

# Profiles in Resilience

Why Survivors of Domestic Violence  
and Gang Violence Qualify for  
International Protection

June 2021





|    |                            |
|----|----------------------------|
|    | Contents                   |
| 3  | Executive Summary          |
| 7  | Introduction               |
| 8  | Background                 |
| 10 | Methodology                |
| 12 | Findings                   |
| 34 | Legal and Policy Framework |
| 42 | Conclusions                |
| 43 | Recommendations            |
| 45 | Annex                      |
| 48 | Endnotes                   |

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*NOTE: The photographs included in this report were taken during the course of a research project for a PHR report entitled "If I went back, I would not survive." Asylum Seekers Fleeing Violence in Mexico and Central America," which was based on medical evaluations conducted by some of the same researchers who wrote this report. While the people depicted are not the same individuals cited in this report, their stories and health outcomes are illustrative of the broader trend uncovered in this research project.*

*Cover: A woman who fled Honduras with her family after her husband witnessed a murder and the family was attacked by armed men affiliated with a local gang.  
Photo: PHR photo library*

# Executive Summary

## Introduction

Although protection for refugees is a longstanding U.S. legal commitment under federal and international law, immigration policy has become a deeply politicized topic in the United States in recent years. Domestic violence and violence by organized gangs represent a major cause of forced displacement for those arriving at the U.S. border. Yet these forms of persecution are viewed skeptically by some policymakers who favor restricting immigration in spite of U.S. legal obligations to ensure the right to seek asylum.

Extensive data demonstrates that the increase in migration from Central America to the United States in the past decade has been triggered by physical and sexual violence, death threats, and other abuses by organized gangs, domestic abusers, and government authorities, resulting in high levels of physical and psychological trauma. The Trump administration dismissed these claims as **“meritless” and asylum seekers as “fraudsters” who exploit the “loophole” of asylum, alleging that they are actually criminals.** Former attorney general Jeff Sessions flouted decades of domestic and international legal precedent by issuing a blanket statement, in a single case, that domestic and gang violence survivors will generally not qualify for asylum. This decision had the immediate impact of increasing denials of Central American asylum claims, in line with the political goals of the Trump administration to deter migration from Central America.

## Research and methodology

A large proportion of Physicians for Human Rights (PHR) clients, who are asylum seekers receiving pro bono forensic evaluations, are survivors of domestic and gang violence. A research team, comprised of faculty from the University of California, Los Angeles (UCLA), graduate students from the UCLA Fielding School of Public Health, medical students at the David Geffen School of Medicine at UCLA, and PHR staff, analyzed 132 medical-legal affidavits resulting from medical and psychological evaluations of asylum seekers to capture the characteristics of the harms they experienced. The study also explored descriptive statistics that could expose discriminatory patterns of harm that were not captured through the qualitative analysis. Our hypothesis was that the physical and psychological findings in medical-legal affidavits would bring new insights that could inform efforts to change asylum policies.

## Research findings: Significant trauma exposure from domestic and gang violence

In this study, 81 percent (107 people) of the applicants were seeking asylum due to domestic violence and 29 percent (38 people) due to persecution by organized gangs; 10 percent (13 people) had experienced both domestic and gang violence.

According to data from the affidavits, the applicants reported a wide range of trauma: of 26 types of trauma, almost two thirds (65 percent) of applicants had experienced six or more types. Nearly all (95 percent) of the applicants had experienced multiple trauma categories: 78 percent had experienced three or

The increase in migration from Central America to the United States in the past decade has been triggered by physical and sexual violence, death threats, and other abuses by organized gangs, domestic abusers, and government authorities, resulting in high levels of physical and psychological trauma.

more categories of trauma while 15 percent had experienced all five trauma categories. Overall, sexual violence was very common in gang violence-related claims, with one third of applicants in this category reporting having been raped and five percent reporting a history of “gang rape” or rape by two or more perpetrators.

Overall, 38 percent of applicants in this sample reported having a family member who had experienced violence or had been killed as a sign that they were likely to be targeted next. Perpetrators commonly threatened family members as a powerful means of coercing, threatening, or exploiting their specific targets.

### Nowhere to flee: Lack of community or state protection from domestic and gang violence

Affidavits captured the complicated social and gender norms, sense of male entitlement, and systemic disempowerment of women that motivated intimate partners to inflict physical and sexual violence. These pervasive beliefs about the obligations of women within intimate relationships were prevalent amongst perpetrators and local community members.

Parents, guardians, and extended family members also perpetrated physical violence (50 percent) and sexual violence (19 percent). Many clients reported that their family members were motivated by adherence to social, religious, and community norms, such as the maintenance of male-dominant power structures **within the family or the avoidance of familial “shame” caused by non-conformity** to these customs.

Of the 132 affidavits analyzed, 32 (24 percent) reported that the person sought



*After the father was extorted, beaten, and threatened with death by a local gang, this family fled El Salvador rather than go to the police, who they said were in collusion with the gangs.  
Photo: PHR photo library*

**People reported that the state was unable or unwilling to protect them due to corruption, fear, normalization of domestic and gang violence in the community, and stigmatizing attitudes towards victims.**

assistance from a police, military, or government official or civil society organization. For 81 percent of those who sought assistance, there was either no response or the report resulted in direct persecution by the state actor. People reported that the state was unable or unwilling to protect them due to corruption, fear, normalization of domestic and gang violence in the community, and stigmatizing attitudes towards victims. More than a third of the people described in our sample (49 people or 37 percent) attempted to relocate within their home country prior to migrating to the United States, including 22 people who attempted to relocate more than once.

For many asylum seekers, arrival in the United States did not mean that they had found safety. Almost half of the subjects in the sample (46 percent) reported ongoing trauma after entering the United States. This trauma often took the form of ongoing threats by former persecutors through phone or social media. Other applicants reported experiencing new forms of abuse after arrival in the United States, including by harassment or assault in their new workplace or abuse by new intimate partners. Other types of abuse that were reported after arrival in the United States included trauma related to detention and forced prostitution.

## **Physical and mental health effects of trauma**

Of the 101 affidavits in this sample that included a mental health evaluation, 79 percent met criteria in the Diagnostic and Statistical Manual of Mental Disorders (DSM–5) for a mental health diagnosis. Post-traumatic stress disorder (PTSD) was the most common diagnosis, with 68 percent of people who underwent a mental health evaluation meeting criteria for this diagnosis. Suicidality was also very common, with 32 percent of people reporting any history of suicidal ideation or attempt and 13 percent reporting active suicidality at the time of the evaluation.

Of the 50 evaluations that included a physical evaluation, the most common types of physical injuries reported were cuts (28 people, 56 percent) followed by burns (12 people, 24 percent).

The majority of clinicians in this sample concluded there was objective physical or psychological evidence of past trauma consistent with, highly consistent with, or diagnostic of the history of trauma described by the applicant.

## **Resilience of survivors**

Many affidavits commented on resilience factors that helped the applicants recover from their prior trauma and adjust to a new life in the United States. These resilience factors included family and social support, religion and collective

identity, work and school, access to mental and other clinical health services, and individual traits. Mental health improvement was strongly associated with the number of reported resilience factors. Improvement in mental health was reported in 74 percent of subjects who reported two or more resilience factors, compared to 14 percent of subjects who reported no resilience factors.

## Legal protections for refugees fleeing domestic and gang violence

The Refugee Convention defines a refugee as someone who is unable or unwilling to avail themselves of the protection of their country from persecution, for the reasons, **or “protected grounds,” of race, religion, nationality, membership of a particular social group, or political opinion.** The UN High Commissioner for Refugees (UNHCR) advises that domestic violence and gang violence survivors **may be considered “members of a particular social group” due to their gender, or** due to gender with their relationship status or national origin, and that in gang violence cases, survivors can be considered members of social groups which are defined as groups by their past actions or experiences, such as resisting gang recruitment or refusing to pay extortion money to gangs. Opposition to gang activity and domestic violence can also be understood as a type of political opinion. According to UNHCR, persecution by non-state actors, such as gang members or violent family members, should be recognized whenever a government is unable or unwilling to control the perpetrators.

## Conclusions

The data in this study provides additional evidence that the harms suffered by asylum seekers from domestic and gang violence are real and severe, and that victims often cannot find protection in their own country. These narratives of abuse and trauma in this study were consistent with mental and physical health evidence, as documented according to international standards contained in the Istanbul Protocol.

Domestic and gang violence survivors can meet the criteria for international protection, especially when their persecution and inability to obtain protection is understood through a gender lens. The Biden administration should revise Department of Homeland Security and Department of Justice regulations to ensure that U.S. asylum law is consistent with international refugee law standards in the protection that it offers. Ultimately, Congress should amend the Immigration and Nationality Act to codify these standards at the level that international law requires.

Refugees, asylum seekers, and all immigrants must be treated humanely. The people whose narratives are described in this study were bona fide applicants who were granted asylum in the United States after experiencing severe harm in

**The data in this study provides additional evidence that the harms suffered by asylum seekers from domestic and gang violence are real and severe, and that victims often cannot find protection in their own country.**

their home countries, often over many years and by multiple perpetrators. Some 46 percent of them reported experiencing ongoing trauma in the United States, most commonly due to ongoing threats to themselves or their loved ones and new experiences of domestic violence in the United States. For some, mistreatment in detention, separation from family, inability to work, and anxiety about their asylum cases also caused deteriorating mental health symptoms after they arrived in the United States. Nevertheless, this study demonstrates the resilience of these applicants and the possibility for healing for those who are able to find safety in the United States. Statistical analysis showed that those who did not experience ongoing trauma in the United States or who had factors that promote resilience, such as family and community support, opportunities for religious engagement, employment, and education, and access to mental and other clinical health services, had significantly better health outcomes. These courageous survivors can heal if we ensure respect for their dignity, well-being, and human rights.

## Introduction

Immigration policy has become a deeply politicized topic in the United States in recent years, even to the point of undermining historic public support for and understanding of asylum protection for those fleeing harm. Current debates represent a stark contrast with the longstanding refugee regime ensured under U.S. and international law. Domestic violence and violence by organized gangs that occur with impunity represent a major cause of forced displacement for those arriving at the U.S. border. Yet these forms of persecution are viewed skeptically by some U.S. policymakers who favor restricting immigration and argue that asylum should be limited to a few singular dissidents, rather than serve as a meaningful mechanism for states to share responsibility for global persecution and forced displacement trends.

A growing proportion of Physicians for Human Rights (PHR) clients who are asylum seekers receiving pro bono forensic evaluations are survivors of domestic and gang violence. The physical and psychological trauma caused by domestic and gang violence is substantial. The narratives of these survivors shed light on community attitudes toward gender identity, gender-based persecution, and dynamics of persecution by non-state actors, as well as the nature and meaning of state protection of human rights.

Immigration experts were deeply concerned by the rollback of protections for domestic and gang violence survivors under the Trump administration. These changes undermined decades of hard-won progress in establishing violence against women as a human rights violation and seriously addressing human rights abuses by non-state actors, while the Refugee Convention generally contemplated government persecution.<sup>1</sup> Refugees themselves as well as legal counsel and others serving affected communities are often best placed to drive development of refugee law, in collaboration with adjudicators, international organizations, and academia, because their data reflect the lived experiences of people forced into flight.<sup>2</sup> Toward this end, we sought to explore gender-based persecution (including gendered forms of violence by organized gangs) and state failure to protect victims due to gender-based discrimination in law enforcement and judicial response through the experiences of people who lived those realities.

This study specifically examines more than 100 detailed cases of people who were successful in obtaining asylum in the United States from 1999 to 2019 due to their membership in a particular social group as the protected ground; this violence was mainly perpetrated by non-state actors. We focused on this population because it has been targeted by recent policy changes as being generally unworthy of international protection. This study seeks to describe the dynamics and characteristics of the harm these asylum seekers experienced that are relevant for their legal cases, including the severity of harm, community and government responses to persecution, and targeting based on their immutable characteristics, such as kinship ties. Describing the characteristics of this group through analyzing their lived experiences is important to inform advocacy efforts which seek to advance U.S. asylum policies that protect survivors of domestic and gang violence. A unique finding in this study captures the resilience of survivors who have access to community and social support.

