

# INTIMATE PARTNER VIOLENCE AND ASYLUM IN THE AMERICAS

CANADA • CHILE • MEXICO • PERU

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**HUMAN  
RIGHTS  
CENTER**

UC Berkeley School of Law



**UNHCR**  
The UN Refugee Agency



Center for Human Rights,  
Gender and Migration

INSTITUTE FOR PUBLIC HEALTH AT WASHINGTON UNIVERSITY

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# TERMINOLOGY AND ABBREVIATIONS

## Terminology

**“Admissibility” v. “Eligibility”:** In this report, the term “admissibility” is used to describe someone’s eligibility to apply for refugee protection. This reflects the terminology used by several key informants in multiple countries to describe an initial screening step that occurs prior to submitting a formal application for asylum. The term “eligibility” is used in this report to refer to an applicant’s qualification for refugee protection. Asylum adjudicators often make these “eligibility” determinations after interview. However, in Canada, the terms “admissibility” and “eligibility” have a different meaning. “Admissibility” in Canada refers to a screening process that determines whether someone is barred from entering Canada, usually due to criminality. “Eligibility” in Canada refers to a foreigner’s eligibility to apply for asylum. Foreigners are ineligible to apply for asylum to the Immigration and Refugee Board if they are inadmissible to Canada. Instead their grounds for asylum are generally considered through a Pre-Removal Risk Assessment conducted by a government official. In Canada, the actual assessment of someone’s right to refugee protection is called “refugee status determination.”

**Asylum:** A State’s grant of international protection on its territory to persons from another State who are fleeing persecution or other serious harm in their home countries. In the Americas region, eligibility is generally based on the *1951 Convention relating to the Status of Refugees* and its *1967 Optional Protocol* or, where applicable, provisions derived from the 1984 *Cartagena Declaration*. In Canada, “asylum” refers to a form of refugee protection available to applicants upon physical entry to, or once within, the country and who are deemed eligible based on domestic laws which incorporate obligations under the *1951 Refugee Convention* and *1967 Optional Protocol*. In much of Latin America, however, the term “asylum” (or “*asilo*”) often technically refers to state protection granted to a foreigner through diplomatic channels and not based on 1951 Refugee Convention or the Cartagena Declaration criteria.

**Asylum seeker:** An individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which the claim is submitted. Not every asylum-seeker will ultimately be recognized as a refugee.

**Gender:** Socially or culturally constructed and defined identities, status, and roles that are assigned to one sex or another, shaping the relationship between women and men. Each person’s deeply felt internal and individual experience of gender may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms.

**Intimate partner violence (IPV):** Intimate partner violence refers to any behavior within an intimate relationship that causes physical, sexual, or psychological harm to those in the relationship. Examples include acts of physical violence, sexual violence, emotional or psychological abuse, and controlling behaviors, such as restricting access to resources or services. IPV can be perpetrated by current or former partners and also includes dating violence. IPV is a form of domestic violence, and the terms are largely used interchangeably. However, domestic violence can be a broader category encompassing child abuse, elder abuse, and other forms of abuse in the home not occurring between intimate partners.

**Migrant:** Someone who changes his or her country of usual residence, irrespective of the reason or of legal status. UNHCR distinguishes between “economic migrants” and “refugees,” where the former refers to persons who leave their countries purely for economic reasons unrelated to the refugee definition.

**Refugee:** A person who meets the eligibility criteria under the applicable refugee definition, as provided for by international or regional instruments (such as the 1951 Refugee Convention and the 1984 Cartagena Declaration), under UNHCR’s mandate, and/or in national legislation.

**Refugee Status Determination (RSD) process:** Legal and administrative procedures undertaken by States and/or UNHCR to determine whether an individual should be recognized as a refugee in accordance with national and international law.

**Sex:** Refers to physical or biological sex characteristics including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.

**Sexual and gender-based violence:** Acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion or arbitrary deprivation of liberty that target individuals on the basis of their gender.

N.B. For the purposes of this report, definitions are based on UNHCR conventions.<sup>1</sup>

## Abbreviations

<b>CEDAW</b>	Convention on the Elimination of Discrimination Against Women
<b>CEPR</b>	Comisión Especial para los Refugiados (Special Commission for Refugees) (Peru)
<b>COMAR</b>	Comisión Mexicana de Ayuda a Refugiados (Mexican Commission for Refugee Assistance)
<b>DEM</b>	Departamento de Extranjería y Migración (Department of Foreigners and Migration) (Chile)
<b>IPV</b>	Intimate partner violence
<b>IRB</b>	Immigration and Refugee Board (Canada)
<b>IRPA</b>	Immigration and Refugee Protection Act (Canada)
<b>LGBTQI</b>	Lesbian, gay, bisexual, transgender, queer, and intersex
<b>NGO</b>	Non-governmental organization
<b>PRRA</b>	Pre-removal risk assessment (Canada)
<b>PTP</b>	Permiso Temporal de Permanencia (Temporary Permanency Permit) (Peru)
<b>RLU</b>	Regional Legal Unit of the UNHCR
<b>RPD</b>	Refugee Protection Division (Canada)
<b>RSD</b>	Refugee status determination
<b>SGBV</b>	Sexual and gender-based violence
<b>SRE</b>	Secretaría de Relaciones Exteriores (Ministry of Foreign Affairs) (Mexico)
<b>SRR</b>	Sección Refugio y Reasentamiento (Refugee and Resettlement Section) (Chile)
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees

# EXECUTIVE SUMMARY

Intimate partner violence (IPV) can include physical as well as psychological harm; it can involve rape, beatings, verbal abuse, financial control, and enforced isolation. It can also be fatal. A recent global study by the UN Office on Drugs and Crime approximates that 50,000 women were killed by an intimate partner or family member in 2017. This represents roughly 58% of the total number of women who were intentionally killed in the same period.<sup>2</sup> Rates of IPV in the Americas are high – a 2019 review of national data suggests that 1 in 3 women in the region between the age of 15 and 49 have suffered physical and/or sexual violence at the hands of an intimate partner.<sup>3</sup> Concurrently, the region has seen dramatic shifts in refugee and migration trends due to recent political and economic crises, as in Venezuela, Colombia, or Central America. Many forcibly displaced individuals are seeking protection in neighboring states, through refugee status determination (RSD) processes or alternative forms of immigration status. This has come as a shock to states that have not historically been “destination countries.”<sup>4</sup>

This report addresses the under-examined intersection of IPV and refugee protection in the Americas. Despite high rates of IPV in the Americas region, scant information exists about whether and how IPV survivors are able to secure international protection on the basis of these experiences. Further, though exploratory research by UNHCR’s Regional Legal Unit for the Americas in 2017 suggests that several countries in the region address IPV in national asylum policies and guidelines, it is unclear to what extent RSD claims are actually being granted on this basis. Finally, there is little examination of the extent to which the application, interview, and adjudication processes address the specific needs of IPV survivors seeking international protection. Clarifying the legal grounds and practical considerations surrounding IPV-related claims would assist countless advocates, adjudicators, and asylum-seekers in the region.

