



INTERNATIONAL ACTION NETWORK
FOR GENDER EQUITY & LAW

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Re: U.S. Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS) and Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (the Departments) Joint Notice of Proposed Rulemaking (NPRM): Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review; RIN 1125-AA94 / EOIR Docket No. 18-0002, published in the Federal Register on June 15, 2020.

Dear Assistant Director Reid and Division Chief Dunn:

I submit the following comments on behalf of the International Action Network for Gender Equity and Law (IANGEL) in **opposition** to the above-referenced NPRM (“proposed rule”) and urge the Departments to withdraw the proposed rule in its entirety.

As an organization, IANGEL is dedicated to protecting the rights of women and girls globally through legal means. One of IANGEL’s recent projects analyzed women’s cultural and human rights in the context of climate change.¹ Currently, IANGEL is producing a report about laws regarding child marriage, reproductive healthcare services, and female genital mutilation around the world. This work exposes the many injustices that women and girls routinely face both in the U.S. and abroad. IANGEL has opposed the current administration’s draconian asylum laws, especially in the context of the current pandemic, which have exacerbated human rights violations and discrimination experienced by women. IANGEL’s mission is to use legal resources to promote and protect women’s rights – as such, IANGEL opposes the proposed

¹ INTERNATIONAL ACTION NETWORK FOR GENDER EQUITY & LAW, *New IANGEL Paper on “Women, Cultural Rights, and Climate Change,”* Advocacy, Network News, Apr. 26, 2020, <https://www.iangel.org/climate-change/>.

rule on the grounds that it is inhumane, unreasonably burdensome, and contrary to the U.S. Government's international obligations.

The proposed rule's near-total bar to gender-based asylum denies protections to those who need it most. Women and girls comprise the most vulnerable group of asylum-seekers.² Women globally face discrimination, subjugation, and violence on the basis of their gender. The struggles of women who seek asylum on other grounds – such as fleeing from religious and political persecution – are frequently compounded by the additional burden of gender-based discrimination and violence.³ By broadly barring gender-based asylum, the proposed rule would deny protection to the world's most at-risk populations.

IANGEL objects to the proposed rule's dismissive characterization of gender-based violence. Under the proposed rule, a persecuted group cannot be defined by circumstances related to "interpersonal disputes" or "private criminal acts" of which governmental authorities were "unaware or uninvolved." While domestic violence may be viewed by authorities as an intra-family issue, this violence is a symptom of unchecked patriarchy. One in four countries currently do not have laws protecting women from domestic violence and, where laws do exist, they are frequently not heeded or enforced.⁴ By refusing to intervene in domestic violence cases, and by framing these issues as 'personal disputes,' governments normalize gender-based violence and perpetrate further violations of women's rights. A government's silence on issues of domestic violence constitutes persecution in itself, as it robs women of recourse against their abusers and contributes to a culture of women's subjugation.⁵ Under the proposed rule, survivors of domestic violence would be punished by the U.S. government for their native government's failure to protect them.

The proposed rule also seeks to bar evidence that promotes "cultural stereotypes about an individual or a country."⁶ Oppression within a culture may easily become "stereotypical" if pervasive enough, and exposing such oppression may as easily be seen as contributing to the stereotype. This creates a self-perpetuating cycle of evidence inadmissibility. Barring women from bringing evidence of their society's common flaws under the proposed rule would, essentially, punish them for suffering gender-based violence in a place well-known for gender-based violence. One would not deny a religious minority asylum because they fled from a place well-known for persecuting the religious minority – this would be both unjust and counterintuitive. Furthermore, this evidence ban applies to only the asylum-seekers and not the government, which creates a legally unsupportable double standard.⁷

² TAHIRIH JUSTICE CENTER, *Analysis of the Asylum Rule's Impact on Survivors of Gender-Based Violence*, <https://www.tahirih.org/wp-content/uploads/2020/06/Tahirih-GBV-survivor-analysis-of-Asylum-Rule.pdf> (last visited Jul. 12, 2020) at 1.