## Background

Violence by organized gangs represents a serious threat to human rights. According to data from the United Nations Office on Drugs and Crime, in 2017 more people were killed worldwide in unlawful killings than in armed conflict, with Central America being the most dangerous region for unlawful killings.<sup>3</sup> The World Health Organization (WHO) reports that around 200,000 young people aged 10-29 are killed each year, with 83 percent of the victims of unlawful killings being boys and young men.<sup>4</sup> Criminal gangs are often deeply embedded in the political system, leveraging coercive power to eliminate opposition and to promote candidates who will ensure a permissive environment for gang activities.<sup>5</sup> The political dimension of gang operations means that individuals often do not have any safe option for reporting violence or threats without fear of violent reprisal.<sup>6</sup>

Globally, violence against women is an endemic public health problem and human rights violation, with WHO data indicating that almost a third of women worldwide (27 percent) are subjected to intimate partner violence during their lifetime.<sup>7</sup> In 2015, El Salvador and Honduras ranked third and fifth in the world in the rate of violent deaths of women; social norms and legal culture mean that only a fraction of these cases are opened and an even smaller fraction result in conviction.<sup>8</sup>

Demographics of migrants arriving at the U.S. border have changed over the past decade. While fewer people are crossing the border each year than in prior decades, more people are seeking asylum from Central America, and an increasing proportion are families and children. The majority of people apprehended by U.S. Border Patrol are from the Central American countries of El Salvador, Guatemala, and Honduras, countries with some of the highest rates of

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*Brothers who fled their home in Honduras with their parents after the family was attacked by armed men affiliated with a local gang.*

*Photo: PHR photo library*

homicide in the world.<sup>9</sup> Applications for asylum in the United States increased seven-fold from Fiscal Year (FY) 2009 to FY2013, with 70 percent of that increase due to asylum applications from these three countries.<sup>10</sup> From 2012 to 2017, there was a rise again in asylum applications from people from Central American countries, this time an almost eight-fold increase, with increasing numbers of families and unaccompanied children as applicants.<sup>11</sup> Extensive data demonstrates that the increase in migration from Central America to the United States in the past decade has been triggered by physical and sexual violence, death threats, and other abuses by organized gangs, domestic abusers, and government authorities, resulting in high levels of physical and psychological trauma.<sup>12</sup>

Asylum grant rates have also increased, underscoring the bona fide nature of these claims and their merit under U.S. asylum law: from 2010 to 2016, there was a 96 percent increase in the percentage of asylum seekers from the Central American countries of El Salvador, Guatemala, and Honduras who were granted protection.<sup>13</sup>

Nonetheless, with no evidence of change in root causes of displacement, the Trump administration abruptly dismissed these claims as “meritless” and asylum seekers as “fraudsters” who exploit the “loophole” of asylum, alleging that they are actually criminals.<sup>14</sup> In addition to deterrence policies of family separation, the “Remain in Mexico” policy, and expulsions, lesser known changes to interpretation of asylum law were mostly overlooked by the media, but struck a devastating blow at the core of asylum protection. Then Attorney General Jeff Sessions overturned an asylum decision for a domestic violence survivor from El Salvador, *Matter of A-B-*, and used that case to reverse decades of precedent, making a sweeping statement that domestic and gang violence survivors generally will not qualify for asylum. Other decisions and regulations followed, further undermining protections for domestic and gang violence survivors. A

## In 2015, El Salvador and Honduras ranked third and fifth in the world in the rate of violent deaths of women.

legal database documenting 50 unpublished Board of Immigration Appeals decisions following *Matter of A-B-* found that 37 applications were denied and 13 were remanded, using the decision as a reason to disqualify applications based on domestic or gang violence.<sup>15</sup> Although *Matter of A-B-* did not mention specific countries, it resulted in a dramatic drop in asylum cases for people applying from Central American countries before and after the decision. Asylum grant rates fell from 23.9 percent for Central Americans in the first half of 2018 to only 14.4 percent in the second half of the year following the decision, while applicants from other countries received asylum 47 percent of the time and experienced only a 0.5 percent decrease during the same period.<sup>16</sup> In contrast, in Canada, asylum seekers from El Salvador obtained asylum in 69 percent of cases.<sup>17</sup>

What this means is that many people with a well-founded fear of severe harm were deported from the United States after being denied asylum. In-depth research has shown that people deported from the United States to Central America were subsequently killed at high rates for reasons connected with their original reason for fleeing their country,<sup>18</sup> with the LGBTQIA+ population facing particularly high risks of harm.<sup>19</sup> Influenced by the United States, Mexico is deporting increasing numbers of Central American asylum seekers, including **children, to face danger in their home countries in violation of Mexico's domestic law and international law obligations.**<sup>20</sup> However, research has shown that even harsh and punitive deportation policies and practices have not stopped the flow **of migration, which is primarily driven by violence in applicants' country of origin** as a push factor.<sup>21</sup> Statistical analysis of U.S. government apprehensions at the border indicates that there is a direct correlation between increases in homicide rates in Central American countries and increases in apprehensions of migrant children at the U.S. southern border.<sup>22</sup>

## Methodology

### Study sample and data set

The research team, comprised of faculty from the University of California, Los Angeles (UCLA), graduate students from the UCLA Fielding School of Public Health, medical students from the David Geffen School of Medicine at UCLA, and Physicians for Human Rights (PHR) staff, analyzed 132 medical-legal affidavits conducted by volunteer clinicians in the PHR Asylum Network for the purpose of describing the lived experiences of people harmed by domestic and gang violence. The study uses qualitative analysis to capture the dynamics and characteristics of the harms the survivors experienced which are relevant for the criteria for international protection. These include the severity of the harm; how their harm was perceived by their families, communities, and governments; their visibility as a group to perpetrators; their community and their government; and how their own sense of self was impacted. The study also explored descriptive statistics that could expose discriminatory patterns of harm that were not captured through the qualitative analysis. Our hypothesis was that the physical and psychological findings in medical-legal affidavits would map onto the legal criteria for asylum

and bring new insights for informing coalition efforts to improve asylum policies for these individuals.

Among 1,944 cases placed with clinical experts for evaluation by PHR between 1996 and 2019, PHR was able to confirm that at least 1,017 received some form of humanitarian immigration status and at least 812 received asylum. Of those cases with positive outcomes, and for which a written evaluation was available, PHR identified 149 that were based on the claim of domestic and/or gang violence **experienced in the person's home country. Seventeen were subsequently** excluded, including 15 cases where the main trauma occurred in the United States rather than in the country of origin, leaving 132 affidavits for analysis.<sup>23</sup> The research team focused on successful cases in order to broadly capture the characteristics of people qualifying for asylum on the basis of domestic and gang violence over past decades.

## Coding tool development and quality assurance

The research team developed a coding tool to extract quantitative and qualitative data from affidavits, drawing on questions from validated questionnaires such as the Harvard Trauma Questionnaire and diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). Medical, legal, and policy experts reviewed the coding tool, which was then formatted in the online survey platform Qualtrics. UCLA faculty and PHR staff trained the student coders on how to use the coding tool and provided on-going supervision to ensure consistency in data abstraction.

## Quantitative analysis of narrative data

Researchers coded trauma exposures into 26 distinct trauma types and five main categories: physical violence; sexual violence, other abuse, including verbal and emotional abuse; indirect trauma, including threats to or violence against loved ones; and targeted economic marginalization, including extortion. Researchers defined seven categories of perpetrators and assigned one or more to each act of abuse. Mental health outcomes were defined for 101 affidavits that included a mental health evaluation; researchers coded DSM-5 diagnoses when the clinician author explicitly stated in the affidavit that the client met clinical criteria at the time of the evaluation. Researchers also looked for five categories of resilience factors based on the academic literature<sup>24</sup>: family and social support, religion and collective identity, work and school, access to mental and other clinical health services, and other factors internal to the individual such as optimism or courage.

Using these codes, researchers calculated proportions for key categories, including trauma exposures, perpetrators, and mental health outcomes. Researchers then developed multiple logistic regression models to quantify the association between the trauma that the client was exposed to, their resilience factors, and each of two primary mental health outcomes: any DSM-5 diagnosis and improved mental health symptoms.

## Qualitative analysis

Researchers performed qualitative analysis on 35 free-text response items, including ones related to the trauma narrative, motivation of perpetrators, reasons for not reporting abuse or seeking state protection, and changes in mental health following migration. To ensure accuracy, items with more than 80

responses were reviewed independently by a pair of study authors who then discussed discrepancies until consensus was achieved.

## Limitations

**This sample of affidavits from PHR’s database was not designed to be** representative of all cases of people seeking asylum in the United States. In order for a case to be included in the PHR database prior to 2020, the client must have applied for asylum and had access to an attorney who requested an evaluation from PHR. Access to legal representation among asylum seekers is inconsistent, with Central American asylum seekers less likely than other nationalities to have representation.<sup>25</sup> We restricted the sample to cases where the applicant obtained asylum, in order to broadly capture the characteristics of people qualifying for asylum on the basis of domestic or gang violence over past decades. We cannot extrapolate these findings to represent clients who were not successful in obtaining asylum in the United States. Medical and mental health diagnoses were determined by clinician report rather than uniform administration of validated instruments. Clinicians often did not report the presence or absence of all DSM-5 diagnostic criteria in their affidavits, so diagnoses could not be independently validated by the coders. This data therefore reflects the assessments of clinicians with varying health backgrounds and levels of experience, although all clinicians **have completed PHR’s documentation training and application and vetting** process. These affidavits generally underreport violence and abuse, since attorneys assisting these applicants may ask the clinician to focus on the first, worst, or most recent traumatic incidents rather than documenting all incidents **over the person’s lifetime.**

## Findings

### Demographics of asylum seekers

In this study, 81 percent (107 people) were seeking asylum due to domestic violence<sup>26</sup> and 29 percent (38 people) due to persecution by organized gangs; 10 percent (13 people) had experienced both domestic and gang violence. In their asylum claim, nearly all (92 percent) relied exclusively on membership in a particular social group as their basis for asylum related to either domestic or gang violence; a minority of affidavits (11 people, 8 percent) specified other protected grounds for the asylum claim (race, religion, nationality, or political opinion).

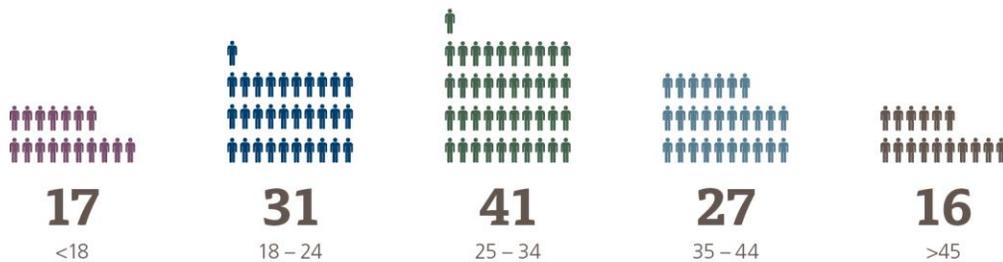
The majority of affidavits in this study addressed asylum seekers who identified as female (101 people, or 77 percent). This sample included affidavits of five people who identified as LGBTQIA+: 10 percent (3/31) of people identifying as men in the analyzed affidavits and 2 percent (2/101) of people identifying as female. The majority of affidavits described people between the ages of 18 and 44 years old (75 percent) at the time of evaluation; 13 percent were under 18 years old. The majority were from Latin America (67 percent) and more than half (55 percent) were from El Salvador, Guatemala, or Honduras, specifically. Twenty-five percent were from Sub-Saharan Africa. The PHR evaluations were conducted from 1999 to 2019, with the percentage of affidavits for clients from Central American countries increasing in recent years (64 percent from 2009 to 2019 vs. 23 percent from 1999 to 2008,  $p < 0.001$ ). Most evaluations (87 percent) were conducted prior to 2016, and the majority took place between 2009 and 2015 (64 percent); thus, most evaluations were conducted prior to changes to immigration

policy enacted under the Trump administration. Most of the evaluations included a mental health evaluation (101 affidavits, or 77 percent); a fewer number included a physical evaluation (50 affidavits, 38 percent), including 7 affidavits (5 percent) which included a gynecological evaluation. The affidavits of 19 people (14 percent) featured both mental health and physical or gynecological evaluations.

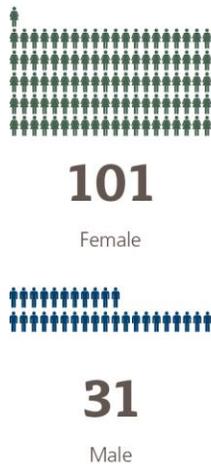
The characteristics of those applying for asylum on the basis of domestic and gang violence claims were remarkably similar. The only statistically significant difference between these two groups was that those applying on the basis of domestic violence were more likely to be female. Though the sample size was small, statistical analysis found that those applying on the basis of gang violence-related claims were more likely to identify as LGBTQIA+ than those applying based on domestic violence.

## Characteristics of 132 domestic and gang violence survivors seeking asylum in the United States, 1999-2019.

### Age



### Sex



### Country of Origin



### Calendar Period



Source: Data from 132 domestic and gang violence survivors who sought asylum in the United States and who were evaluated by Physicians for Human Rights Asylum Network experts between 1999 and 2019.

## Asylum seekers experience multiple and compounded forms of trauma

We looked in detail at the trauma narratives of the 132 people as captured in medical-legal affidavits selected for this sample. According to data from the affidavits, the applicants reported a wide range of trauma exposures: Of 26 types of trauma, almost two thirds (65 percent) of applicants had experienced six or more types. These trauma exposures were further grouped into five categories: physical violence;<sup>27</sup> sexual violence;<sup>28</sup> other abuse, including verbal and emotional abuse;<sup>29</sup> indirect trauma, including threats to or violence against loved ones;<sup>30</sup> and targeted economic marginalization, including extortion.<sup>31</sup> Nearly all (95 percent) of the applicants had experienced multiple trauma categories: 78 percent had experienced three or more categories of trauma, while 15 percent had experienced all five trauma categories. Targeted economic marginalization was the least common category of trauma and was reported by 41 percent of applicants, often in combination with other forms of trauma, for example as a component of domestic violence; this category of abuse receives less emphasis in forensic training for clinicians and may be underrepresented in medical affidavits.