From July 2018 through August 2019, researchers from the Human Rights Center and the International Human Rights Law Clinic at UC Berkeley School of Law were invited by UNHCR to study RSD processes in four countries: Canada, Chile, Mexico, and Peru. Research would describe ways in which IPV is (or is not) treated as a basis for refugee status in these countries, as well as identify major challenges and specific needs of IPV survivors seeking to apply. Through desk research and semi-structured interviews with 71 key informants across the four countries, the team made several findings about the three stages of the RSD process: application, eligibility interview (or hearing), and adjudication.

Research first identified several challenges affecting IPV survivors’ ability to apply for refugee protection, be it at the border, in detention, or inland. Filing an application is not necessarily easy. There may be deadlines, limited numbers of application appointments each day, lack of confidential spaces, or even rushed “admissibility” screenings to determine whether one is permitted to apply to begin with. Rushed admissibility screenings by officers unfamiliar with IPV are unlikely to help a survivor mention her past experiences. This is even less likely where individuals are screened or made to fill out forms in plain view of other applicants. Limited access to counsel – and limited roles of lawyers – was also a challenge for IPV survivors who may struggle to articulate a claim on this basis. Short deadlines on evidence submission paired with long wait times for interview compound the difficulties these applicants face. Further, where laws restrict applicants’ mobility while they await their decisions, abusers can track down IPV survivors. And where an IPV survivor is traveling with her family, the abuser likely serves as the primary applicant – a beneficiary-spouse has little chance of signaling her need for protection.

At the stage of eligibility interview or hearing with an adjudicating officer, there were several challenges that could negatively impact IPV survivors applying for international protection. Eligibility interviews outside of capital or main urban centers in some countries were sometimes unavailable and other times

hastily conducted over the phone. Across four countries, researchers noted limited access to counsel and, in some countries, the narrow role that counsel can play at the actual interview. Most importantly, many key informants noted uneven expertise and skill among interviewing officers with respect to sexual and gender-based violence (SGBV) and working with survivors of trauma. Informants noted the need to improve state actors' ability to detect survivors of SGBV such as IPV and refer them to support services.

Finally, research identified both analytical and practical challenges for IPV survivors at the adjudication stage. Adjudicators may not accept that "persecution" can include IPV or harm inflicted by private actors, or may not find a lack of state protection when laws criminalizing SGBV exist on paper. Other challenges include demonstrating that an applicant's fear of future harm is clearly linked to a protected ground of the 1951 Refugee Convention. Many adjudicators also questioned whether internal relocation in the home country would be possible. Some indulge a recurrent misconception: surely the applicant can relocate safely, since she is only being threatened by one person... Practical challenges included: inconsistent competence and insufficient training of adjudicators and lawyers on SGBV and IPV specifically; limited access to or use of interpretive guidance on refugee laws (deriving from both the *1951 Refugee Convention* and the *1984 Cartagena Declaration*); insufficient familiarity with IPV dynamics and impacts, which can lead adjudicators to make unwarranted adverse credibility findings; and adjudicators' unreasonable expectations about the availability of evidence. Promising practices also emerged: in Mexico, adjudicators are granting asylum on the basis of "gender" (a sixth ground for refugee protection in the law), and some countries apply thoughtful adjudicator guidance for accommodating IPV survivors.

Below is the summary form of our recommendations, some of which are general but still important for IPV-based claims, to relevant policymakers and practitioners in Canada, Chile, Mexico, and Peru:

### **Accessing the Application Process**

1. *Permit meaningful access to counsel.* Lawyers should be permitted to advise, guide, and accompany clients throughout the RSD process to ensure their substantive and procedural rights.
2. *Eliminate or limit scope of "admissibility" interviews.* To ensure accessibility and fairness, any pre-eligibility "admissibility interviews" should not function as mini-hearings. If deemed necessary at all, these should focus on detecting fears that may indicate a possible asylum claim.
3. *Simplify application forms and access to them.* Applicants with limited education, without legal representation, and who need interpretation should be able to complete forms.
4. *Provide proof of application.* IPV survivors often need proof of asylum seeker status in order to access support services and other benefits such as access to housing, school, and healthcare.
5. *Accommodate needs for mobility of applicant or application.* IPV survivors who may be traveling with, or at risk of location by, their abusers must have the option to relocate within a host country.
6. *Improve detection of and response to potential applicants trapped in complex situations of vulnerability, including SGBV.* Train immigration and RSD agents to detect and support possible IPV survivors in need of protection.
7. *Adopt a survivor-centered and trauma-informed approach for SGBV survivors, including IPV.* Train all officers on sensitive interviewing, enabling safe disclosure of SGBV, and psychological first aid. Provide confidential spaces and filing deadline accommodations for trauma survivors.
8. *Improve referral to support services, including on the part of national asylum offices.* Train immigration and RSD officers to detect applicant needs and refer to appropriate service providers. Asylum offices and service providers should develop two-way referral and training mechanisms.
9. *Raise awareness of IPV as a potential basis for international protection.* Train all officers on SGBV generally and the ways in which IPV can constitute a basis for refugee status.

### **At interview / hearing stage**

10. *Ensure that RSD or asylum interviewers are trained and sensitized to SGBV, including IPV.* Ensure all adjudicators are trained on IPV, the cycle of violence, and how this form of harm can affect survivors' testimony. Adjudicators should elicit testimony in a sensitive manner.
11. *Take a survivor-centered approach to the RSD or asylum interview, including accommodation of applicants' expressed needs.* Accommodate these needs in advance of interview (eg, the gender of the interviewer or day-of childcare).
12. *Engage psychologists to support applicants and help clarify their claims.* Explore adjudication teams where psychologists and lawyers work and train together. Where psychologists are asked to speak to applicants, their role must be clearly delineated and communicated to all parties. In preparation for interviews, lawyers should try to engage counselors to support their clients.
13. *Allow meaningful access to counsel.* Permit lawyers to attend eligibility interviews or hearings so they can pose necessary clarification questions and present a summary of their client's eligibility.
14. *Provide adequate interpretation with trained and vetted interpreters.* During the interview, state actors should provide access to trained and vetted interpreters able to work with SGBV survivors.
15. *Continue to strengthen referral mechanisms.* Ensure that interviewing officers are not only able to detect IPV survivors but also provide referral to support services.
16. *Take an open and constructive approach to evidence.* Non-traditional forms of evidence may benefit adjudicators in cases with under-documented forms of violence such as IPV. Avoid requiring specific documentation such as police reports or medical records.

