



## What We Believe

Gender-based violence (GBV) is a pernicious human rights abuse pervasive throughout the world. Perpetrators inflict GBV to punish individuals for their gender identity, gender expression, sexual orientation and/or sex assigned at birth. There are various forms of GBV, including domestic and intimate partner violence, sexual harm, forced female genital cutting, forced intersex genital surgeries, forced marriage, human trafficking, and other forms of physical, sexual, psychological, economic, or sociocultural violence. Just as systemic racism fuels harm on account of race and nativism breeds persecution on account of national origin, systemic misogyny and homophobia/transphobia give rise to mistreatment on account of gender.

U.S. asylum law is based on the 1951 United Nations Refugee Convention and 1967 Protocol.<sup>i</sup> It is designed to protect people from persecution based on specific, fundamental traits like race, religion, and nationality. Gender, however, did not make the list. The result of this exclusion is that claims involving gender-based violence are mostly considered under an anomalous, undefined category termed "particular social group" (PSG).<sup>ii</sup> Claims involving persecution on account of gender identity and/or expression generally receive favorable and consistent consideration in the U.S. under this category.<sup>iii</sup> By contrast, claims involving abuses such as domestic violence, forced marriage, sex slavery, and so-called "honor crimes" do not<sup>iv</sup> - despite United Nations High Commissioner for Refugees' (UNHCR) Guidance<sup>v</sup> to the contrary, and the recent vacatur of harmful caselaw.<sup>vi</sup> Instead, applicants must contort their arguments to fit burdensome and ever-shifting technical requirements for proving they belong to a PSG and were harmed because of their membership in it. This can be complicated at best and impossible at worst. As a result, many survivors face prolonged, uphill court battles or deportation back to face further abuse or even death. Those who cannot afford legal representation or find free counsel and who are acutely and severely traumatized suffer the most.

To ensure equal and enduring access to protection for survivors of GBV, a growing number of countries have updated their laws to explicitly name gender as a basis for asylum either as a PSG,<sup>vii</sup> or as its own independent ground.<sup>viii</sup> It is long past time for the U.S. to do the same. Survivors have always deserved, but have never received, the same protection afforded to other categories of asylum seekers. As a society, we have willfully ignored how our beliefs motivate, perpetuate, and justify gender-based violence, and how we punish those who challenge them. Maintaining the *status quo* - with gender-based asylum standards perpetually subject to judicial reinterpretation and narrowing - means continuing to deny gender its rightful place alongside other characteristics like race and religion as an attribute that equally warrants protection. One option - naming gender as a PSG under U.S. law - would significantly enhance protection for survivors. At a minimum, survivors navigating the system on their own would be explicitly informed, for the first time, that GBV could potentially qualify

them for relief. Naming gender as a PSG would also make it much harder for officials at the border to turn survivors away with impunity, and for judges to dismiss GBV as a common, age-old phenomenon within the 'private' sphere unworthy of redress.

Adding gender as a 6th ground goes one step further as a critical paradigm shift signaling that protection of those targeted because of their sex or gender is of equal importance as protection based on other grounds. A clear legislative mandate adding gender as a 6th ground of asylum should not and will not disadvantage others that already receive relatively consistent treatment under our laws. Expansion of protection for survivors in other countries – including naming gender as a PSG and/or a 6th ground – has not, to our knowledge, caused harm to other asylum seekers. And the naming of "sex, color, and kinship ties" as examples of PSGs in *Matter of Acosta*<sup>ix</sup> likewise did not lead to the rejection of non-named groups.

While a 6th ground would encompass claims involving any and all forms of GBV, its addition should also not preclude any gender-based claim from being separately recognized under the PSG or any other ground. Legislation enacting the 6th ground must therefore expressly ensure the retention of PSG as a parallel avenue for protection.

The urgency of implementing this mandate is unprecedented. What little access to safety survivors have now, in the absence of a named basis of asylum for gender, is precarious, inconsistent, and remains in danger of elimination by a future executive at any time. In expressly seeking to prohibit asylum based on gender, the former administration noted the lack of gender as a Convention ground and the non-binding nature of the UNHCR Guidelines endorsing such claims.<sup>x</sup> We must act now to ensure once and for all that asylum remains available to survivors of GBV as it does to others. In doing so, the U.S. will also play a critical role in dismantling the structural misogyny that allows violence against women, girls, and others to proliferate.

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<sup>i</sup> <https://www.unhcr.org/en-us/1951-refugee-convention.html>

<sup>ii</sup> <https://www.unhcr.org/3ae68cda4.html>

<sup>iii</sup> See *Matter of Toboso-Alfonso*; *Avendano-Hernandez v. Lynch*; and *Bostock v. Clayton County*.

<sup>iv</sup> See [https://www.humanrightsfirst.org/sites/default/files/Asylum\\_Grant\\_Rates.pdf](https://www.humanrightsfirst.org/sites/default/files/Asylum_Grant_Rates.pdf)

<sup>v</sup> <https://www.unhcr.org/3d58ddef4.pdf>

<sup>vi</sup> See vacatur of *Matter of A-C-A-A-*; *Matter of A-B- I&II*; *Matter of L-E-A- I&II*.

<sup>vii</sup> See: [2021 Tahirih list of countries that name gender as a basis for asylum](#). Several countries have also named "childhood" status as a PSG. Any Legislation listing examples of PSGs must explicitly affirm that the list is non-exhaustive, and that omission of other groups is not evidence of their lack of cognizability under U.S. law.

<sup>viii</sup> *Ibid*.

<sup>ix</sup> <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2986.pdf>

<sup>x</sup> <https://www.govinfo.gov/content/pkg/FR-2020-12-11/pdf/2020-26875.pdf> at FN 56.