The physical and psychological trauma experienced by the survivors in this study was severe, for some involving years of significant abuse which was actively or tacitly condoned by their community as the abuse was normalized or the person being abused was regarded as deserving this treatment.

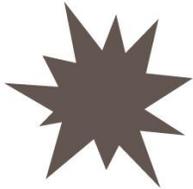
For example, a 31-year-old woman from El Salvador reported that she experienced abduction, sexual violence, social isolation, gang violence, and forced prostitution, as a result of domestic abuse which was also gang-related:

*“Ms. X described how Mr. Y first abducted, raped, and held her captive **and took her as his “woman” for numerous years, treating her as his possession, and how others in her family and community refused to help her or protect her. Ms. X described how Mr. Y began to beat and humiliate her after giving birth to their first child together. Ms. X also described how the beatings intensified after she became aware that Mr. Y had joined a gang. Mr. Y also forced Ms. X to have sexual relations with other men in their neighborhood in exchange for money that Mr. Y kept.”***

Domestic and gang violence claims demonstrated a similar number and type of traumatic exposures.<sup>32</sup> Women were much more likely to experience sexual violence than men (85 percent vs. 13 percent,  $p < 0.01$ ) regardless of the basis on which they were applying for asylum. Although greater numbers of domestic violence survivors in this sample reported sexual violence, in the statistical analysis, sexual violence was not more strongly associated with domestic or gang violence-related claims (70 percent among domestic vs. 55 percent among gang violence claims,  $p = 0.19$ ).

**The physical and psychological trauma experienced by the survivors in this study was severe, for some involving years of significant abuse which was actively or tacitly condoned by their community.**

# Trauma exposures reported by 132 domestic and gang violence survivors seeking asylum in the United States.



**97**

Physical Violence



**90**

Sexual Violence



**116**

Other Forms of Abuse\*



**92**

Indirect Trauma/Abuse\*\*



**54**

Targeted Economic Marginalization\*\*\*

\* Forced labor; verbal or emotional abuse; abandonment; abduction or imprisonment; threats of forced conscription into gangs; threats of violence or death.

\*\* Threats to family or others, family member experienced violence or was killed, witness to violence.

\*\*\* Denied access to basic needs, education, or unemployment; was subjected to extortion.

## Trauma Location



**132**

Home Country



**15**

In Transit (during Migration)



**61**

Since Arrival in the United States



**6**

All Three Locations

Source: Data from 132 domestic and gang violence survivors who sought asylum in the United States and who were evaluated by Physicians for Human Rights Asylum Network experts between 1999 and 2019.

## Claims on the basis of domestic violence

Domestic violence is a complex category of trauma that includes many types of abuse. Many, but not all, of the subjects applying for asylum on the basis of domestic violence-related claims identified as female and reported experiencing abuse by a male intimate partner. Other clients applying for asylum on the basis of domestic violence had experienced multiple types of trauma at the hands of multiple perpetrators, including family members. Family members were sometimes violent towards applicants who were perceived as bringing shame upon the family, including instances in which the applicant was unwilling to

**[Some] clients applying for asylum on the basis of domestic violence had experienced multiple types of trauma at the hands of multiple perpetrators, including family members.**

comply with gender norms. For example, a 16-year-old girl fled Guinea after being forced by her father to marry a much older man. She was his fourth wife and was repeatedly raped by her husband. When she asked her family for help, **her father threatened to kill her if she did not adhere to her husband's wishes.** She was deeply fearful of her father because he beat her and her mother often. Eventually she saved enough money to flee to a neighboring country. She later heard that her father was looking for her to kill her for dishonoring him after leaving her husband. She fled to the United States.

We classified female genital mutilation/cutting (FGM/C) carried out or ordered by family members as a type of domestic violence rather than gang violence, since the practice was carried out at the request of family members in the cases we studied. FGM/C was experienced by 12 of the subjects in this sample of affidavits; an additional five affidavits recorded the experience of people who experienced threats of FGM/C that contributed to their decision to flee their home countries.

Several of the people applying for asylum on the basis of domestic violence were minors who were left in the care of family members and subsequently faced abuse; this finding that family separation creates new vulnerabilities is corroborated by PHR research into the trauma of child migrants.<sup>33</sup>

An 18-year-old boy from Mexico was sexually abused by his male cousin after being left with extended family as a child. He was told that if he reported the abuse, he would suffer physical harm. In another case, a 32-year-old woman from El Salvador was repeatedly sexually abused by her father after her mother, who had fled to the United States, left her in the care of another family member.

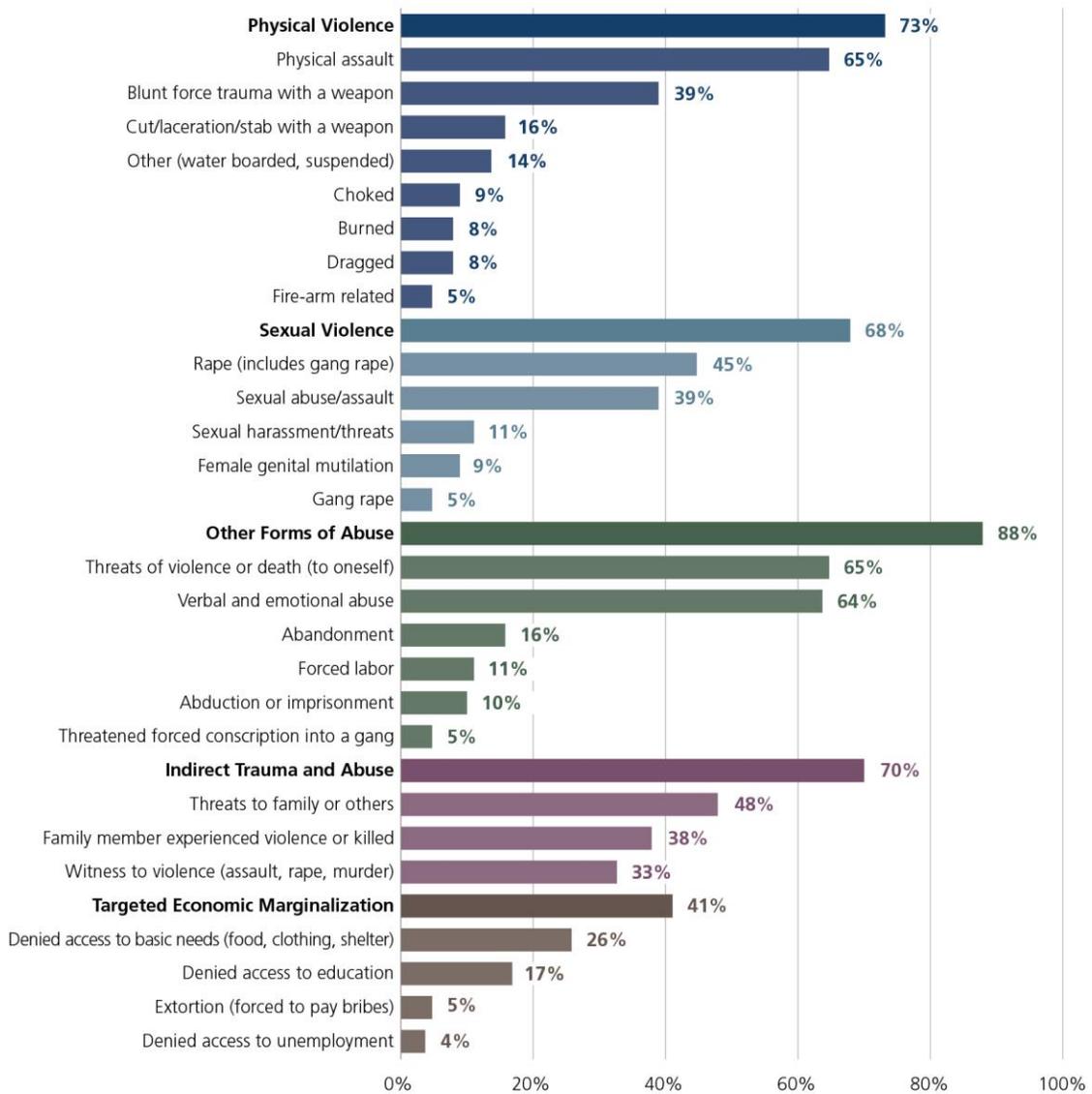
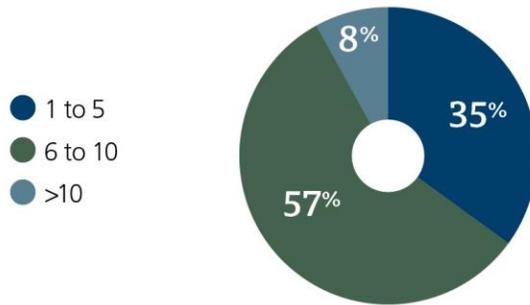
In many of these examples, the applicant identified an unwillingness of their family, community members, or officials to protect them on the basis of their gender or position as a wife/female partner, which will be described later in the report in the section on perpetrators.



*A teenager who fled domestic violence and gang-related death threats in El Salvador.  
Photo: PHR photo library*

# Types of trauma experienced by 132 domestic and gang violence survivors seeking asylum in the United States.

Number of Different Trauma Types Experienced



Source: Data from 132 domestic and gang violence survivors who sought asylum in the United States and who were evaluated by Physicians for Human Rights Asylum Network experts between 1999 and 2019.

## Claims on the basis of gang violence

Pervasive rhetoric by the Trump administration suggested that those applying for asylum on the basis of gang violence-related claims are predominantly men or teenage boys who may have experienced some level of gang involvement.<sup>34</sup> While this is true of some applicants, those applying for asylum on the basis of gang violence-related claims represent a wide variety of people who have experienced different types of gang-related trauma. Examples of applicants in this category include those threatened after refusing to join a gang, those who experienced extortion by gangs, those coerced into intimate partnerships with gang members, and survivors of physical and sexual violence perpetrated by gang members, many of whom were not gang members themselves but lived in a community where gang violence was prevalent.

Both female and male applicants were targets of gang violence. Female applicants, who comprised 61 percent of all subjects seeking asylum on the basis of gang violence in this sample, more often reported sexual assault or intimidation (83 percent of women versus 13 percent of men with gang-related claims), whereas male applicants were more likely to report experiencing intimidation and/or violence after refusing to join a gang. Overall, sexual violence was very common in gang violence-related claims, with one third of applicants in this category reporting having been raped and five percent reporting a history of **“gang rape” or rape by two or more perpetrators. Gang violence claims also overlapped with domestic violence claims in 10 percent of the cases in this study.**

The following example highlights several types of gang violence experienced by clients who were not members of a gang. A 15-year-old boy from Honduras described surviving years of violence and intimidation by local gangs. When he was 10 or 11 years old, he was shot on the way home from playing soccer. He recalls walking home behind a friend when a gang suddenly opened fire on them. His acquaintance was killed while he was shot multiple times in his legs. About one year later, one of his uncles was shot and paralyzed after rejecting an offer by the local drug cartel to sell drugs; a different uncle was killed. His family was told that reporting the incident to the police would be futile because the cartel had paid them off. Eventually, a known rapist from a local gang began threatening the **client’s sister. This same gang member had raped the client’s cousin. His mother**



*A teenager who fled El Salvador after his brother was murdered for refusing to join a local gang.  
Photo: PHR photo library*

**Gang violence-related claims ... include those threatened after refusing to join a gang, those who experienced extortion by gangs, those coerced into intimate partnerships with gang members, and survivors of physical and sexual violence perpetrated by gang members.**

soon purchased tickets for the client and his sister to flee to the United States, given the impending likelihood of them being targeted directly by the gang. Thus, while former gang members (many of whom are coerced to join) certainly do apply for asylum, the experiences of people applying for asylum based on gang violence is diverse.

### Discrimination on the basis of sexual orientation

Though a small subset of the total number of affidavits, five applicants indicated that the violence and discrimination they experienced due to their sexual orientation was completely or partly related to their reason for fleeing. Out of these five affidavits, three applicants identified as male and two identified as female. All five of the applicants experienced domestic violence. In four out of the five affidavits, applicants mentioned their parents as the main perpetrators of violence related to their sexual orientation. In one out of the five affidavits, the applicant indicated their intimate partner as the main perpetrator of physical and sexual violence. One of the applicants experienced gang violence in addition to domestic violence but there was no indication that the gang violence was **associated with the applicant's sexual orientation.**

Applicants reported that their family members harmed them after learning about their sexual orientation, violence often rooted in anger related to their non-



*A transgender woman from El Salvador who was harassed and sexually assaulted by police officers.*

*Photo: PHR photo library*

conformity with familial, social, and religious norms. A 25-year-old man from Senegal stated that **his father believed his orientation was a “personal, family, and social outrage,” and, further, that his family could punish him with impunity since homosexuality is a sin according to his country’s interpretation of Islam and they would be protected from legal consequences.**

Family disapproval and lack of community support also made it difficult for applicants to protect themselves or to escape abuse. In another affidavit, a 41-year-old woman from El Salvador described experiencing physical and sexual abuse from her male intimate partner, with whom her parents had forced her into a relationship to hide her sexual orientation. When she told him she liked women, he started to physically abuse and rape her, even during her pregnancies. She finally left her partner, but he threatened to find and kill her.