### **At adjudication stage**

17. *Strengthen adjudication skills and capacity.* States should ensure that adjudicators possess expertise in refugee law and SGBV, providing sufficient and routine training in legal analysis of eligibility for international protection.
18. *Sensitize adjudicators on the legal and practical aspects of IPV-related claims.* Adjudicators should be trained and sensitive to the many ways SGBV can affect a case. This includes analysis for eligibility and how SGBV may affect testimony and factors relevant to credibility assessment.
19. *Increase team capacity to deliver quality judgments for gender-based claims.* Adequate capacity is crucial to ensure that officers have sufficient time to properly assess each case and draft well-reasoned legal arguments, especially since IPV cases can be particularly complex.
20. *Ensure faithful interpretation of the 1951 Refugee Convention and its 1967 Optional Protocol.* The UNHCR has issued relevant guidance on gender-based persecution and interpretation of "membership in a particular social group," which signatory states should apply so as to ensure the proper implementation of their international law obligations.
21. *Develop interpretive guidance regarding the 1984 Cartagena Declaration.* States should support the development of guidance on applying the *Cartagena Declaration's* definition of refugee, including its potential application to cases of IPV and other forms of widespread SGBV.
22. *Improve the quality and scope of official country reports, including information about SGBV in countries of origin.* Include information about SGBV and women's rights in state-produced reports. Cover both protective laws and actual implementation or availability of state protection.
23. *Enable meaningful appeal.* This requires detailed, substantive analysis in decisions and applicants' prompt access to written decisions in case of denial. It can also entail providing specific referral to legal aid and other support relevant to IPV and SGBV survivors.

# PROJECT BACKGROUND

In 2017, UNHCR's Regional Legal Unit (RLU) of the Americas Bureau conducted a survey of country teams in the region to inform priorities for its gender-related RSD programming and research. Survey results highlighted the need to clarify intimate partner violence (IPV) as a qualifying basis for refugee protection in the Americas, as well as identify challenges faced by individuals seeking protection on this basis. The RLU engaged the Sexual Violence Program of the Human Rights Center at the University of California, Berkeley, to conduct an in-depth assessment of these issues.

The project ultimately focused on four case study countries: Canada, Chile, Mexico, and Peru. These countries were prioritized by the UNHCR RLU based on the different stages of development of their refugee protection systems, as well as geographic diversity and the urgent need to support advocates and adjudicators faced with a rapidly growing migration crisis.

Inquiry focused on the following questions for each country:

- 1. Access to application:** What is the process for applying for international protection? What specific barriers or accommodations apply to IPV survivors seeking to make a claim? What support / protection services are available at this stage?
- 2. Case presentation at interview:** How are IPV-related claims generally framed by advocates? What specific barriers or accommodations apply to IPV survivors during the interview or hearing process? What support / protection services are available at this stage?
- 3. Legal analysis and adjudication:** How is IPV treated in asylum-related legislation, case law, policies, and adjudicator guidance (if at all)? What information do we have about IPV-specific grant rates, case profiles, etc.? What are the primary barriers to approval of these cases?

This project began as an internal assessment for the UNHCR RLU to inform its regional policy priorities on IPV as a basis for asylum. Through desk research, the bilingual team reviewed laws, regulations, policies, and secondary literature about eligibility for refugee status in each country and the practical ways these processes work. Where possible, researchers also studied the extent to which SGBV and particularly IPV are specifically addressed. From September through November 2018, researchers conducted semi-structured interviews with key informants to clarify prior research and understand the practical implications and challenges arising with IPV-related cases in particular. In total, researchers spoke with 71 key informants from 38 organizations / state entities in four countries. Informants included adjudication officers, other relevant state employees engaged in women's protection, civil society actors including lawyers and legal representatives, and academic experts. Interview data was coded according to themes of analytical interest. Data analysis was completed in November 2018. The results of the internal assessment were delivered to the UNHCR RLU in December 2018.

Subsequently, the Sexual Violence Program and the RLU decided to conduct further research on this topic for public dissemination. Researchers obtained ethical clearance from UC Berkeley's Institutional Review Board in June 2019 and sought consent for the use of existing data to inform the findings in this report. With new key informant interviews, researchers expanded upon the original findings. However, most key informant findings cited in this report were collected between September and December 2018. After review by in-country experts, the report was finalized in October 2019.<sup>5</sup>



# THE PROBLEM: IPV & ASYLUM IN THE AMERICAS

Intimate partner violence (IPV) is a serious global problem. According to a recent global study by the UN Office on Drugs and Crime, approximately 50,000 women were killed by an intimate partner or family member in 2017. This represents roughly 58% of the total number of women who were intentionally killed in the same period. In terms of homicide committed by family members and intimate partners, women are disproportionately affected: 64% of homicide victims killed by a family member are female, as are 82% of homicide victims killed by intimate partners.<sup>6</sup>

In conflict and forced displacement settings, research indicates that women are at higher risk of suffering intimate partner violence. While there exist no global estimates of IPV rates in conflict, several systematic reviews and country-specific studies find higher IPV rates in conflict-affected areas.<sup>7</sup> For instance, 71% of women in Northern Uganda reported physical abuse at the hands of a partner in 2012.<sup>8</sup> One study in Palestine found that women whose husbands were directly or indirectly exposed to conflict-related violence were anywhere from 47% to 123% more likely to experience IPV.<sup>9</sup> Moreover, several studies suggest that women's risk of suffering IPV increases during forced displacement and in refugee camp settings.<sup>10</sup> Higher rates of IPV in conflict and forced displacement settings may be linked to the presence of known risk factors for IPV. Researchers theorize that conflict and displacement can challenge traditional gender roles, normalize violence, increase women's economic dependence on potentially abusive partners, create openings for opportunistic violence that goes unpunished, and lead to depression and post-traumatic stress disorder — all factors associated with a risk of suffering or perpetrating IPV.<sup>11</sup>

Women around the world flee their countries to escape IPV. The laws of many host countries recognize IPV as a form of persecution that may provide a basis for a refugee or other protection claim.<sup>12</sup> Some countries' laws also explicitly list “gender” as a potential reason one might be targeted for persecution, such as IPV.<sup>13</sup> This growing global recognition that IPV can trigger a need for refugee protection is promising. However, much work remains to strengthen IPV survivors' ability to access this protection.

