To ensure equal and enduring asylum access for survivors of gender-based persecution, the Refugee Protection Act (RPA) must include **both** 1) clarified PSG and nexus standards; **and** 2) a 6th ground of asylum for sex/gender.
 - Any administration can seek to end gender-based asylum through executive action. New PSG and nexus standards will not insulate gender-based claims from such an attack. With sex/gender as an enumerated ground of asylum, decisionmakers will have a harder time denying gender-based claims for failure to prove elements such as nexus to a protected ground or persecution itself.
 - PSG is inherently discriminatory. Unlike the other grounds, it requires a highly technical multi-tiered analysis, and is routinely subject to reinterpretation. PSG analysis and case development re-traumatizes survivors. Most survivors cannot afford or access counsel and are unfamiliar with the nuanced PSG international law and policy arguments they must make to succeed.
 - Favorable UNHCR guidance is non-binding; courts routinely ignore it.
- Simplifying the gender-based asylum analysis will reduce unnecessarily protracted proceedings and appeals, as well as inefficiencies during initial screening processes at the border. This will allow taxpayer resources to be leveraged elsewhere.
- A more intuitive framework reduces re-traumatization and helps level the playing field for pro se applicants.
- The US has long recognized sex/gender as a protected characteristic in the anti-discrimination context. Naming sex/gender as such for asylum is a long-overdue acknowledgment that misogyny, like racism, is a systemic human rights abuse equally worthy of redress.

ADDING GENDER AS A SIXTH GROUND HELPS, RATHER THAN HARMS, ASYLUM SEEKERS

- At least 25 countries (including the EU) have updated their laws to explicitly identify sex/gender as a basis or element of asylum. Of these, 4 have added sex/gender as a 6th ground. We are not aware of harm asylum seekers have faced as a result.
- Laws naming sex/gender signal a State party's commitment to addressing violence against women – rather than their repudiation of the Convention. Parties, such as the US, who reject gender based PSGs cite the *absence* of a 6th ground as justification.
- The 70-year-old Convention is a floor and not a ceiling for protection; UNHCR itself interprets it expansively. Adding a 6th ground is **both** consistent with Congressional intent to uphold the Convention, **and** it fosters compliance with it in its application.
- A 6th ground enables survivors to bring claims based on sex/gender, membership in a PSG, political opinion, and/or other grounds alone or in combination with each other just as they do now. Rather than undermining favorable gender-based PSG precedential decisions, a 6th ground will help *disarm* decisionmakers currently emboldened to ignore or overturn them.
- It is extremely difficult, under any circumstances, for asylum seekers to flee and win asylum. Survivors face severe obstacles in doing so due to the ostracization, stigmatization, and discrimination that defines gender-based persecution itself. As shown in the past, expanding eligibility does not open the “floodgates.”
- Past legislation naming specific categories of asylum has led to *protection* for countless asylum seekers. Improved asylum standards are **also** helpful and necessary to maximize protection for all.