

EMERGING TRENDS IN ASYLUM LAW *(Last Updated February 2013)*

Asylum law continually evolves based on social and political trends and as new forms of harm are recognized as persecution. Some of the types of harm that may now be recognized as a basis for an asylum claim include gender-based violence; gang-related violence; and violence based on a person's sexual orientation or gender identity. The United Nations High Commissioner for Refugees (UNHCR) Regional Office in Washington, D.C. (ROW) understands that some issues are sensitive and thus may be difficult to talk about. UNHCR ROW also is aware that for some individuals, issues like the ones just mentioned may be very important to an asylum claim. UNHCR ROW has prepared this memo to provide a short description of some of the kinds of harm that may serve as the basis of a request for asylum so that individuals who may be in need of protection for any of these kinds of reasons will have a better understanding of them.

If you believe any of the issues discussed in this memo apply to you, or you are unsure whether your experience falls under any of these categories, or you would like more information about any of them—even if it is not the only reason that you have fled your country, please contact UNHCR ROW and we will send you additional information. UNHCR does not discriminate against individuals based on any of these circumstances.

If you think any of these issues may apply to you, it is critical that you communicate this to your attorney or legal advocate, or if you do not have legal representation, directly to the judge hearing your case.

Gender-Based Violence

Gender-based violence claims involve individuals who were harmed, threatened with harm, or fear harm in the future because of their gender or sex. These types of claims may include:

- Abuse by a partner, spouse, boyfriend or girlfriend (domestic violence);
- Female ritual genital cutting /mutilation;
- Forced marriage /underage marriage without consent;
- Being kidnapped by or sold to someone for purposes of forced labor or forced prostitution (trafficking).

Lesbian, Gay, Bisexual, Transgender, or Intersex (LGBTI)

LGBTI claims involve individuals who were harmed, threatened with harm, or fear harm in the future based on their sexual orientation, usually due to a real or perceived romantic or sexual interaction with someone of the same sex; or their gender identity, usually when an individual is or appears to be a person of the sex opposite to the sex they were born as; or because someone has accused them of being a lesbian, gay, bisexual, transgender individual in a society where such an accusation may lead to harm either by the government or by the community or society.

HIV or AIDS

HIV or AIDS claims involve individuals who are HIV positive or have AIDS and were harmed, threatened with harm, or fear harm in the future because of they have been or may be identified as having HIV or AIDS or because they have been or may be denied necessary medical assistance because of being HIV positive or having AIDS. An asylum claim cannot be based solely on having HIV or AIDS, but rather must be based on harm or denial of necessary medical assistance or fear of such harm by the government or by the community or society because an individual has or is perceived to have, HIV or AIDS.

Gang-Related Violence

Gang-related claims involve individuals who were harmed, threatened with harm, or fear harm in the future harm because of previous association with gangs, family associations with gangs, or because they refuse to be associated with gangs. Fear of criminal prosecution alone is not a basis for seeking asylum; but rather must be based on situations where the government is unwilling or unable to protect the individual from harm because it is related to gang violence.

Mental Illness

Mental illness claims involve individuals who were harmed, threatened with harm, or fear harm in the future harm because they have or are perceived as having, a mental illness. Mental illness may include but is not limited to schizophrenia and bi-polar disorder. Asylum claims cannot be based solely on having a mental illness, but rather must be based on harm or fear of such harm by the government or by the community or society because an individual has or is perceived to have, a mental illness.

Statelessness

Stateless claims involve individuals who do not have citizenship or nationality in any country. An asylum claim cannot be based solely on being stateless but statelessness may be an important factor to be considered. If you believe you may be stateless and are being denied the rights of a citizen of your home country such as support from a consular office, travel documents, a birth certificate, or identity documents, please contact UNCHR ROW for more information.