## Forced displacement and intimate partner violence in the Americas

In the Americas, a 2019 systematic review of national data suggests that 1 in 3 women between the age of 15 and 49 have suffered physical and/or sexual violence at the hands of an intimate partner. However, the range of reported cases varies widely, from 14-17% in countries like Brazil, Panama, and Uruguay, to 58.5% in Bolivia. Although the prevalence of intimate partner violence seems to be declining in many countries, this form of harm remains a public health and human rights problem across the Americas.<sup>14</sup>

While forced displacement trends in the Americas change over time, the numbers of people on the move have increased dramatically in recent years, as is the case globally.<sup>15</sup> Many of these newcomers need international protection, posing new challenges for countries' immigration and protection systems. Several countries in the region that were not historically “destination countries” are now receiving large numbers of migrants and refugees due to humanitarian crises in nearby states.<sup>16</sup> For example, the number of Venezuelans living in Peru increased from 2,351 in 2015 to over 860,000 in May 2019.<sup>17</sup>

Further north, Canada has historically received high numbers of immigrants and asylum seekers. In contrast with its Latin American counterparts, large numbers of immigrants to Canada<sup>18</sup> come from countries outside the Americas, such as Nigeria, India, and Iran. Nevertheless, many asylum seekers are from the Americas region, particularly Central America, Colombia, Haiti, and Mexico.<sup>19</sup> IPV rates are high in all countries producing refugees and migrants. Yet, relatively few claims for refugee protection in the Americas region are

based on IPV. The gap may be due to many factors, including a lack of awareness of potential eligibility by both applicants and state officials, as well as fundamental barriers to accessing national protection systems.

## Overview of the legal framework for refugee protection in the Americas

At its core, the legal framework governing refugee protection in the Americas is based on international instruments (1951 UN Convention Relating to the Status of Refugees and 1967 Optional Protocol)<sup>20</sup> and regional instruments (1984 Cartagena Declaration on Refugees, along with subsequent Declarations)<sup>21</sup>. Additionally, key human rights treaties forming the Inter-American Human Rights System are relevant.

### ***The 1951 UN Convention Relating to the Status of Refugees and 1967 Optional Protocol***

The 1951 UN Convention Relating to the Status of Refugees (Convention) and 1967 Optional Protocol (Protocol) are the primary international instruments providing rights and protections for refugees.<sup>22</sup> Of 35 countries in the Americas, 80% have ratified or acceded to the Convention and 83% have acceded to the Protocol.<sup>23</sup> Both documents define “refugee” as someone who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>24</sup> One foundational principle of the Convention is that of *non-refoulement*,<sup>25</sup> the principle prohibiting the return of individuals to countries where they face serious threats to life or freedom.<sup>26</sup>

### ***The 1984 Cartagena Declaration on Refugees***

Even before adoption of the 1951 Convention, Latin American countries have traditionally extended asylum to individuals fleeing political persecution. Crises in the 1960s, 70s, and 80s in Central America and the Southern Cone, however, led to a convening of Latin American leaders to address the unique protection needs of refugees fleeing different crises in the region.<sup>27</sup> The 1984 Cartagena Declaration on Refugees emerged, initially adopted by 10 of 33 States in Latin America and the Caribbean.<sup>28</sup> Crucially, Article 3 expanded the 1951 Convention definition of “refugee” to include “persons who have fled their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”<sup>29</sup> The Cartagena Declaration has inspired various regional and national instruments.<sup>30</sup> Nine of 33 countries in Latin America have adopted the Cartagena Declaration definition of “refugee” into their national laws.<sup>31</sup> Two known sources provide interpretive guidance for the Cartagena Declaration. In 1989, the International Conference on Central American Refugees (CIREFCA) produced the CIREFCA Legal Document, which served mostly as a legal guide, as opposed to a practical one.<sup>32</sup> In 2013, a regional expert roundtable issued Summary Conclusions with broader interpretations of the Cartagena Declaration.<sup>33</sup> However, it is unclear to what extent these guidelines are actually used to adjudicate refugee claims.<sup>34</sup>

### ***The Inter-American Human Rights System***

The Inter-American System grants specific rights to refugees, asylum seekers, and migrants.<sup>35</sup> A few cases before the Inter-American Court have contributed to the development and interpretation of these rights. For example, a 2013 decision in *Familia Pacheco Tineo v. Plurinational State of Bolivia*<sup>36</sup> held that Bolivia violated the American Convention<sup>37</sup> and clearly stated the rights and protections of refugees.<sup>38</sup> In 2018, the Court published an Advisory Opinion stating that the right to seek and receive asylum is a human right within the Inter-American System; that *non-refoulement* can be demanded by any foreign person; and that the principle of *non-refoulement* imposes positive duties upon States.<sup>39</sup>

# CASE STUDY OVERVIEW

This report analyzes how intimate-partner violence (IPV) survivors fare in four different asylum systems in the Americas: Canada, Chile, Mexico, and Peru.

**Canada** admits a greater proportionate share of immigrants compared to its population than any other North American country.<sup>40</sup> In 2018, The Refugee Protection Division received 55,388 asylum applications, compared to 10,465 in 2013.<sup>41</sup> The acceptance rate was over 50%.<sup>42</sup> A recent public information request revealed that one in six women asylum seekers in Canada were fleeing gender-based persecution, with over half of those fleeing domestic violence in particular.<sup>43</sup> The 2001 Immigration and Refugee Protection Act (IRPA) and its regulations govern Canada’s refugee protection system. IRPA defines a refugee in accordance with the 1951 Convention definition,<sup>44</sup> and also confers refugee protection to “persons in need of protection.”<sup>45</sup> Canada has an overseas refugee resettlement program and an in-country asylum program, and also offers relief on “humanitarian and compassionate grounds.”<sup>46</sup>

**Chile** is not historically a destination country for migrants and refugees. In 2017, however, Chile received 5,723 asylum applications, up from 623 in 2015.<sup>47</sup> Most asylum seekers come from Colombia, Cuba, and Venezuela<sup>48</sup>; Chile also hosts large numbers of migrants from Bolivia, Haiti, and Peru.<sup>49</sup> Key informants commented that many women seeking asylum from the Dominican Republic were fleeing IPV. A public information request<sup>50</sup> revealed that of 147 Dominican women seeking asylum since 2011, only 1 case was granted, with the rest pending or denied. Recognition rates are quite low generally: only 7 people were granted refugee status in the first half of 2019, down from 171 grants in 2018.<sup>51</sup> Chile’s 2010 Law on the Protection of Refugees<sup>52</sup> and its regulations<sup>53</sup> govern the RSD process. While Chile has no alternate forms of protection, it sometimes offers temporary protection visas.<sup>54</sup>

