

Intimate Violence, Fundamental Human Rights and Gendered Persecution: Do the Guidelines Make the Link?

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ABSTRACT

There is currently very little information on how refugee claims related to gender-based violence are decided. This paper begins to fill the information gap by analyzing decisions on asylum claims based on domestic or intimate violence. The paper considers all refugee decisions of the Immigration and Refugee Board from 2004 to 2009 and all Federal Court judicial reviews from 2005 to 2009, that were reported in the Quicklaw LexisNexis service. Decisions are analyzed both quantitatively, as well as qualitatively.

The paper finds that adjudicators consistently identify domestic violence as a type of gendered persecution that has a nexus to a Refugee Convention ground. Despite this, and contrary to directions from the *Gender Guidelines*, adjudicators often fail to take into consideration the social, cultural, economic and psychological dynamics of domestic abuse as legally relevant in their assessment of state protection. This failure is particularly striking in assessments of whether it was reasonable to expect the claimant to seek state protection.

The paper presents data on various factors, such as the rates at which adjudicators consider the adequacy of women's shelters and the responsiveness of local police to domestic violence complaints. It also presents data on the frequency and grounds for which judicial reviews in this area are granted (based on reported decisions). The study concludes with a series of recommendations for reform. The recommendations identify areas where further studies are needed, as well as sets out how the *Gender Guidelines* in particular should be reformed, and how training and support for members of the Refugee Protection Division of the Immigration and Refugee Board needs to be enhanced.