### Targeted as a family member

Many applicants whose narratives were recorded in the affidavits used in this study reported being targeted both individually and as a part of a family unit, and directly connected kinship ties with heightened risk of harm. Overall, 38 percent of applicants in this sample reported having a family member who had experienced violence or had been killed as a sign that they were likely to be targeted next; nearly half (48 percent) reported threats to family members and others close to them. Perpetrators commonly threatened family members as a powerful means of coercing, threatening, or exploiting their specific targets, showing that indeed kinship ties can be a particular or socially distinct characteristic which directly increases risks of harm. The emotional pain that people experienced when perpetrators threatened or harmed family members was severe and long-lasting, making it an extremely effective tactic.

For example, a 19-year-old young woman from El Salvador was told by gang members that if she did not join the gang, they would start killing members of her family. Although the family members were not involved and did not even know about these threats, they were at direct risk due to being related to someone who resisted joining a gang. In other cases, family members were at risk if they in any way sought to protect or help their threatened family members or went to the police. A 19-year-old young man from Ecuador described how gang members threatened both him and his family to deter them from contacting the police



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*A young Honduran woman who was raped by gang members trying to pressure her husband into joining the gang.  
Photo: PHR photo library*

about the extortion and robbery they suffered. Domestic abusers also used this tactic in order to coerce and silence their victims. A 38-year-old woman from **Côte d’Ivoire reported that she stayed in a highly abusive relationship for many years** because her partner threatened to kill their children if she left him. A 63-year-old woman from Bolivia did not tell her family members about the abuse she suffered because her abusive husband threatened to beat up or kill her father if he were to come and try to protect her, stating **“I will hurt the most sensitive things you have.”**

### Cyclical and multi-generational nature of abuse

The trauma narratives highlight the cyclical nature of violence within many communities, particularly in the case of domestic violence. In some cases, female applicants who experienced domestic abuse at the hands of intimate partners had also experienced or witnessed domestic violence as children. For example, a 45-year-old woman from Honduras reported witnessing abuse of her mother by her **biological father until she was eight years old. Following her mother’s remarriage,** she was sexually abused by her stepfather. She attempted to report the abuse to her mother, who did not believe her. Eventually, the client began a relationship with a man who then physically abused her for many years. She later escaped this relationship and then began dating another man who later physically abused her. After multiple attempts to relocate to avoid him, she ultimately fled to the United States.

Another case illustrated how parents, children, and other family members may experience nearly identical forms of physical and sexual violence perpetrated by the same abuser. An 11-year-old girl from El Salvador resided with her maternal grandparents after her mother fled to the United States to avoid violence by MS-13 gang members. Her maternal grandfather often verbally abused the client and **threatened to “cut off her head.” The client’s grandfather physically abused her,** including one instance in which he struck her back with a machete. The client also witnessed her grandfather physically abusing others, including her cousin. **The client’s grandfather had a history of physically and sexually abusing his own wife and children. Specifically, the client’s maternal grandfather had raped her mother and physically abused the client’s mother and sisters by hitting them with** objects such as ropes, belts, tree branches, and machetes. The client was eventually sent to the United States with a smuggler to be reunited with her parents. She reported having suicidal thoughts because of the trauma she had experienced. This example highlights the intergenerational impact of abuse, particularly when families and communities are unable or unwilling to confront or bring the perpetrator to justice.

This cyclical nature of abuse has been documented extensively in the literature on domestic violence and is **often linked to the pervasive devaluation of women’s** lives and normalization of violence against women by multiple perpetrators across generations. The coping mechanisms that domestic violence survivors develop to survive, such as self-blame, isolation, and walking on eggshells, often put them at risk of re-victimization.<sup>35</sup> Empirical research corroborates this **study’s findings on the cyclical nature of abuse, finding that male perpetrators of** intimate partner violence were more likely to have witnessed domestic violence between their parents than non-perpetrators and that women who were exposed to domestic violence as children were more likely to become victims of intimate partner violence.<sup>36</sup>

## Motivations of perpetrators: animosity towards non-conformity to community norms

Intimate partners were the most commonly identified perpetrators of both physical violence (57 percent) and sexual violence (69 percent). Intimate partners were significantly more likely to be perpetrators in domestic violence claims compared to gang violence claims, though they still represented a key group of perpetrators in gang violence claims. Amongst gang-related claims, gang members themselves were rarely identified as perpetrators of sexual violence (1/21=5 percent); extended family members (29 percent) and intimate partners (48 percent) were more often perpetrators of sexual violence in this group. Greater than one in five clients named multiple perpetrators, highlighting the numerous, compounded traumas that contributed to their asylum claims.

Affidavits captured the complicated social and gender norms, sense of male entitlement, and systemic disempowerment of women that motivated intimate partners to inflict physical and sexual violence. One client, a 35-year-old woman from Guatemala, described enduring 17 years of rape, economic abuse, emotional abuse, and physical abuse at the hands of her intimate partner. Her abuser claimed that she must obey him, that he could and would have sex with her whenever he pleased because it was his right as a man, and that women should be subservient to men. She fled after surviving several attempts on her life. These pervasive beliefs about the obligations of women within intimate relationships were prevalent amongst perpetrators of intimate partner violence; moreover, they reflected broader perceptions among local community members that condoned and legitimized abuse of individuals based on gender.

Parents, guardians, and extended family members also perpetrated physical violence (41 percent) and sexual violence (19 percent). Many clients reported that their family members were motivated by adherence to social, religious, and community norms, such as the maintenance of male-dominant power structures within the family or the avoidance of familial “**shame**” **caused by non-conformity** to these customs.

Female clients were subjected to forced marriage, female genital mutilation/cutting, and physical violence driven by well-established cultural norms and harmful practices, such as the understanding that women are property rather than autonomous agents. One 33-year-old woman from Mali was beaten by her father and brothers several times when she refused to enter a forced marriage. She was told by her family that who she married was not her choice but that of the male family members. Another woman from Kenya endured years of trauma, including rape by her maternal uncle, forced female genital mutilation/cutting, and forced marriage to a much older man. She eventually fled to the United States, but was told that should she return, she **would be forced to marry a member of her late husband’s family because she was still the property of the family.**

In some cases, the applicants also reported not realizing that the abuse they endured was wrong because the subjugation of women is so normalized in their community. A 42-year-old woman from Mexico stated that her husband would force her to have sex when he was drunk, telling her that it was her duty as his wife. At that time, she had internalized his view of her to such a degree that it did not even occur to her to try to escape.

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The desire to uphold prevailing community norms and to punish non-conformity was also a theme with regard to sexual orientation-related persecution. Adherence to social norms and avoidance of stigmatization motivated familial perpetrators to abuse applicants based on sexual orientation. In these cases, beliefs about homosexuality as well as attitudes towards homosexuality in the community were cited as motivations for abuse.

Overall, gang members comprised a smaller proportion of perpetrators: 15 percent of affidavits identified gang members as perpetrators of physical violence, while 4 percent identified gang members as perpetrators of sexual abuse. When gang members were cited as perpetrators of violence, they were often described as instilling widespread fear within communities through intimidation of anyone who might resist. Young women reported that they avoided leaving their homes or going to school for fear of falling victim to sexual assault by gangs. Intimidation tactics were used to enable extortion or forced gang recruitment. A 30-year-old woman from Honduras stated that her family's home was invaded by gang members who demanded ransom for her and her family's safety at gunpoint. Men and boys described persistent intimidation by gangs to force them to join the gang. A 15-year-old boy from Guatemala and his brother were forced to steal for a local gang; they refused and went into hiding. A few months later, the client was recognized by some gang members, who amputated several digits on his right hand.

Even among those who experienced violence by gang members, perpetrators were often identified as family members or intimate partners due to an overlap between familial and intimate partner perpetrators who were also members of local gangs and the penetration of gang influence into almost all areas of life. A 19-year-old young woman reported that her intimate partner became verbally and physically abusive once he joined the gang MS-13. These persistent instances of violence escalated to sexual violence, including rape. When she attempted to refuse his sexual advances, he threatened her with gang rape by his fellow gang members.

The vast majority of perpetrators in this sample were non-state actors, with only four percent of affidavits citing military, police, or government officials as perpetrators. However, many affidavits demonstrated how deeply ingrained community perceptions enabled perpetrators to enact violence with little fear of repercussion or little opportunity for victims to resist or find safety. Clients reported living in communities where domestic violence against women was normalized, and family and community members often allowed abuse to continue, either because they believed that the abused person deserved mistreatment or because they were themselves afraid of the persecutor. A 30-year-old woman from Mexico recounted years of torture, severe beatings, and rape committed by her ex-husband for more than a decade. Upon reporting the abuse to her family, her parents told her that it was part of a marriage and commonplace, discouraging her from leaving her husband because it would

Young women reported that they avoided leaving their homes or going to school for fear of falling victim to sexual assault by gangs.... Men and boys described persistent intimidation by gangs to force them to join the gang.... Normalization of domestic and gang violence within communities gave perpetrators permission to continue abusing victims.

shame the family. She eventually tried to report the abuse to the police, but her husband later joined the force, and the police disregarded her claims.

Multiple clients were stigmatized or ostracized after disclosing abuse, fueling reluctance to report. A 19-year-old woman from El Salvador recounted being raped by her cousin at age 11; upon learning of this rape, her grandmother treated her harshly and beat her often. After a 17-year-old girl from Guatemala was left in the care of her grandmother, she reported experiencing sexual abuse by her **grandmother's husband, who threatened to abuse the client's little sister if she** disclosed the abuse. One of these instances was videotaped by a neighbor, who then disseminated the video amongst the community as punishment because the young woman had refused his own sexual advances. Community members blamed the victim for the sexual assaults inflicted on her, her grandmother did not believe the abuse occurred, and the applicant stated that police in her community typically did not intervene in these cases. Normalization of domestic and gang violence within communities gave perpetrators permission to continue abusing victims, and the inaction of officials in response to these claims implicates the state in creating an environment of impunity.

## Survivors faced barriers to seeking or receiving assistance from community and state

Information about state response to abuse is typically included in the legal filing or country conditions report in an asylum case and may not be mentioned in the medical affidavit. Nevertheless, of the 132 affidavits analyzed, 32 (25 percent) reported that the person sought assistance from an authority figure (police, military, or government official or civil society organization). Of these, only six (19 percent of those who sought assistance; 5 percent overall) reported that the authorities took appropriate additional action. For the rest (26 people or 81 percent of those who sought assistance), there was either no response or the report resulted in unprofessional conduct or direct persecution by the state actor. In these cases, people reported that the state was unable or unwilling to protect them due to corruption, normalization of domestic and gang violence in the community, and stigmatizing attitudes towards victims. Of those who did not report seeking assistance, 11 percent of all affidavits (14 people) provided an explicit reason, including prior experience with impunity in their community and fear of retribution.

**In some cases when the applicant tried to report abuse, the police or other authorities actively harmed the applicant or put them in danger.**

### Impunity by authorities left no recourse for victims

**Victims frequently mistrusted the police’s ability or willingness to protect them** due to corruption, fear, a history of police ignoring domestic violence and favorably treating abusers, and sometimes because the abuser was themselves a member of the police force. Applicants who experienced domestic or intimate partner violence reported difficulty securing protection from state authorities because the government officials regarded domestic violence as a private affair or actively blamed or disbelieved women when they reported abuse. In this study, women were often blamed by the police for their abuse or, in some instances, were threatened with more violence should they continue their efforts to report. A 35-year-old woman from Guatemala stated that, in cases of domestic violence, the law only becomes effective in investigating and prosecuting the crime if the victim is killed. She recounted how police officers often told women to avoid their husbands when they were inebriated to minimize the chance of abuse.

A 25-year-old female client from Russia stated that authorities typically do not take on domestic violence cases. When she brought medical reports detailing the physical abuse she had endured, officers blamed her for her abuse, stating she **likely had “beaten wife syndrome” and had “intentionally irritated” the abuser.** After this encounter with the police, she said that she felt very humiliated.



*A Honduran man, who was attacked by gang members after trying to rescue his nephews from being forcibly recruited, said he did not trust the police to help him.  
Photo: PHR photo library*

In some cases when the applicant tried to report abuse, the police or other authorities actively harmed the applicant or put them in danger. In other cases, applicants reported witnessing this type of police retaliation against others who reported abuse in their communities. For example, a 15-year-old boy from Honduras who experienced gang violence, including an instance when he was shot and subsequently hospitalized, reported that the day that his cousin filed a complaint about gang violence, he was later shot by a police officer from the same police station. Police retaliation made some applicants unwilling to seek state protection, knowing that it might increase their risk of harm.

In other cases, the police or other authorities failed to investigate reports of abuse because they themselves feared retribution, particularly in the case of gang-related violence. A 19-year-old woman from El Salvador fled after a gang raped and killed a young woman in her community. The police came to the scene of the crime but did not investigate it further due to fear of retribution by the local gang. The woman herself had been raped by a local gang member and feared she may soon be murdered. In this case, it was the combination of witnessing police **impotence and the client's own history of surviving sexual violence that** convinced her of the futility and potential harmful consequences of seeking state assistance.