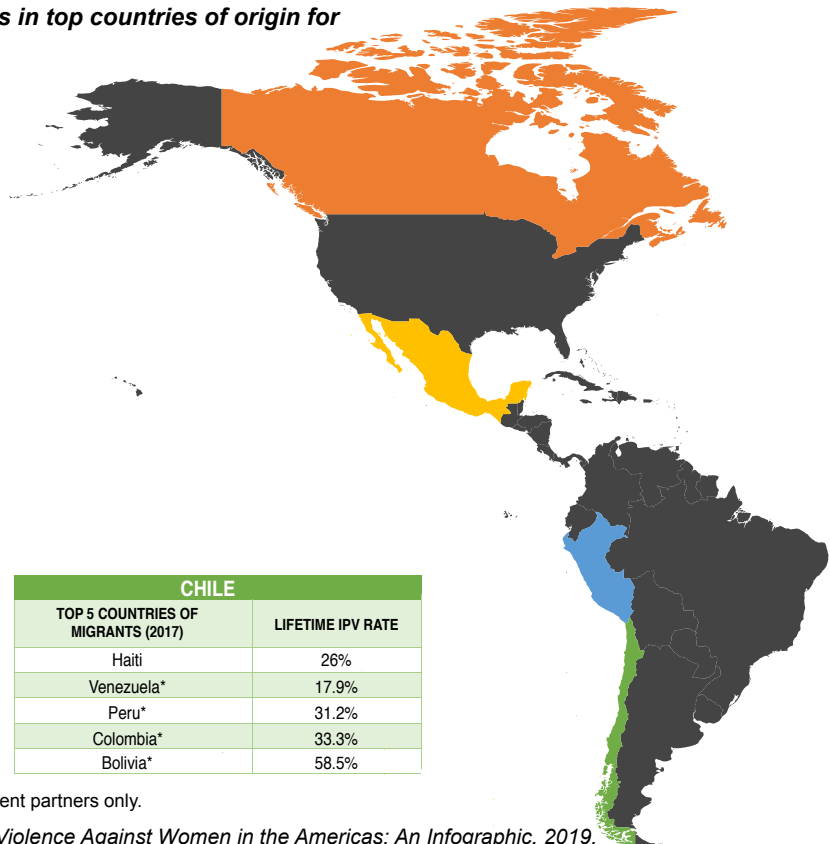
**Figure 1: Estimated lifetime IPV rates in top countries of origin for each case study country.**

CANADA	
TOP 5 COUNTRIES OF ASYLUM SEEKERS (2016)	LIFETIME IPV RATE
Nigeria	16%
India	29%
Mexico*	21%
Colombia*	33.3%
Iran	No official data.

MEXICO	
TOP 5 COUNTRIES OF MIGRANTS (2016)	LIFETIME IPV RATE
United States	37.3%
Honduras	27.8%
Venezuela*	17.9%
Cuba	No official data.
Colombia*	33.3%

PERU	
TOP 5 COUNTRIES OF MIGRANTS IN VULNERABLE CONDITION (2017)	LIFETIME IPV RATE
Venezuela*	17.9%
Spain	13%
United States	37.3%
Colombia*	33.3%
Argentina	26.9

CHILE	
TOP 5 COUNTRIES OF MIGRANTS (2017)	LIFETIME IPV RATE
Haiti	26%
Venezuela*	17.9%
Peru*	31.2%
Colombia*	33.3%
Bolivia*	58.5%



\*Data represent IPV rates with current or most recent partners only.

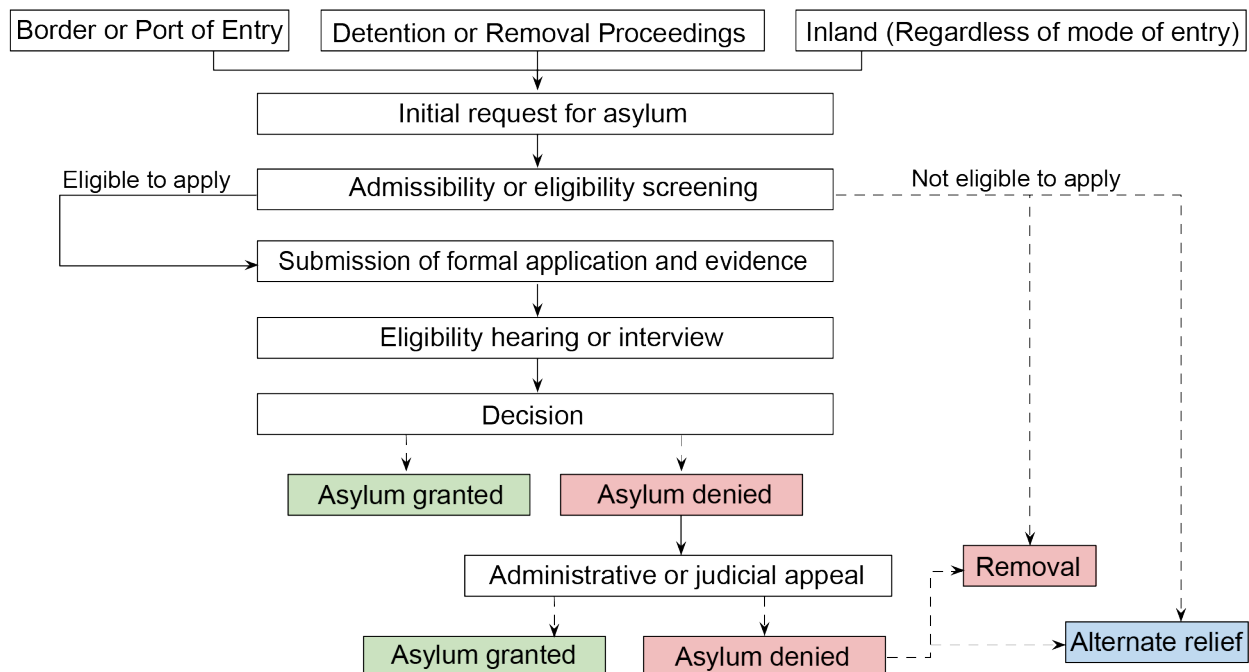
Source: PAHO and WHO, *Intimate Partner Violence Against Women in the Americas: An Infographic, 2019.*

**Mexico** is a country of origin, transit, and destination for refugees and migrants. Due to violence in Central America, harsher U.S. immigration policies, and information campaigns on the right to seek asylum, the number of asylum applications in Mexico rose from 2,137 in 2014 to 29,648 in 2018.<sup>55</sup> Mexico’s Commission for Assistance to Refugees (COMAR) reports that 80% of cases adjudicated on the merits in 2018 resulted in a grant of refugee status or complementary protection.<sup>56</sup> COMAR also reports that only 2 of 1,423 decisions based on domestic violence were denied from 2013 to 2018.<sup>57</sup> Mexico’s 2011 Law on Refugees, Complementary Protection, and Political Asylum<sup>58</sup> and its Migration Law<sup>59</sup> govern international protection and migration. Mexican law includes “gender” as a sixth ground of persecution.<sup>60</sup> It also offers complementary protection<sup>61</sup> as alternate relief and temporary visitor permits for humanitarian reasons<sup>62</sup> to asylum seekers and victims of “grave crimes” on Mexican territory. A new COMAR team took office in January 2019, eager to improve upon practices documented during the earlier research period.

