



Why Victims of Domestic Violence Should Be Granted Asylee Status

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The term refugee was incorporated into United States Immigration Law by the Refugee Act of 1980. The law defines a refugee as: "any person who is outside any country of such person's nationality or country where he/she last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself/herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion." U.S. asylum benefits – including access to social services, official resident status, and permission to work in the United States – are granted by the Board of Immigration Appeals to individuals who meet this legal definition of a refugee.

U.S. asylum policy needs clarification, starting with the definition of asylum and what it means to be a member of a "particular social group." Failure to address the ambiguities of this law and the definition of "refugee" puts some of the world's most vulnerable people in jeopardy. Gender-based violence has been recognized internationally as a human rights violation. In keeping with this, U.S. law should treat victims of gender-based violence as victims of human rights crimes and grant them refugee or asylum status with the benefits that come with the appropriate status.

Domestic Violence and Refugee Status

In 2017, 468 women were killed in El Salvador – at a rate of one per 18 hours. Among Latin American and the Caribbean countries, El Salvador has the highest rate of femicide – women murdered on account of their gender. Because they committed their crimes in El Salvador, these women's murderers were much less likely to face legal consequences than if they had killed a woman in another country.

In El Salvador, only one in four of such crimes get to court and only around seven percent of them get convictions. The United Nations' Economic Commission for Latin America and the Caribbean finds that, in 2017, femicide took the lives of over 2,795 women 15 years or older. The Commission also notes that Honduras, Guatemala, the Dominican Republic, and Bolivia have female murder rates of at least two per 100,000.

In December 2009, after fourteen years of court hearings, the Board of Immigration Appeals set a new precedent when they granted Ms. Rody Alvarado asylum. Ms. Alvarado fled her home in Guatemala to escape brutal domestic violence. Once in the United States, she submitted her asylum application as a member of a "particular social group defined as "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination." In 2014, the Board of Immigration Appeals considered a similar case in which a Guatemalan woman fled to the United States as a member of the group of "women in Guatemala who are unable to leave their relationships." After eight years of court proceedings she was finally granted asylum. In 2014, the Board held that "El Salvador women who are unable to leave their domestic relationship where they have children in common" can be granted asylum as members of a particular social group.

Legal Precedent

These cases all held that victims of gender-based domestic violence are, in fact, members of a particular social group and eligible for refugee status, asylum status, or both. Yet, on June 11, 2018, then Attorney General Jeff Sessions, overruled an asylum case on the grounds that women fleeing domestic violence are not being persecuted by their governments and therefore should not be granted refugee or asylum benefits. This

decision is irresponsible. Refusing to grant these women asylum effectively abandons them – and in some cases their children – to violence and abuse from which their governments refuse to protect them. In addition to being irresponsible with regard to these women's lives, Jeff Sessions' decision also fails to take into account the current political crises playing out around the world, the histories of these governments' neglect, and the precedent laid out by immigration officials and law covering the topic.

There are several laws that provide ample precedent to include victims of domestic abuse among those eligible to receive the "particular social group" refugee designation:

- *The Human Rights Enforcement Act of 2009* – establishes a section within the Criminal Division of the Department of Justice to enforce human rights laws.
- *The Battered Immigrant Women Protections Act of 2000* – covers women and children that have been subject to battery or extreme cruelty in the United States and finds them eligible to petition the Attorney General to adjust their status accordingly.
- *The Violence Against Women Act of 1994* – includes provisions that allow immigrant victims of domestic violence to obtain immigration relief independent of their abusive spouse or parent through a process called "self-petitioning."

Ways Forward

These laws show that the U.S. government often considers gender-based victims of violence to be victims of human rights violations. Jeff Sessions did not consider these laws nor the precedent they set when he decided to prohibit victims of domestic violence from seeking asylum in the United States as refugees.

Based on the above and findings from my research on the topic, I recommend that policymakers, survivors, and their advocates work to amend the Immigration and Nationality Act and the Code of Federal Regulations 208.13 *Establishing Asylum Eligibility* part (b) in the form of a Public Law.

The law should be amended to include a clear description of who can be considered a member of a "particular social group," highlight the fact that gender-based violence victims are legally victims of a human rights crime, and thus, should be considered eligible for asylum.

Read more in Maria del Carmen Rodriguez, "International Laws and Human Rights Actions: A Key Role Combating Human Trafficking" (working paper, 2019).