³ *Id.*

⁴ Paula Tavares and Quentin Wodon, *Global and Regional Trends in Women's Legal Protection Against Domestic Violence and Sexual Harassment*, Ending Violence Against Women and Girls, Mar. 2018, <http://pubdocs.worldbank.org/en/679221517425064052/EndingViolenceAgainstWomenandGirls-GBVLaws-Feb2018.pdf>.

⁵ See generally *AT v. Hungary*, CEDAW Communication No.: 2/2003, 26 January 2005, <https://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf>.

⁶ Brian Soucek, *Re: RIN 1125-AA94 / EOIR Docket No. 18-0002*, Jun. 29, 2020, <https://law.ucdavis.edu/faculty/soucek/files/Comment-on-Asylum-Rule.pdf>, at 9.

⁷ *Id.*

The proposed rule's restrictions come at a particularly harmful time. As a result of COVID-19, violence against women and girls has risen worldwide.⁸ In some places, the number of women in need of support services for violence has doubled.⁹ Authoritarian leaders are using this moment of uncertainty and crisis as an opportunity to broaden the scope of their powers, squash opposition, and limit individual freedoms.¹⁰ Growing authoritarian control may prove particularly damaging, and potentially fatal, to marginalized identities – such as abused women and LGBTQI+ individuals.¹¹ The proposed rule seeks to bar entry to oppressed individuals at a time when oppression and fear are mounting worldwide.

IANGEL objects to the proposed rule as it undermines U.S. international human rights obligations. Historically, the U.S. has been a safe haven for immigrants, especially immigrant activists fleeing from oppressive political regimes. As a member of the United Nations Human Rights Council, the U.S. has a duty to uphold and protect fundamental human rights.¹² The United Nations has categorized certain acts of sexual violence as constituting not only human rights violations, but also torture and war crimes.¹³ By denying a multitude of asylum-seekers a safe haven and specifically targeting gender-based claims for asylum, the U.S. contributes to the abuse of human rights and unchecked sexual tyranny. Furthermore, unnecessarily stringent asylum bars discourage potential asylees from escaping oppression and seeking shelter in the U.S. and allow perpetrators of human rights violations to abuse with impunity.

The proposed rule also undermines the U.S.'s duty to uphold women's rights. Women worldwide face routine backlash for speaking out against authoritarian governments, tyrannical gender norms, and human rights infringements. Through the presidentially-approved *Women's Global Development and Prosperity Initiative*, the U.S. government has claimed to prioritize women's economic equality.¹⁴ Through the Violence Against Women Act ("VAWA"), the government has admitted a responsibility to protect women from domestic violence.¹⁵ The proposed rule cuts against both of these obligations. By denying gender-based asylum broadly, the proposed rule would eliminate protection for the countless women persecuted for seeking economic and social equality within their home countries. Furthermore, by

⁸ Edith M. Lederer, *UN Chief Urges End to Domestic Violence, Citing Global Surge*, U.S. NEWS AND WORLD REPORT, Apr. 5, 2020, <https://www.usnews.com/news/us/articles/2020-04-05/un-chief-urges-end-to-domestic-violence-citing-global-surge>; INTERNATIONAL ACTION NETWORK FOR GENDER EQUITY & LAW, *Women, Cultural Rights, and Climate Change: Addendum re COVID-19 – Impacts and Opportunities*, 4-5.

⁹ Lederer, *supra* note 8.

¹⁰ See Philippe Dam, *Hungary's Authoritarian Takeover Puts European Union at Risk: COVID-19 is not an Opportunity to Shelve Democracy*, HUMAN RIGHTS WATCH, Apr. 1, 2020, <https://www.hrw.org/news/2020/04/01/hungarys-authoritarian-takeover-puts-european-union-risk>.