Another common theme reported by asylum seekers was the inability to obtain protection from the state due to corruption. Some perpetrators bribed law enforcement to avoid jail time or other legal repercussions, bolstered by permissive family and community attitudes which support abusers. For example, a 41-year-old woman from Ecuador with visible scars on her face and body from **abuse was able to work with the local Commission on Women's Rights to** convince the police to arrest her husband. However, his family bribed the jailor, who then released the abuser within a few days.

### **Fear of retaliation from perpetrators**

Some clients faced the threat of violence or death if they were to report the abuse. Women survivors of domestic violence often reported that their partners explicitly threatened to hurt or kill them if they reported the incident to the police. A 35-year-old woman from Guatemala who survived 17 years of intimate partner violence, including physical, sexual, and economic abuse, recalled considering going to the police. Her partner threatened to kill her if she filed a police report. She did not doubt the validity of his threats since he had attempted to kill her on three separate occasions, including one in which he drew his gun and almost shot her. She ultimately chose not to go to the police due to her fear of retaliation and the lack of resources for victims of domestic violence in her community. In another instance, a 38-year-old woman from Guatemala who was physically and sexually abused for years by her husband did not seek help from authorities because she knew that there were no legal protections for survivors of domestic violence. She knew that if she reported her husband and he was detained, he would eventually bribe his way out of the charges and beat her even more.

In the case of those who had experienced gang violence, clients described how **reporting a gang's threats or attacks put them at risk of gang retaliation.** An 18-year-old man from Guatemala was shot in the abdomen by the MS-13 gang, just as they had threatened to do, after he reported a fatal robbery to the police. In other cases, applicants did not report because they feared this type of retaliation.

# Perpetrator groups identified by asylum applicants as responsible for violence and other abuse.

## Perpetrators of Physical Violence and Other Abuse



## Perpetrators of Sexual Violence



Source: Data from 132 domestic and gang violence survivors who sought asylum in the United States and who were evaluated by Physicians for Human Rights Asylum Network experts between 1999 and 2019.

19-year-old woman from El Salvador learned that the gang her boyfriend was affiliated with was involved with the local police. She had once overheard him talk about inflicting physical violence on another individual and later found guns in his home. She believed that, had she reported the physical and sexual abuse, the police would inform her boyfriend who would then escalate the violence.

## Relocation attempts result in continued danger

Over a third of the people described in our sample (49 people or 37 percent) attempted to relocate within their home country prior to migrating to the United States, including 22 people who attempted to relocate more than once.

There were two main themes related to relocation: people (1) who did not attempt to relocate, often because they felt they would not be safe anywhere within their home country or could not be effectively protected in neighboring countries, or (2) who relocated but faced ongoing violence, either at the hands of the initial abuser or by other perpetrators. A 39-year-old woman from Honduras recounted how she frequently thought about relocating but knew that her abusive partner would find her and kill her, a threat he made frequently. In the previous example of the 18-year-old from Guatemala, who was shot in the abdomen by the MS-13 gang after reporting a fatal robbery, the client was hospitalized but left before he recovered fully, because he feared he would be killed by the gang while still in the hospital. He then moved to another city in his country, but was later found by the gang members, forcing him to flee to the United States.

In a few cases of domestic violence, those seeking to flee abusive relationships felt that relocation would not be enough to protect them from being found and killed or severely harmed by their abuser. Some did flee or sought safety with family members but were soon found by their abusers. A 29-year-old woman from Guatemala fled a six-year-long abusive relationship and stayed with her family in another city. She was found by her partner, who then beat and raped her. When she regained consciousness, she had profuse nose bleeding and still has difficulty breathing through her nose.

**Those seeking to flee abusive relationships felt that relocation would not be enough to protect them from being found and killed or severely harmed by their abuser.**

## Trauma continues for many in the United States

For many asylum seekers, arrival in the United States does not mean that they have found safety. Almost half of the subjects in the sample reported ongoing trauma after entering the United States. This trauma often took the form of continuing threats to themselves or their loved ones by former persecutors through the phone or social media. For example, a 19-year-old girl from El Salvador reported that a week after she arrived in the United States, the MS-13 gang reached out to her through Facebook and threatened to kill her because she had fled the country.

Other applicants reported experiencing new forms of abuse after arrival in the United States, including harassment or assault in their new workplace or abuse by new intimate partners who seek to exploit their tenuous immigration status.

A 16-year-old girl from Guinea entered into a new relationship after arriving in the United States; her partner used her lack of immigration status as a means of coercion to keep her from seeking help or escaping. She was subjected to threats of abandonment, deportation, and murder, while her partner severely restricted any contact with others outside the home.

**Other types of abuse that were reported after applicants' arrival in the United States** included trauma related to detention and forced prostitution.

**Of the 101 affidavits in this sample that included a mental health evaluation, 79 percent met criteria for a mental health diagnosis. Post-traumatic stress disorder (PTSD) was the most common diagnosis, with 68 percent of people who underwent a mental health evaluation meeting criteria for this diagnosis.**

## Health outcomes of asylum seekers in the United States

**Mental health symptoms of trauma are common, but also improve with safety**

Of the 101 affidavits in this sample that included a mental health evaluation, 79 percent met criteria in the Diagnostic and Statistical Manual of Mental Disorders (DSM–5) for a mental health diagnosis. Post-traumatic stress disorder (PTSD) was the most common diagnosis, with 68 percent of people who underwent a mental health evaluation meeting criteria for this diagnosis. Suicidality was also very common, with 32 percent of people reporting any history of suicidal ideation or attempt and 13 percent reporting active suicidality at the time of the evaluation.

In addition to diagnosing psychiatric conditions, mental health evaluators will sometimes comment on specific behaviors displayed by the applicant during the interview that are consistent with a history of trauma. Of the 101 affidavits that included mental health evaluations, 51 percent commented on behaviors that the evaluator noted during the interview. These included a flat affect, emotional lability, and dissociation.<sup>37,38</sup>

Of the affidavits that included a mental health evaluation (101 affidavits, 77 percent of the sample), 42 percent (42 people) reported that the person had experienced improvement in their mental health symptoms or general well-being at the time of the evaluation. For the majority of those people, the improvement occurred since migration to the United States. This suggests that despite a high burden of mental illness in this population, by the time of the evaluation a substantial portion of people had started on the road to recovery.

Among people who experienced a positive change in their mental health, the most commonly reported reasons were the safety and social support they found in the United States and their ability to safely attend school, work, church, and community events without fear, persecution, or discrimination. These factors decreased shame and improved self-confidence, as in this example, where the PHR clinician wrote:

*“[A 24-year-old woman from Guatemala] reports that her sleep is improved and she feels calm. She is engaging in the community by attending a religious congregation with her mother where she feels comfortable and welcome. Although she has not yet made new friends, she does frequently take her daughter outside, and feels safe in doing so. This new environment is assisting the client in gaining self-confidence and reducing her shame.”*

In the case of an 18-year-old boy from Mexico, the PHR clinician describes his improvement in mental health after arriving in the United States:

*“He has begun a slow recovery process; his night terrors are less frequent and he has begun to build up more confidence in himself. He has hope for a better future with plans to obtain a GED and to continue his education in aviation mechanics. He has made friends in his new school, and seems to be adapting well to life in the United States.”*

However, not all applicants experienced an improvement in their mental health following migration. Some reported persistent and even worsening mental health symptoms or a negative change in their sense of self after arriving in the United States. To understand why this might be the case, we looked at variables associated with those who reportedly experienced improvement in mental health symptoms following migration compared to those who did not. We found that ongoing trauma after arrival in the United States, which affected 46 percent of people in this study (and 48 percent of those with a mental health evaluation), was associated with a higher likelihood of meeting criteria for a mental health diagnosis.<sup>39</sup> Types of trauma experienced by people in the United States included ongoing threats to themselves or loved ones by former persecutors in their country of origin, as well as new forms of abuse. Of people who reported experiencing ongoing trauma after arrival in the United States, 90 percent met criteria for at least one mental health diagnosis at the time of the evaluation, compared to 70 percent of those who did not report experiencing ongoing trauma. The association between mental health diagnosis and ongoing trauma in the United States remained significant in the multivariable model that adjusted for age, sex, physical violence and torture, indirect trauma and targeted economic marginalization, and number of resilience factors (adjusted OR 4.49, p=0.03).

Some people reported ongoing trauma in the form of threats to loved ones in their home country, which further perpetuated negative mental health symptoms. For example, a 31-year-old woman from Egypt who met DSM-5 criteria for PTSD reported that after a court granted her a divorce from her abusive husband, he attacked her sister and continues to threaten her as revenge. Even though the woman fled to the United States, she is still very fearful that her ex-husband will find and kill her and her son. As a result, she has difficulty sleeping, has nightmares, and is constantly anxious.

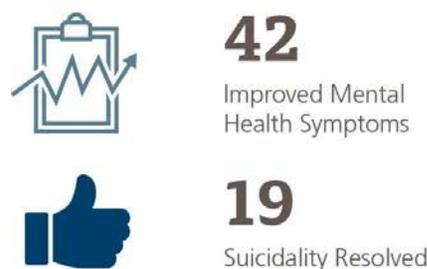
Other reasons for persistently poor or worsening mental health after migration **included being separated from one’s children, family, or community during the migration process**, as well as financial hardship and a loss of self-efficacy as a result of being unable to work in the United States. While successful asylum applicants, or those whose cases have been pending for many months, will eventually receive employment authorization, the obstacles beforehand are daunting.

# Mental health diagnoses and resilience factors for 101 domestic and gang violence survivors applying for asylum in the United States.

## Met Criteria at Time of Evaluation



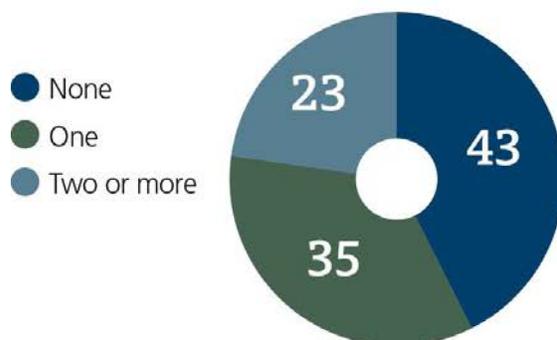
## Improved Mental Health after Arrival in the United States



## Resilience Factors



## Number of Resilience Factors Experienced



Source: Data from 132 domestic and gang violence survivors who sought asylum in the United States and who were evaluated by Physicians for Human Rights Asylum Network experts between 1999 and 2019.

**Many affidavits also cited the applicant's looming asylum decision and fear of deportation as a source of ongoing stress and a driver for ongoing mental health symptoms.**

For example, a 42-year-old woman from Guatemala reported experiencing extreme worry and anxiety about the well-being of her sons, who are living alone back home, and tremendous economic stress trying to support herself and still having enough money to send to her children. In another case, a 42-year-old woman from Honduras described feelings of guilt and low self-esteem because she is unable to repay the kindness of her friends who are hosting her in the United States, because her immigration status does not allow her to work.

**Many affidavits also cited the applicant's looming asylum decision and fear of deportation as a source of ongoing stress and a driver for ongoing mental health symptoms.** One PHR clinician noted the mental health impact of deportation fear on a 54-year-old woman from Guatemala:

*“The fear of [her abuser’s] threats, and of perhaps having to return to Guatemala, where she believes, with strong evidence, that she and her children would be killed, has kept her from making a better adjustment to her new life. Her children are all having negative reactions to the stress and fear, compounding her feelings of guilt and helplessness.”*

Several affidavits also commented on how detention in the United States prevented the applicant from experiencing improvement in their mental health, which is especially significant when considering how vulnerable and traumatized populations held in federal custody are, including children. For example, a 17-year-old boy from Guatemala continued to experience trauma symptoms until he **was released from detention: “Other significant trauma symptoms (sleep disturbance and fear of the dark, depression) ended when he reached the safety of the U.S. or when he was released from detention.”**

### Physical health findings consistent with persecution

Of the 50 evaluations that included a physical evaluation, one dermatologic finding was reported in 38 percent (19 people), two or more findings were reported in 42 percent (21 people), and no findings were reported in 20 percent (10 people). The most common types of physical injuries reported were cuts (56 percent, 28 people) followed by burns (24 percent, 12 people). While not statistically significant, men in the sample were more likely to have abrasions (21 percent vs. 3 percent,  $p=0.06$ ), whereas women were more likely to have burns (31 percent vs. 7 percent,  $p=0.08$ ).

### Sources of resilience

Many affidavits commented on a number of resilience factors that helped the applicants recover from their prior trauma and adjust to a new life in the United States. These resilience factors included family and social support, religion and collective identity, work and school, access to mental and other clinical health services, and individual traits.

**Resilience factors that helped the applicants recover from their prior trauma and adjust to a new life in the United States ... included family and social support, religion and collective identity, work and school, access to mental and other clinical health services, and individual traits.**

Mental health improvement was strongly associated with the number of reported resilience factors.<sup>40</sup> Improvement in mental health, as assessed by the PHR clinician in taking the client history, was reported in 74 percent of subjects who reported two or more resilience factors, compared to 14 percent of subjects who reported no resilience factors ( $p < 0.001$ ).