**Peru** is the primary host country for Venezuelan asylum seekers globally.<sup>63</sup> Over 860,000 Venezuelans live in Peru,<sup>64</sup> 287,114 of whom have applied for asylum.<sup>65</sup> At the end of 2016, there were only 6,041 refugees and asylum seekers total in Peru.<sup>66</sup> No statistics on gender-based asylum claims are yet available, but around 40% of asylum applicants in Peru are women.<sup>67</sup> Peru’s 2002 Refugee Law<sup>68</sup> and Regulations<sup>69</sup> govern refugee protection. The country also offers a “Special Migration Permit”<sup>70</sup> to foreigners in situations of extreme vulnerability (including victims of domestic and sexual violence), a “Humanitarian Migration Permit,”<sup>71</sup> and a “Temporary Permit of Permanence”<sup>72</sup> (only available to Venezuelans).

Each country studied has different asylum application processes. Still, there were several common steps. The graphic below offers a distilled version of five very different RSD processes. Appendix A discusses the particularities of each system. In general, an individual can enter the refugee status determination (RSD) process in three main ways: at a border or official point of entry, while in detention or removal proceedings, or once they are in country. After this initial encounter, most countries include five steps in their processes: an initial request, which may or may not be described in the country’s official administrative procedures; an official or unofficial admissibility or eligibility screening; a formal application and evidence submission; a hearing or interview to determine the applicant’s eligibility for asylum; and finally, a decision. All countries also have administrative or judicial options for appeal and most offer alternate forms of relief.

**Figure 2: Common stages of the RSD process in Canada, Chile, Mexico, and Peru**



# ACCESS AND APPLICATION

In all countries studied, accessing the RSD process can be challenging. From the first moment of contact with authorities to filing an application, to obtaining legal counsel and exercising their rights, IPV survivors face both general and unique access and application barriers. This section examines these challenges at each step of the application process, highlighting their relevance for IPV survivors in particular. Promising strategies for supporting IPV survivors at this stage are also discussed.

## Applying for refugee protection: Initial approach

Each country studied generally has three ways to enter the RSD process: (1) at the border or other official port of entry, (2) in detention or removal proceedings, and (3) inland. IPV survivors contend with access challenges in each of these three entry points. Some access challenges are specific to their experiences as survivors, and others affect them and other asylum seekers on a more general level.

### At the border

For many in need of protection, the first opportunity to express a fear of return and enter the RSD process is with border authorities upon entering the potential host country. Domestic regulations in each country outline these officials' responsibilities when presented with a potential asylum claim. Obligations range from referring individuals to the inland refugee agency offices (Chile<sup>73</sup>) to receiving and transferring initial applications (Mexico<sup>74</sup>, Peru<sup>75</sup>) to screening for eligibility to apply at the border (Canada<sup>76</sup>).

In practice, however, informants noted significant barriers in individuals' ability to ask for asylum and in border authorities' ability to properly detect and refer potential asylum seekers. Informants mentioned individuals' fear of deportation or of revealing violence to authorities as key impediments. For IPV survivors in particular, informants in all countries noted that many women may simply not see themselves as victims or as eligible for protection and assistance on the basis of IPV. This can prevent women from discussing past violence or knowing to seek asylum on this basis. Additionally, individuals who do not know they can request asylum often cannot access the RSD process if border officials do not ask about a fear of return.<sup>77</sup> Only Mexico requires that immigration authorities actively identify potential asylum seekers and inform them of their right to seek asylum,<sup>78</sup> meaning that many IPV survivors remain unaware of this possibility. Not asking for asylum at the border can have consequences for applicants. For instance, informants in Chile noted that not asking for asylum upon entry will hurt the credibility of a claim during adjudication, even if applicants did not know about the possibility.

If border authorities understand a foreigner's need or desire to apply for asylum, next comes an eligibility screening (Canada<sup>79</sup>) or onward referral (Chile<sup>80</sup>, Mexico<sup>81</sup>, Peru<sup>82</sup>). However, informants pointed to serious flaws in this process in all countries. In Canada, contrary to asylum regulations,<sup>83</sup> informants shared that eligibility screenings sometimes veer into substantive assessment of claimants' credibility.<sup>84</sup> Informants noted this practice is especially problematic for IPV survivors who may not feel safe revealing this harm to a border official or who may confuse dates and other facts due to trauma. This can hurt their claims, given that responses during the eligibility screening are later considered at the eligibility hearing (in Canada, the term "refugee status determination hearing" is used in lieu of "eligibility hearing," to avoid confusion with the initial "eligibility screening" step). In Chile and Mexico, informants commented that a lack of coordination between border and inland authorities, along with few formal mechanisms for transferring applications, inhibit claimants' ability to move forward with their claim.<sup>85</sup> In Peru, no mechanism existed until recently to

receive and transfer applications at the border. As of September 2019, however, key informants indicate that Peru's refugee agency (CEPR) now staffs a border office that can receive asylum applications upon entry.

Although authorities are not always obligated to identify potential asylum seekers, all countries require immigration authorities to provide general information on RSD procedures to potential applicants.<sup>86</sup> Despite this, informants in Mexico and Chile felt that authorities often presume that undocumented foreigners are seeking to regularize their migration status and are therefore likely to advise individuals to seek out other migratory visas instead of referring them to the RSD process. A lack of border officer training on the RSD process and sexual and gender-based violence was cited by informants as a recurrent challenge for IPV survivors. Multiple informants commented that border officials may turn women away based on assumptions that they are looking to engage in sex work, or because officials do not know that IPV can be a basis for asylum. In one example from Mexico, a woman contacted immigration authorities for assistance stating she had suffered domestic violence, only to be told she should marry or have children to remain in Mexico.

In Mexico, informants were concerned about specific dangers for IPV survivors who do manage to apply for asylum at the southern border with asylum authorities from COMAR. Mexican legislation requires applicants to remain in the state where they filed their asylum application; any request to change states must be justified and approved by COMAR, which is required to respond within three days.<sup>87</sup> However, informants shared that COMAR can take months to approve state transfers for applicants, leaving women exposed to their persecutors when stuck in porous border areas of southern Mexico. Some informants mentioned cases of women being tracked down in border areas by abusive partners, triggering response from the UNHCR and local actors. For IPV survivors without regular immigration status who approach immigration rather than asylum authorities at the border, Mexican immigration law indicates that they will automatically be transferred to a migratory detention center,<sup>88</sup> even if they want to apply for asylum. Informants noted that IPV survivors who are released from detention to apply for asylum are not able to request a transfer to a different state, unlike applicants who approach COMAR directly, leaving these applicants exposed to their persecutors without recourse to state transfers whatsoever.