¹¹ See Kaela Roeder, *More than 40 LGBTQ Activists Arrested in Moscow*, WASHINGTON BLADE, Jul. 2, 2020, <https://www.washingtonblade.com/2020/07/02/more-than-40-lgbtq-activists-arrested-in-moscow/>; See THE NEW YORK TIMES, *Russian Constitution Change Ends Hopes for Same-Sex Marriage*, Jul. 13, 2020, <https://www.nytimes.com/aponline/2020/07/13/world/europe/ap-eu-russia-gay-couples.html>.

¹² *Resolution adopted by the General Assembly on 15 March 2006*, UNITED NATIONS GENERAL ASSEMBLY, 60/251 Human Rights Council, Apr. 3, 2006, https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/60/251&Lang=E; UNITED NATIONS HUMAN RIGHTS COUNCIL, *Membership of the Human Rights Council*, 2020, <https://www.ohchr.org/en/hrbodies/hrc/pages/membership.aspx>.

¹³ Ms. Zainab Hawa Bangura, UN Special representative on Sexual Violence in Conflict, *Sexual Violence: A Tool of War*, OUTREACH PROGRAM ON THE RWANDA GENOCIDE AND THE UNITED NATIONS, Mar. 2014, <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Sexual%20Violence%202014.pdf>.

¹⁴ *Women's Global Development and Prosperity Initiative*, <https://www.whitehouse.gov/wgdp/> (last visited Jul. 13, 2020).

¹⁵ *History of VAWA*, THE WOMEN'S LEGAL DEFENSE AND EDUCATION FUND, Legal Momentum, <https://www.legalmomentum.org/history-vaaw> (last visited Jul. 14, 2020).

denying gender-based asylum, banning stereotype-promoting evidence, and willfully ignoring “interpersonal disputes” in claims for asylum, the proposed rule specifically targets survivors of domestic violence – the very demographic VAWA was enacted to protect. The proposed rule’s strict limits to asylum endanger the social, economic, and political rights of women globally and undercut the U.S.’s commitment to protecting these rights.

Aside from its apparent cruelty, the proposed rule is also legally unsound. Per the analysis of Brian Soucek, Professor at the University of California, Davis School of Law, the rule misuses case law, misconstrues asylum law, and is likely to be “quickly challenged and enjoined.”¹⁶ Moving forward with this rule would not only jeopardize the lives of many, but also face copious legal backlash.

To get to the U.S. at all, asylum-seekers embark on life-threatening journeys, defying their countries, families, and social order. For women, the process is almost always more challenging. The bravery, tenacity, and perseverance of asylum-seekers who have endured rape, severe domestic violence, human trafficking, forced marriage, female genital mutilation/cutting, “honor” violence, and other forms of gender-based violence, as they encounter immense danger while also navigating the complexities of the U.S. legal system is inspiring. Many victims of violence already face injustice at the hands of U.S. immigration policies – to further complicate these policies, denying a vast majority of asylum-seekers safety, is cruelty in the extreme. The least that people seeking refuge in the U.S. deserve is a chance to have their claims justly evaluated by U.S. courts.

Obtaining asylum in the U.S. is not an effortless process. To demonstrate eligibility for this form of immigration relief one must clear considerable legal hurdles – hurdles made higher still by the violence, trauma and fear that many asylum-seekers face on a daily basis. The proposed rule would make obtaining asylum relief essentially impossible for many, and especially difficult for the most vulnerable demographic of asylum-seekers – women. The proposed rule is unnecessary, unfounded, and inhumane.

IANGEL urges the Departments to rescind the proposed rule immediately and instead promote policies that protect and support survivors of persecution, including those who suffer persecution based on their gender. Basic compassion as well as respect for justice and equality demand it.

Thank you for considering IANGEL’s perspective. Please contact me for questions.

Sincerely,



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¹⁶ Soucek, *supra* note 5 at 2.