The following quote regarding a 15-year-old boy from Honduras highlights the importance of family and social support as a source of resilience:

*“Although Mr. X’s sense of trust has been severely impaired and damaged by his previous traumatic experiences, he is adapting to his ‘new family’ [his uncle’s family who took him in as sponsors since he is separated from his parents.] With the help of his uncle, wife and their children, he is slowly learning to develop feelings of safety. The continuation of working towards a stable and predictable routine and an openness to communication will help him feel more secure and confident.”*

**Given that separation from one’s family (when they are not perpetrators of violence) was reported to be a significant barrier to improvement in mental health symptoms, and family support was identified as a significant source of resilience for applicants, family reunification appears to support the mental health of asylum seekers.** While an asylum grant does allow for asylees to apply to bring certain family members to join them in the United States, in practice this is a protracted process that can take many years. Generally, children who obtain asylum cannot bring their parents or siblings to the United States through family reunification. However, as the following quote regarding a 38-year-old woman from Guatemala highlights, migration without family reunification often does not allow for recovery from trauma, particularly if the safety of the family members **that remain in one’s home country is threatened.**

*“Her period of most intense symptoms was during the period she was separated from her children, which likely reflected both her fear for their safety and the pain of being separated. Having the children here and safe has also contributed to an amelioration of symptoms.”*

In addition to family support, having the ability to pursue education and/or new skills was identified as another factor that promotes resilience amongst asylum applicants, as is seen in this quote:

*“[A woman from Ghana] now lives with her baby daughter in a shelter. She very recently started going to a weekly computer class and has begun meeting people her own age. She describes the joy of going to the market alone and not being afraid of coming home to insults related to her purchases. Despite the daunting challenges she faces taking care of a*

*baby while living in a foreign country with little support, Ms. Y explains, **‘It is better than being with [her abusive husband].’***

Several affidavits described how access to mental and other clinical health **services helped to promote the applicant’s recovery in the United States**, as is described in this example:

*“[A woman from Bolivia] saw a psychologist for individual visits over three years. She says this helped her a lot. Although she expresses feelings of failure in particular in relation to her first marriage, and she feels guilty over choosing her second husband, she says that treatment has helped her realize that she deserves to be treated well. The psychologist also suggested a lot of the self-help books that she is currently using.”*

A few affidavits commented on innate qualities of the applicant that contributed to their resilience, such as in this quote regarding a woman from Guatemala:

*“Her baseline optimism and courage at having escaped her situation are resources she can draw on and which have likely protected her from having more devastating symptoms of PTSD.”*

The majority of the resilience factors mentioned in the affidavits, including family support and access to school and/or employment opportunities, would not be available to people who are in U.S. immigration detention or are awaiting their U.S. immigration proceedings in northern Mexico due to the Migrant Protection Protocols, metering, expulsions under the Title 42 order, and other policies which deny access to asylum at the U.S. border. (At the time of writing, the government had begun to admit people to the United States who had been sent back to danger under the Migrant Protection Protocols but was still actively expelling people to northern Mexico and countries of origin under the Title 42 expulsion order.) The improvement in mental health symptoms experienced by some applicants in this study would be less likely without access to supportive factors and safety from physical and sexual violence.

## Legal and Policy Framework

This study analyzed the experiences of people who were successful in obtaining asylum in the United States from 1999 to 2019 (most from 2009 to 2015), due to domestic violence or gang violence, almost exclusively perpetrated by non-state actors, and all arguing that they had been harmed on account of their membership in a particular social group. Thus, the legal framework reviews 1) state obligations to provide protection from domestic and gang violence under international and regional human rights laws with a gender lens; 2) the state of asylum obligations under international law when the state fails to fulfill those protection needs; and 3) changes to interpretation of U.S. asylum law in recent decades which have restricted protection for these groups, with possible solutions for restoring protection.

The right to bodily integrity and freedom from violence, including domestic violence, is inherent in international human rights law, including in the right to life and the prohibitions against torture or cruel, inhuman, or degrading treatment.

## Protection from domestic violence under international and regional law

Within the PHR dataset, the most common pattern of harm was domestic or intimate partner violence, primarily against women. The right to bodily integrity and freedom from violence, including domestic violence, is inherent in international human rights law, including in the right to life and the prohibitions against torture or cruel, inhuman, or degrading treatment, slavery, arbitrary detention, and enforced disappearance, which should be applied without discrimination based on race, sex, religion, political opinion, or any other status.<sup>41</sup>

However, many scholars have noted that international law is also rooted in a gendered system, which assigns asymmetrical value to different types of human rights violations, where violations disproportionately (though not exclusively) affecting women, such as domestic and intimate partner violence, were long **considered to be “private” and outside the realm of legal regulation.**<sup>42</sup> The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), adopted in 1979, did not explicitly include provisions prohibiting violence against women; the CEDAW Committee has subsequently emphasized that violence against women, including harmful cultural practices, is an extreme form of discrimination prohibited by the Convention,<sup>43</sup> as have soft law documents such as the Vienna Declaration and the Declaration on the Elimination of Violence against Women.<sup>44</sup> Even sexual violence in conflict was traditionally understood as a common crime rather than a human rights violation or a crime under international criminal law and international humanitarian law;<sup>45</sup> today rape in war has been recognized as a form of torture, an underlying act of genocide and crimes against humanity, and a war crime.<sup>46</sup> Explicitly recognizing that violence and discrimination against LGBTQIA+ populations is a human rights violation has also faced resistance from conservative states. For example, **the Rome Statute contains a caveat that “the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.”**<sup>47</sup>

In subsequent decades, regional treaties have explicitly recognized the right to protection from gender-based violence, including in situations of domestic violence, whether involving physical, sexual, or psychological harm, or harmful cultural practices,<sup>48</sup> as have human rights bodies.<sup>49</sup> International legal bodies have also recognized the right to freedom from all violence and discrimination based on sexual orientation or gender identity.<sup>50</sup>

Despite progress on establishing the right of women and LGBTQIA+ communities to be protected from violence, challenges in implementation and **enforcement remain a serious threat to women’s rights and safety. The due diligence standard in human rights law requires that states effectively investigate, prosecute, and punish perpetrators, as well as provide effective protection**

mechanisms.<sup>51</sup> Where states consistently fail to prosecute domestic violence cases or ensure justice and protection for victims, these acts can rise to the level of a human rights violation by the state, because these patterns can demonstrate the **state's failure to exercise due diligence due to discrimination.**<sup>52</sup> These patterns are sometimes difficult to uncover, as states rarely explicitly condone violence against women, making it difficult to obtain documentary evidence of government refusal to protect women from abuse.<sup>53</sup> Legal analysis of gender-based persecution dynamics has uncovered how discriminatory legal and policy structures specifically enable domestic violence or other harmful practices,<sup>54</sup> and how deliberate failure to respond to domestic violence complaints can be evidence of state acquiescence in discriminatory enforcement of the law where protective laws actually exist.<sup>55</sup> When analyzing state responsibility, it is critical to include the real experiences of women in society.<sup>56</sup>

## Protection from gang violence under international and regional law

The dynamics of state protection from gang violence also contain a gender dimension. Although femicide is also a significant concern, men and boys between the ages of 15 and 29 are statistically at the greatest risk of being killed.<sup>57</sup> Men and boys are the most likely to be forcibly recruited into gangs, turning them into real or perceived threats which then increases their risk of being targeted for violence.<sup>58</sup> Forced recruitment violates the right to liberty and puts both the recruit and their family members at risk of lethal violence.<sup>59</sup> The other form of gendered harm analyzed in this study is violence by organized gangs, which at times was also implicated in domestic violence as domestic abusers were or became gang-involved. Many PHR clients reported endemic levels of violence, with gangs targeting youth for recruitment, women and girls for sexual slavery, and business owners or landowners for extortion.

As mentioned above, international human rights law contains an inherent right to protection from violence in order to secure the right to life and humane treatment. Forced recruitment, or coercion, to join a gang is also a violation of the right to freedom of association and the right to liberty, and practices such as abducting or forcing people to carry out gang orders may amount to slavery, compulsory labor, or trafficking, all prohibited under international human rights law.<sup>60</sup> Similar to the failures of government protection experienced by domestic violence survivors, those harmed by gang violence report situations where states fail to protect, as corrupt authorities collude with gangs, have a financial stake in gang activities, or do not consider the victims worthy of protection.<sup>61</sup>

Recognizing gendered harms experienced by men can help to deconstruct gender stereotypes and disrupt sex-gender structures which essentialize women as victims and men as threats.<sup>62</sup> Conversely, failing to recognize that gender-based violence is not limited to women can perpetuate an imperialist discourse of, in the words of Gayatri Spivak, **“white men are saving brown women from brown men”**<sup>63</sup> and Chandra Talpade Mohanty, **“freezing” women into “objects who defend themselves” and men into “subjects who perpetuate violence.”**<sup>64</sup> Research on the U.S. immigration system found that among attorneys and adjudicators alike there was a stereotype that only women experience gendered harm and that women have a greater chance of obtaining asylum if they are stereotyped in **categories of “exotic” harm such as female genital mutilation/cutting** or traditional views on sexual violence.<sup>65</sup>

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## International refugee and asylum law protections for domestic and gang violence survivors

### Persecution by non-state actors

The UN High Commissioner for Refugees (UNHCR) *Handbook on Procedures and Criteria for Determining Refugee Status* states that acts committed by non-state actors can be considered persecution if the authorities are unable or unwilling to control persecution due to discrimination on protected grounds (explained below).<sup>66</sup> U.S. law also recognizes persecution by non-state actors, as long as the asylum seeker is able to prove that the government is unable or unwilling to control the persecutors.<sup>67</sup> Lack of effective witness protection or country conditions reports stating that seeking police help is futile or increases the risk of harm are examples of key indicators for assessing the ability and willingness of the state to protect people from non-state actors.<sup>68</sup>

### Protected grounds for asylum and nexus with persecution

The Refugee Convention defines a refugee as someone who is unable or unwilling to avail themselves of the protection of their country from persecution, for the **reasons, or “protected grounds,” of race, religion, nationality, membership of a particular social group, or political opinion.** An applicant must prove that they are persecuted on account of one or more of those five reasons; if they cannot **prove this “nexus” (or “causal link”)**, they cannot qualify for asylum even if they have experienced or fear extremely severe harm.

As asylum cases have been brought forward for survivors of domestic and gang violence, a common challenge across jurisdictions has been to determine the protected grounds for the claim. Though racial or religious targeting can take place in the context of domestic and gang violence, as with this group of PHR clients, arguments have most commonly been made that the applicants are members of a particular social group which is persecuted, such as the social **group of “married women unable to leave their relationship” or “tattooed, former Salvadoran gang members,” or that their persecution is related to political beliefs about gender equality or gang activity.**<sup>69</sup> The UNHCR interpretive guidance advises that domestic violence survivors may be considered members of a particular social group with gender as an immutable characteristic per se, or gender combined with relationship status or national origin,<sup>70</sup> and that in gang violence cases, survivors can be considered members of social groups linked by past actions or experiences, such as resisting gang recruitment or refusing to pay extortion money to gangs, as these events have a historical permanence.<sup>71</sup> U.S. federal courts have also confirmed for decades that a family can be a particular social group, as family members can be targeted due to their ties to their family members and to the family as a particular group.<sup>72</sup>

The applicant must also separately prove that these protected grounds have a nexus with the harmful acts, showing that the persecution or lack of protection were motivated by discrimination linked to the protected ground. UNHCR finds that there is a nexus when a non-state actor commits these harms on account of a protected ground, or when the state refuses or cannot provide protection from the acts of non-state actors due to a protected ground.<sup>73</sup>

## Changes to interpretation of U.S. asylum law for domestic and gang violence survivors

The international refugee regime, created by the 1951 Refugee Convention and updated in the 1967 Protocol, represents an agreement of international cooperation between treaty parties to provide international protection for people fleeing persecution. While the refugee definition in the Convention represented a significant achievement in providing a protection solution for some people **affected by forced displacement, it was always “partial and designed to serve state policy,”**<sup>74</sup> created in a colonial world, in a time when gender was not seen as relevant to international law. And indeed, although refugee law continues to develop, as does human rights law, it is vulnerable to being rolled back through regressive domestic policies.<sup>75</sup>

Since the adoption of the Convention refugee definition into federal law in 1981, asylum protections in the United States have progressed in some areas, but they have also faced backlash and politicization. Proving that someone meets the complicated criteria of the refugee definition is challenging enough, but various federal regulatory, judicial, and legislative changes in combination have made the interpretation of these universal criteria convoluted and impermissibly narrow. These changes have collectively undermined asylum protections to the extent that meritorious applicants may be arbitrarily denied asylum in violation of the Convention and the United States Refugee Act of 1980.

For example, the REAL ID Act of 2005 added an additional hurdle that adjudicators must apply in analyzing the intent of the persecutor.<sup>76</sup> Some courts then used this restriction to argue that survivors of domestic and gang violence were only targeted to a lesser extent based on their protected characteristics and to a greater extent based on the personal motivations of the persecutor, and therefore that these claims deserved to be denied.<sup>77</sup> However, the Refugee **Convention only requires that the persecution be “on account of” the protected ground, not a ranking of all possible motives that a persecutor might have had.**

Neither the Refugee Convention nor the U.S. Refugee Act defined what constitutes a particular social group. A groundbreaking 1985 U.S. asylum case, *Matter of Acosta*, held that a particular social group can be defined as a group of people sharing an immutable characteristic that they cannot or should not be asked to change. This decision has been influential in many other countries due to its consistency with international refugee law. However, a series of decisions by the U.S. Board of Immigration Appeals created new, additional criteria for recognizing a social group, requiring that applicants prove that they belong to a group which is particular, or discrete, and that the group is socially distinct or recognizable within their community. The Board did not define exactly how judges should determine these additional criteria, and case law differs across circuits, making it an inconsistent, confusing, and onerous standard, especially for asylum seekers who cannot afford a lawyer to help them navigate it.