## In detention or removal proceedings

For individuals in detention or removal proceedings, accessing the RSD procedure is even more challenging. While every country technically funnels asylum applications from those in detention through the regular RSD procedure, several countries have no mechanisms in place for ensuring detained foreigners have this access (ie, Peru, Chile). In Mexico, where immigration authorities are required to detect potential asylum seekers in detention,<sup>89</sup> informants emphasized that procedures for doing so are inadequate or poorly implemented in practice. Moreover, Mexican immigration detention authorities are supposed to interview detainees to detect vulnerable individuals,<sup>90</sup> including SGBV survivors,<sup>91</sup> and transfer them to institutions that can care for them.<sup>92</sup> While informants noted that immigration authorities do indeed conduct these interviews, detention of asylum seekers remains the norm and not the exception, despite recent court rulings and attempts to institute alternatives to detention.<sup>93</sup>

In Canada, foreigners in detention have a right to ask for asylum but authorities are not obligated to inform them of this right or direct them to the RSD process unless they proactively express a desire to apply for asylum or fear of returning to their country.<sup>94</sup> Moreover, foreigners in removal proceedings in Canada are not able to claim asylum.<sup>95</sup> Despite this, foreigners in removal proceedings can apply for a pre-removal risk assessment (PRRA) if they have not applied for asylum and been denied within the past 12 months.<sup>96</sup> The PRRA assesses whether the individual would face a risk to life or risk of persecution, torture, or cruel and unusual treatment or punishment if removed.<sup>97</sup> If the PRRA application is accepted, the individual becomes a "protected person," with the same rights as recognized refugees.<sup>98</sup>

## Inland

Each case country's regular or affirmative application process occurs inland and is governed by regulations. Asylum requests made at the border or in detention are normally channeled through inland procedures. However, applicants still face barriers moving through RSD processes and IPV survivors often face a unique set of challenges when filing inland applications.

Filing deadlines and bars to applying are the first hurdle for submitting an application. Every country has a filing deadline,<sup>99</sup> although informants shared that application of this rule is quite lenient in practice. Exclusions to applying can pose a challenge, however. In Canada, one informant noted that a woman who flees her country and brings her minor children without their father's permission can be found to have committed a "serious non-political crime" of child abduction. This would make her "inadmissible" to Canada and thus excluded from applying for asylum.<sup>100</sup> The informant emphasized that this exclusion is very detrimental to IPV survivors, since most women in this situation are fleeing abuse at home.

Submitting an application for refugee protection is complicated in every country, but some more so than others. In Chile and Mexico, a complex multi-step procedure for submitting a formal application inhibits access to asylum. In Mexico, informants noted that applicants must first go to COMAR's offices to express a desire to apply for asylum, known as submitting a *solicitud*. Only about two dozen *solicitud* forms were available per day. This forces would-be asylum seekers to line up outside COMAR offices as early as 4:00 AM in hopes of simply expressing a desire to apply for asylum — an extra access barrier for applicants with child or work-related duties (like many IPV survivors). Further, once they submit the *solicitud*, applicants must await a call from COMAR to set an appointment for returning in person to fill out an official application form, or *formulario*. Informants noted this is an additional barrier, as people may lose their phones, miss a call, or change their number. In cities where COMAR does not have an office, claimants must apply with an INM officer who communicates back and forth with COMAR for each of these steps. Informants commented that this complicates and prolongs the process even further. For IPV survivors traveling with an abusive partner, informants worried this could expose women to further abuse: there is more time and more opportunity for an abuser to catch his partner before she secures state protection.

Barriers to formalizing an asylum application are exacerbated in Chile due to alleged "admissibility" screenings at the application stage. According to informants, the Refugee Section (SRR) of the Department of Foreigners and Migration (DEM) had been requiring applicants to first appear in person to obtain a later appointment for filling out an official *formulario*. Informants noted this appointment was often set for many months later, most likely because only about fifteen *formularios* were being issued per day. Moreover, on the day of this appointment, informants consistently confirmed that applicants were first interviewed for ten to fifteen minutes to determine if they were "admissible" to apply for asylum before being allowed to fill out a full *formulario*. Several informants stressed that officers with little experience or training on SGBV conducted these short interviews, increasing the risk that potentially viable claims would be overlooked. This lack of training, informants felt, severely limited detection or disclosure of IPV at the "admissibility" stage. They mentioned instances in which IPV survivors were turned away at this step after trying to initiate a claim on the basis of this harm. A recent application to the Comptroller General of Chile requested that the DEM revise its application procedures so they align with the provisions of Chile's refugee law.<sup>101</sup> Plaintiffs emphasized that this short pre-screening interview was not provided for in law and resulted in individuals being denied the ability to apply for asylum.<sup>102</sup> In its response, the Comptroller General agreed, stating that: "the granting or denial of refugee status must conform to the provisions [of Chile's refugee law] (...) which does not appear to have occurred in this case. Therefore, it can be concluded that the DEM must comply with the aforementioned procedure."<sup>103</sup> This conclusion<sup>104</sup> is promising for IPV survivors, who may otherwise struggle to disclose past harm in such a brief, public interaction, preventing access to the application process.

In contrast, Canada<sup>105</sup> and Peru<sup>106</sup> only require applicants to bring a completed Basis of Claim form (Canada) or short narrative (Peru) to an in-person appointment with asylum officials to formally apply. Applicants based in Lima can also submit their short narrative online and will then receive an in-person appointment.<sup>107</sup> At this appointment, officials register applicant data and, in Canada, conduct an eligibility screening before referring the application to the Immigration and Refugee Board (IRB).

However, even with simpler application form submission procedures, informants worried IPV survivors still face application barriers. Informants noted that adjudicators frequently assume that men are primary applicants in family groups, which can inhibit survivors' ability to submit their own, separate claims or mention IPV at the formal application stage. Some countries guarantee that every member of an applying family can file an individual claim for protection.<sup>108</sup> In Mexico, legislation guarantees every person accompanying a primary applicant will be individually interviewed to assess whether she could present a separate claim.<sup>109</sup> In practice, informants noted that separate interviews, if they occur at all, usually aim to corroborate or challenge the primary applicant's narrative, rather than establish a spouse's independent claim. Moreover, informants commented that COMAR only provides one document per family attesting to those individuals' asylum seeker status — and this document is given to the principal applicant. In practice, therefore, informants found that IPV survivors seeking asylum in Mexico as part of a family group are afraid to leave an abuser who may hold this documentation that proves their status in Mexico. Informants also noted that applying for asylum independently of an abusive partner is difficult due to the dynamics of IPV itself. For example, a controlling partner may prevent a survivor from applying for asylum, or a survivor may be unable to leave an abuser to attend an application appointment on her own. A survivor may also fear for her or her children's safety if her abuser discovers she has filed her own claim for refugee protection.