The Trump administration leveraged these ambiguities to increasingly deny asylum claims, even those which had already been recognized by U.S. courts. Former Attorney General Jeff Sessions flouted decades of domestic and international legal precedent that had confirmed that domestic violence survivors can qualify for asylum; in 2018, he overturned a case where the Board had granted asylum to a woman from El Salvador, *Matter of A-B-*, making a blanket statement that domestic and gang violence survivors will generally not qualify for asylum.<sup>78</sup> His justification for doing so relied in part on the new standard mentioned above, as he believed that groups based on domestic and gang violence inherently lacked particularity and social distinction. This single decision had the immediate impact of disproportionately increasing denials of Central American asylum claims,<sup>79</sup> a stated goal of the Trump administration, which disparaged asylum seekers from the region as criminals and fraudsters.<sup>80</sup> Another unprecedented decision came in 2019, when the former attorney general held that most family units inherently could not meet the new criteria of social distinction by overturning an asylum claim of a Mexican boy whose father refused to sell drugs to the cartel, going against numerous courts of appeals cases which have held the opposite.<sup>81</sup> This decision attempted to invalidate particular social groups based on kinship and family ties, unless the applicant can prove that **they belong to a family of “social importance,” a departure from U.S. and international refugee law.**<sup>82</sup> These changes were opposed by advocates and have been challenged in court. Litigation secured a ruling which ended a presumption against finding that domestic violence survivors could have a credible fear of persecution as members of a particular social group,<sup>83</sup> and rulings that domestic and gang violence cases must still be considered individually on their merits.<sup>84</sup>

Another critical change in the Trump era involved changing the standard of proof required to demonstrate that the state failed to provide protection from non-state actors such as domestic abusers and gang members. In 2018, the former attorney general held that persecution would only be recognized by the U.S. government if **the government in the country of origin actively “condoned” the harm or was “completely helpless” to stop it, which created confusion about how to apply the previous “unable or unwilling to protect” standard.**<sup>85</sup>

As documented in this study and acknowledged even by the former attorney general,<sup>86</sup> people fleeing domestic and gang violence indeed experience very severe forms of harm. Domestic and gang violence survivors should be protected under domestic, regional, and international law; although some survivors continue to obtain asylum, many claims to international protection have been undermined by these changes.

## Gender-sensitive understandings of persecution and asylum

**In the words of one scholar, “Women are always and never refugees,”** as women cannot rely on their own countries to protect them from gender-based violence and yet gender-based persecution often goes unrecognized in both domestic and international legal systems, due to pervasive gender discrimination around the world.<sup>87</sup> Feminist scholars have demonstrated that the law divides society into public and private spheres, where the private sphere is a site of gender(ed) oppression which is neglected by the law.<sup>88</sup> The process of asylum adjudication is **also subject to gendered biases and power structures, as many of women’s** activities and experiences are seen as irrelevant in refugee law.<sup>89</sup> For example, an empirical study of 120 forced marriage cases in the UK found that domestic violence survivors were not recognized as a social group because domestic

violence was seen as a “familial dispute with no wider social significance,” denying the legal obligation of the state to protect people from abuse by family members.<sup>90</sup> Attorneys at times achieve hard-won victories based on extensive expert evidence that survivors who challenge their abusers are often motivated by their political belief in gender equality, but must struggle uphill against immigration adjudicators who seek to insist that domestic violence is a private matter.<sup>91</sup>

This study also highlights the gender dimension of harms faced by men, including LGBTQIA+ people, whose international protection claims are also undermined by these stereotypes. Just as women are harmed by oppressive structures of gender discrimination, men and gender-non-conforming individuals can also be targeted for resisting gendered roles which may be **expected by society, such as “violent, masculine gang member.”**

## Possible solutions to ensure protection for domestic and gang violence survivors

There are a number of ways to transform our understanding of persecution and international protection obligations through a gender-sensitive lens and to break down the public-private dichotomy which limits the effectiveness of the law as a source of rights for everyone.

**One is to understand women’s (or other genders’) resistance to gender norms as** opposition to discriminatory political or religious systems, under the protected grounds of political opinion or religion.<sup>92</sup> **Recognizing women’s response** to domestic violence as political resistance overturns stereotypes of domestic violence survivors as passive victims and acknowledges gender discrimination as a violation of fundamental human rights.<sup>93</sup> **The U.S. asylum officers’ union has** proposed that government regulations should recognize broad categories as constituting political opinion by definition, such as opposition to criminal or terrorist activity (including economic activities) as well as feminism, LGBTQIA+ rights, and property rights, as some courts already have.<sup>94</sup>

Adding gender as a sixth protected ground is another option,<sup>95</sup> as excluding gender as one of the primary protected grounds masks the specificity and **systemic nature of women’s oppression and downplays the seriousness and** prevalence of gender-based persecution. Some scholars have expressed concern that channeling gender-based persecution claims solely into one protected ground could imply that resistance to gender-based persecution cannot have a political, religious, or racial basis under those protected grounds.<sup>96</sup> However, applicants asserting gender as the basis for asylum would be free, as they are now, to assert several grounds in combination with one another when the facts warrant it. In addition, our study shows how men and boys also suffer gendered forms of harm, thus adding gender as a ground would not only relate **to women’s** claims, but also to gender-based persecution affecting all genders. Another benefit of gender as a ground is that LGBTQIA+ applicants would not have to individually define their particular social group, as a study in Australia found that some particular social groups defined by adjudicators were not consistent with **applicants’ identities, such as characterizing someone who is transgender MTF as belonging to a social group of “gay men,”**<sup>97</sup> and in the United States, a key circuit court case recognizing a trans woman as belonging to a social group of **“gay men with a female sexual identity.”**<sup>98</sup> Developing a particular social group for trans claims must consider born sex, current gender identity, and validation of how

identity evolves over time;<sup>99</sup> being able to use gender as a protected ground would mean that trans applicants could simply apply based on gender and gender non-conformity without being confined to one specific category. This could also help alleviate trauma that can be unnecessarily triggered by the convoluted process **itself of defining one's social group.**

A similar option is to recognize gender as a particular social group by definition, without needing to prove the group composition anew with each individual case.<sup>100</sup> **The asylum officers'** union has recommended that government internal regulations provide a list of broad characteristics which can define particular social groups, including gender, age, past experience, or family unit.<sup>101</sup> Several other state parties to the Refugee Convention have amended their laws accordingly to name gender as a particular social group per se, or to add gender as a sixth ground.<sup>102</sup>

Recognizing gender as a protected ground, or as a per se particular social group, can transform not only how we analyze the protected ground, but also how we define persecutor motive and what constitutes persecution. Analysis of dozens of cases from the United States and other similar legal systems showed that conflict-related harms could not be recognized as persecution at all, because the harms are generalized rather than targeting individuals, without acknowledging the ways that women can be specifically targeted in war, for example when sexual violence is used as a weapon.<sup>103</sup> Race-based persecution could be seen as equally **“generalized,” yet we do not have the same ambivalence recognizing race-based claims.**

Regardless of whether gender is added as a sixth ground, or as a particular social group per se, there are other critical changes that need to be made in order to ensure protection for those with valid claims based on domestic and gang violence.<sup>104</sup> Particular social group should be defined in Department of Homeland Security and Department of Justice regulations, and ultimately in the Immigration and Nationality Act, consistent with the position of UNHCR and U.S. precedent in *Matter of Acosta*, to include unchangeable characteristics and groups visible in society as two possible options, not requiring applicants to prove both. State protection should be understood, consistent with the Refugee Convention and the Immigration and Nationality Act, as having failed when the **applicant is “unable or unwilling” to avail themselves of protection in cases where the government is unable or unwilling to reliably and meaningfully protect victims.**<sup>105</sup>

Due to the complexity of establishing persecution, protected grounds, and nexus, the United States should also consider adding a form of permanent complementary protection, as available in European Union countries, for cases which may not meet the full criteria for asylum but in which a person demonstrates that they are likely to face serious harm if returned to their country.<sup>106</sup>

**The data in this study provides additional evidence that the harms from domestic and gang violence are real and severe, and that victims often cannot find protection in their own country.**

## Conclusions

The data in this study provides additional evidence that the harms from domestic and gang violence are real and severe, and that victims often cannot find protection in their own country. People reported being targeted due to immutable characteristics as women, as LGBTQIA+ people, as family members, and generally as anyone who refuses to conform with prevailing norms or expectations of submission to abuse by state or non-state authorities. People described perpetrators as motivated by animosity towards anyone who resists sexual advances, extortion, or recruitment. They described authorities who were unable and unwilling to provide effective protection due to corruption, fear, or attitudes about who is worthy of being protected. These narratives of abuse and trauma were consistent with mental and physical health evidence, gathered according to Istanbul Protocol standards. Domestic and gang violence survivors meet the criteria for international protection, especially when their persecution and inability to obtain protection is understood through a gender lens, and the U.S. asylum system should recognize their claims accordingly.

This study also underscores the critical importance of treating refugees, asylum seekers, and all immigrants humanely. The people whose narratives are described in this study were bona fide applicants who were granted asylum in the United States after experiencing severe harm in their home countries, often over many years and by multiple perpetrators. Some 46 percent of them reported experiencing ongoing trauma in the United States, most commonly due to ongoing threats to themselves or their loved ones and new abusive relationships. For some, mistreatment in detention, separation from family, inability to work, and anxiety about their asylum cases and the future also caused deteriorating mental health symptoms after they arrived in the United States. Despite these severe harms, which are deeply embedded in social, political, and economic power structures and policies, this study tells an encouraging story of resilience and healing for people who are able to flee to safety. Statistical analysis showed that those who did not experience ongoing trauma in the United States or who had access to resilience factors such as family and community support, opportunities for religious engagement, employment and education, and access to mental and other clinical health services, had significantly better health outcomes. These courageous survivors can heal if we ensure respect for their dignity, well-being and human rights.

**Those who did not experience ongoing trauma in the United States or who had access to resilience factors such as family and community support, opportunities for religious engagement, employment and education, and access to mental and other clinical health services, had significantly better health outcomes.**

# Recommendations

## To the Biden Administration:

- Incorporate a trauma-informed approach into the adjudication process, recognizing the high burden of physical and mental health symptoms due to persecution;
- Recognize the critical importance of fostering resilience, and release asylum seekers from detention to community settings, further ensuring that asylum seekers can work legally, access education, and simplify family reunification processes;
- Restore access to asylum at the border by rescinding the Title 42 order and allowing people who were denied asylum or deported in absentia due to the Migrant Protection Protocols to renew their cases, to allow people to find safety and healing in the United States;
- Instruct the Department of Homeland Security (DHS) and the Department of Justice to issue regulations:
  - Which define Particular Social Group as a group whose members 1) share a characteristic that is immutable or fundamental to identity, conscience, or the exercise of human rights; or 2) share a past experience or voluntary association that, due to its historical nature, cannot be changed; or 3) are perceived as a group by society; and
  - Which contain a non-exhaustive list of characteristics which can define a particular social group (such as gender, sexual orientation, gender identity, age, shared past experience, nuclear or extended family, or clan or tribe), as well as clarifying that political opinion encompasses opposition to extra-legal control of territory or economic or social activity by non-state actors such as gangs, as well as political opinions related to feminism, LGBTQIA+ rights, and property rights;
- Instruct the attorney general to vacate cases<sup>107</sup> which impose additional requirements for recognizing **particular social group (such as “social distinction,” “social visibility,” and “particularity”)**,<sup>108</sup> and instruct DHS to issue harmonized policy guidance for asylum officers;
- Instruct the DHS secretary and the attorney general to issue regulations which **clarify that persecution shall be considered “on account of” a protected ground** when it is a central reason for the harm, regardless of whether the persecutor had additional motivations for the harm. Persecution should be considered on account of a protected ground as long as the persecution would not have occurred but for the ground or will have the effect of harming the person because of the ground, and regardless of the number of other people targeted by the persecutor;
- Ensure that regulations also clarify that country of origin statistics, such as high rates of femicide, gang violence, or domestic abuse, would be sufficient proof of the inability or unwillingness of a government to reliably protect **people from persecution, meeting the “unable or unwilling to control”** requirement, even if domestic law criminalizes these acts, regardless of whether the government has direct knowledge of or involvement in the persecution and whether the applicant reported persecution to their government or sought to relocate internally.

## To the U.S. Congress:

- Review the regulations listed above with the intent of determining whether they should be codified into law to safeguard asylum protections at the legislative level, including considering adding gender as a sixth ground for asylum, as some other countries have done;
- Revisit the protections provided under U.S. asylum law to consider whether the United States should also introduce a form of complementary or subsidiary protection, as exists in the European Union, for cases which may not meet the full criteria for asylum but have demonstrated that the person is likely to face serious harm if returned to their country; and
- Allocate increased funding for:
  - Hiring additional asylum officers, and for the asylum adjudication process to implement a trauma-informed approach which will make the process more efficient and fair;
  - Hiring additional immigration judges and asylum officers and restoring and expanding legal orientation and representation programs; and
  - Ensuring essential services for asylum seekers while their cases are pending.

# Annex: Consistency of Findings

The UN’s Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also called the Istanbul Protocol, specifies language that clinicians are to use when documenting physical examination findings that are attributed to a history of trauma.<sup>109</sup> The terms are as follows:

|                               |   |
|-------------------------------|---|
| <i>Not consistent with</i>    | The lesion could not have been caused by the trauma described.  |
| <i>Consistent with</i>        | The lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes. |
| <i>Highly consistent with</i> | The lesion could have been caused by the trauma described, and there are few other possible causes.                         |
| <i>Typical of</i>             | This is an appearance that is usually found with this type of trauma, but there are other possible causes.                  |
| <i>Diagnostic of</i>          | This appearance could not have been caused in any way other than that described.  |

Of the 50 affidavits that included a physical evaluation, 100 percent documented at least one physical finding consistent with the history of trauma reported. Of these, 30 percent (15 affidavits) documented at least one finding that was highly consistent with the history of trauma reported and six affidavits (12 percent) documented one finding each that was diagnostic of the history of trauma reported.

Examples of these findings are included below:

Consistent:

*Regarding a 27-year-old woman from Guatemala:*

***"Ms. X's scars in paragraphs 13 – 19 above are entirely consistent with the location and types of injury described in her affidavit. The length and location***

*of the scar on her nose (paragraph 13) is consistent with being punched in the face and hit by knuckle at the location of the scar, resulting in a broken nose with the bridge shifted to the left, as she described. The scars on her scalp (paragraphs 14, 18) are consistent with being hit with the butt of a pistol. In particular the two parallel scars on her left scalp (paragraph 18) are consistent in length and distance from each other with being hit squarely with a pistol butt such that both edges of the pistol handle lacerated the scalp." (#26).*

Highly Consistent:

*Regarding a 30-year-old woman from Burkina Faso:*

***"2" x 3" oval scar with a stellate (star like) pattern at the center is attributed to a blow from a piece of wood with a large splinter protruding from it. Ms. S reports that the splinter punctured the skin at the center of the wound, and the wound then became infected with a prolonged course of healing. The stellate pattern of this scar is highly consistent with a puncture wound followed by a wound infection."***

Diagnostic Of:

*Regarding a 39-year-old woman from Honduras:*

***"On the back of her left leg there are at least six 5-10 mm circular, hyperpigmented scars with clear borders, diagnostic of cigarette burns, which client reports were inflicted on her "occasionally" by Mr. X."***

*Regarding a 30-year-old woman from Burkina Faso: "2 parallel, thin, linear, 6" scars attributed to beating with a piece of split firewood. Parallel scars in this pattern ("tram tracks") are diagnostic of a blow with a flat broad object, consistent in this case with being hit with the flat surface of a piece of split firewood."*

Some affidavits (including those with mental health evaluations) commented on other cognitive and somatic symptoms that the applicant reported experiencing as a result of their trauma history. The most common of these was headache (33 people, 25 percent), followed by back pain (21 people, 16 percent) and other musculoskeletal pain (24 people, 18 percent), and abdominal pain (12 people, 9 percent).

### *Overall Health Findings*

The majority of the clinicians in this sample found evidence that was consistent with the history of trauma that people reported. The way that clinicians state this conclusion varies. Clinicians that conduct physician evaluations generally use the Istanbul Protocol taxonomy as described above and as is re-demonstrated in the following summary example:

*Regarding a 51-year-old woman from Honduras: "Based on my knowledge of the methods of torture and their physical effects, it is my opinion that Ms. X's allegations of injury by gunshot wound are highly consistent with the physical findings included in this affidavit." (page 6 paragraph 33)*

Mental health evaluators may describe a specific diagnosis as being "consistent with" a prior history of trauma, but they do this less routinely than in physician evaluations. Instead, they often comment on the overall consistency of the

**applicant's history, their symptoms, and the clinician's findings, such as in this example:**

*Regarding a 26-year-old woman from El Salvador: "I find Ms. X's story to be credible and consistent with all the information provided to me. Her psychiatric symptoms are credible sequelae to the experiences she describes. Ms. X meets diagnostic criteria for a Major Depressive Disorder and Post Traumatic Stress Disorder. Her current presentation is also typical for someone who has endured similar experiences, and that the co-morbidity between a mood disorder (MDD) and PTSD is quite common."*

Some clinicians involved in either type of evaluation specifically stated that they found the client to be believable or credible. In 12 percent of the mental health evaluations, the clinician specifically commented that the evaluator did not find any evidence that the subject was malingering,<sup>110</sup> as is demonstrated in the following quote, whereas none of the affidavits containing only physical evaluations made mention of this:

*Regarding a woman from the Dominican Republic: "Ms. X does not demonstrate any evidence of faking, exaggerating, and malingering or any evidence of previous psychiatric illness (prior to these events) or substance abuse."*

Thus, while there is variability in the way they report their findings, the majority of clinicians in this sample concluded there was objective physical or psychological evidence of past trauma consistent with the history of trauma described by the applicant.

# Endnotes

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- <sup>13</sup> Doe v. Nielsen, **“Complaint for Declaratory and Injunctive Relief,” 3:19-cv-00807, 1, 10** (N.D. Cal. 2019), [https://www.aclu.org/sites/default/files/field\\_document/2019.02.14.0001\\_compl.\\_for\\_decl.\\_and\\_inj.\\_relief.pdf](https://www.aclu.org/sites/default/files/field_document/2019.02.14.0001_compl._for_decl._and_inj._relief.pdf).
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- <sup>23</sup> PHR has the largest medical-legal asylum affidavit database in the United States. Affidavits are shared by volunteer clinicians or legal counsel and are redacted and stored according to their PHR case number in a password protected database.
- <sup>24</sup> Chesmal Siriwardhana, Ali Shirwa Sheik, Bayard **Roberts**, and **Robert Stewart**, “**A systematic review of resilience and mental health outcomes of conflict-driven adult forced migrants**,” *Conflict and Health vol. 8*, (2014): pp. 8:13.
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- <sup>26</sup> Domestic violence is defined as acts of abuse in the social context of domestic settings, including intimate partner violence and violence perpetrated by a family member or by a resident in the home, e.g., a parent, aunt, or cousin.
- <sup>27</sup> Physical violence included experiencing physical assault; blunt force trauma with a weapon; being cut, stabbed, or lacerated with a weapon; being shot with a firearm; being burned; being dragged; being choked; being kidnapped/detained; or experiencing other forms of physical torture (e.g., being water boarded or suspended from the ceiling)
- <sup>28</sup> Sexual violence included sexual harassment/threats; sexual abuse/assault; rape; gang rape; or female genital mutilation.
- <sup>29</sup> Other abuse included forced labor; verbal or emotional abuse; abandonment; abduction or imprisonment; threats of forced conscription into gangs; or threats of violence or death to oneself.
- <sup>30</sup> Indirect trauma included threats of violence against family members or others; having a family member who experienced violence or was killed; or witnessing violence against others (e.g., witnessing rape, aggravated assault, or murder).
- <sup>31</sup> Targeted economic marginalization included being deprived of access to education; being deprived of access to employment (e.g., being fired unfairly); extortion (e.g., being forced to pay bribes); or being deprived of access to basic needs (e.g., food, clothing, or shelter) or other forms of neglect.
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- <sup>38</sup> **Dissociation is defined as** “disruption of and/or discontinuity in the normal integration of consciousness, memory, identity, emotion, perception, body representation, motor control, and behavior.” Source: **American Psychiatric Association**, *Diagnostic and Statistical Manual of Mental Disorders* (Washington D.C.: Generic, 2015).
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on Preventing and Combating Violence Against Women and Domestic Violence, known as the Istanbul Convention.

<sup>49</sup> Human Rights Committee general comment No. 28 (2000) on article 3 (The equality of rights between men and women), para. 11.

<sup>50</sup> International Commission of Jurists (ICJ), Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007.

<sup>51</sup> See Velásquez Rodríguez Case; UN Committee on the Elimination of Discrimination Against Women (CEDAW), Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention and reply from the Government of Mexico (27 January 2005), CEDAW/C/2005/OP.8/MEXICO.

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<sup>88</sup> J. Greatbach, "The gender difference: feminist critiques of refugee discourse," *International Journal of Refugee Law* 1(4) 1989, p. 519.

<sup>89</sup> Heaven Crawley, *Women and Refugee Status: Beyond the Public/Private Dichotomy in UK Asylum Policy*, 1998, p. 311.

<sup>90</sup> C. Dauvergne and J. Millbank "Forced marriage as a harm in domestic and international law," *The Modern Law Review* 73(1) 2010, pp.57–88.

<sup>91</sup> *Rodriguez Tornes v. Garland*, No. 19-71104 (9th Cir. 2021).

<sup>92</sup> Crawley, p. 326-327.

<sup>93</sup> Crawley p. 326; also see *Rodriguez Tornes v. Garland*, No. 19-71104 (9th Cir. 2021).

<sup>94</sup> Refugee Asylum and International operations internal white paper for the Biden administration (on file with author).

<sup>95</sup> Jamie Gorelick and Layli Miller-Muro, "U.S. asylum law must protect women," *Washington Post*, April 7, 2021, <https://www.washingtonpost.com/opinions/2021/04/07/us-asylum-law-must-protect-women/>.

<sup>96</sup> Macklin, p. 259

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<sup>97</sup> L. Berg and J. Millbank “Developing a jurisprudence of transgender particular social group” in T. Spijkerboer, (ed.) *Fleeing homophobia: sexual orientation, gender identity and asylum*, (Abingdon: Routledge, 2013) p. 123.

<sup>98</sup> *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000).

<sup>99</sup> Berg and Millbank, p. 146.

<sup>100</sup> Greatbatch, p. 526.

<sup>101</sup> Refugee, Asylum, and International Operations Directorate (RAIO) white paper.

<sup>102</sup> Tahrir Justice Center, “Countries with Asylum/Refugee Laws That Explicitly Protect those Fleeing Gender-Based Persecution,” 2021, <https://1t1ls613brjl37btzk4eg60v-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/Appendix-1-List-of-other-countries-with-gender-listed-in-asylum-laws.pdf>.

<sup>103</sup> V. Oosterveld, “Women and girls fleeing conflict: gender and the interpretation and application of the 1951 Refugee Convention” in V. Türk, A. Edwards and C. Wouters (eds) *In flight from conflict and violence: UNHCR’s consultations on refugee status and other forms of international protection*, (Cambridge: Cambridge University Press, 2017), p. 185; study analyzed 46 asylum cases decided between 2004 and 2012 in Australia, Canada, New Zealand, the United Kingdom, and the United States from women and girls fleeing war.

<sup>104</sup> **Karen Musalo, “The Wrong Answer to the Right Question: How to Address the Failure of Protection for Gender-Based Claims?,” March 9, 2021,**

<https://lawprofessors.typepad.com/immigration/2021/03/guest-post-the-wrong-answer-to-the-right-question-how-to-address-the-failure-of-protection-for-gende.html>.

<sup>105</sup> As recommended in the RAIO white paper.

<sup>106</sup> Bill Frelick, “**How to make the US asylum system efficient and fair,**” *The Hill*, **May 21, 2021**, <https://thehill.com/opinion/immigration/554341-how-to-make-the-us-asylum-system-efficient-and-fair>.

<sup>107</sup> Such as: *Matter of A-C-A-A-*, 28 I&N Dec. 84 (A.G. 2020); *Matter of E-R-A-L*, 27 I&N Dec. 767 (BIA 2020); *Matter of L-E-A-*, 27 I&N Dec. 40 (A.G. 2019); *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018); *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014); *Matter of S-E-G-*, 24 I. & N. Dec. 579 (BIA 2008); *Matter of E-A-G-*, 24 I. & N. Dec. 591 (BIA 2008); *Matter of A-M-E- and J-G-U-*, 24 I. & N. Dec. 69 (BIA 2007); *Matter of C-A-*, 23 I. & N. Dec. 951 (BIA 2006).

<sup>108</sup> See **Stephen Legomsky and Karen Musalo, “One quick asylum fix: How Garland can help domestic violence survivors,”** *The Hill*, **May 9, 2021,**

<https://thehill.com/opinion/immigration/552539-one-quick-asylum-fix-how-garland-can-help-domestic-violence-survivors?r1=1>, and also the Roundtable of Immigration Judges recommendations to Attorney General Garland, <https://perma.cc/Q286-MTFG>.

<sup>109</sup> United Nations, Office of the High Commissioner for Human Rights, *Istanbul Protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment*, United Nations, New York, 2004, [https://phr.org/wp-content/uploads/2020/11/istanbul-protocol\\_opt.pdf](https://phr.org/wp-content/uploads/2020/11/istanbul-protocol_opt.pdf).

<sup>110</sup> **This includes affidavits where the clinician specifically used the word “malingering,” as well as other synonyms, such as “lying” or “faking.”**



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