Even if they overcome logistical and procedural hurdles in obtaining a form, informants in all countries noted that applicants — many of whom are unrepresented by counsel or have limited education — often struggle to complete it. With respect to IPV, informants expressed concern that many survivors may lack the literacy levels to be able to read the form. Informants also noted that few survivors would know to include SGBV experiences in their applications, much less present IPV as a possible basis for protection. Sometimes local wisdom may work against IPV survivors. For example, informants in Peru explained that many applicants submit claims based on generic templates<sup>110</sup> or complete forms according to community advice. For survivors, informants commented that IPV is often lost when claimants submit these generic templates rather than detailing their own personal narrative. Lastly, the method of completing an application form can obstruct disclosure of IPV. For instance, informants in Mexico explained that applicants fill out a form in the presence of other applicants at COMAR's offices, often without the aid of an interpreter or lawyer. In this non-confidential context with little support, few may feel comfortable mentioning IPV. On the whole, these practices render intimate forms of harm like IPV invisible.

## Right to counsel at the application stage

Key informants in all countries mentioned access to legal counsel as a defining factor in claimants' ability to submit a strong asylum application. Aside from Chile, whose Refugee Law contains no specific provisions regarding the right to counsel, other countries' laws note the right to counsel<sup>111</sup> when filing an application. Canada<sup>112</sup> and Mexico<sup>113</sup> mention the right to be assisted by counsel during the application stage, and Peru<sup>114</sup> specifies that an application can be submitted by a legal representative. Despite these provisions, informants in all countries noted challenges with both access to and the role of counsel at the application stage of the RSD process, affecting IPV survivors in specific ways.

Informants from the four countries generally agreed that, in reality, claimants have limited access to legal counsel. Canada is the exception, with a 2018 IRB review noting that only 4% of asylum seekers are



unrepresented.<sup>115</sup> None of the countries studied provide lawyers to asylum seekers, leaving applicants to seek out private attorneys and non-profit legal aid. Additionally, informants commented that some governments do not assist claimants in finding legal assistance (Chile, Peru). Others simply provide a list of legal aid organizations on a government website or handout (Canada<sup>116</sup>). In Chile, Mexico, and Peru, all informants observed that most asylum seekers are unrepresented, as few lawyers in the country take asylum cases. The difference in case outcomes for applicants with legal counsel is dramatic. In Canada, for instance, only 16% of unrepresented claimants were granted asylum from 2002 to 2012 (compared to a 53% overall).<sup>117</sup>

Different factors impede access to legal representation. In Chile, informants shared that lawyers are not allowed to participate in the orientation phase where applicants are informed of the RSD process. Unless applicants discover legal aid groups by some other mechanism, interviewees in Chile (and Peru) lamented that few are able to access representation, or even know-your-rights sessions (although, informants in Peru noted that occasional such sessions do occur at the border and inland). For IPV survivors, access to lawyers can make or break their ability to even file a claim. In Chile, for instance, informants reported that most adjudicators do not view IPV as a basis for asylum. Adjudicators' interpretation of the 1951 Convention definition of "refugee" informs SRR officers' ten-minute assessment of someone's likely eligibility for asylum during "admissibility" screenings in Chile. With this restrictive interpretation, informants report that IPV survivors are often barred from formally applying for asylum at this stage. Without access to legal counsel, IPV survivors have little chance of challenging decisions denying access to the RSD process.

**Promising practice: Chilean lawyers advocate for IPV survivors' access to the RSD process**

When SRR officers denied IPV survivors the ability to apply at the "admissibility" stage, attorneys in Chile stepped in to argue that IPV can be a legitimate basis for asylum. Using UNHCR's Guidelines<sup>118</sup> and Handbook,<sup>119</sup> and citing to international treaties on women's rights (CEDAW,<sup>120</sup> Convention of Belém do Pará<sup>121</sup>), they demonstrated that women subject to IPV from countries that lack effective state protection are refugees. Attorneys accompanied claimants in person to the SRR office to ensure their admittance to the formal application process. Thanks to this insistence, over two dozen women survivors of IPV who were initially turned away succeeded in applying for asylum in 2017.

Additional factors impede access to counsel in the other countries studied. In Mexico, despite INM's legal obligation to ensure detained asylum seekers can communicate with their lawyers,<sup>122</sup> several Mexican attorneys recounted that INM greatly restricted their access to asylum seeker clients in detention. Key informants also shared that legal aid organizations cannot enter INM detention centers without explicit authorization from an asylum seeker, preventing them from offering general legal information to detainees. IPV survivors seeking asylum stand to lose in all countries without the advocacy of legal counsel, especially when submitting their initial applications. In Peru, for example, informants shared that many applicants submit country-specific application templates, rendering IPV invisible. Asylum applications in Peru have recently skyrocketed,<sup>123</sup> creating large backlogs and extending wait times. In this crisis context, adjudicators report they prioritize vulnerable claimants. Without legal advocacy, however, informants feared that women do not disclose IPV and are thus not identified and prioritized by adjudicators. Informants noted an unfortunate lack of legal aid for asylum-seekers in Peru generally.

Legal representatives' ability to advocate for clients at the application stage varies in each country. In Canada, the Department of Justice states that foreigners interviewed at ports of entry are not generally permitted to have a representative at the initial interview, although they can consult with a lawyer by phone prior to this interview. For inland claims, accompaniment to interviews is allowed, but the accompanying person is not generally permitted to actively represent the claimant.<sup>124</sup> Informants in Canada also noted that the availability and quality of legal aid can vary dramatically across different parts of each

country. Informants in Mexico and Chile expressed concerns that, even where legal counsel was engaged in a case, officials actively restricted their ability to represent their clients. For instance, lawyers in Mexico claimed that despite a legal provision allowing applicants to be assisted by counsel at any moment of the process,<sup>125</sup> COMAR had been known to prevent lawyers from accompanying clients to appointments to complete formularios. This meant their clients had to fill out the application form alone and without support. In Chile, where the right to counsel is not guaranteed, lawyers were also prevented from accompanying clients to the “admissibility” stage of application.

For IPV survivors in particular, legal counsel plays an important role at the application stage. In Canada, lawyers highlighted the crucial support they offer for understanding and completing forms. This helps survivors build a stronger case that addresses IPV from the beginning. Lawyers additionally pointed to their role in gathering IPV-specific evidence for the claim, which can be complicated and time-consuming to obtain. They also play a major role in eliciting a complete testimony from survivors, which is often vital to case success since documentary evidence for IPV can be scarce. However, building the necessary rapport and trust for disclosing IPV can take time. Informants mentioned this poses challenges for legal aid organizations that are already at capacity. Lawyers must also be sufficiently trained to elicit such testimony supportively and effectively; informants acknowledged that incompetent or poorly trained attorneys can not only fail to obtain this testimony, but may also retraumatize their clients in the process.

## Evidence submission and wait times

While most adjudicators give significant weight to the claimant’s testimony, key informants indicated that supporting evidence can make or break a case. Most documentary evidence submission occurs prior to the eligibility interview.<sup>126</sup> Applicants usually provide basic evidence with their application, such as identity documents and family information.<sup>127</sup> In Canada, medical and psychological reports, business records, news clippings, sworn statements from witnesses, and country conditions information are all acceptable forms of evidence.<sup>128</sup> Informants from Canada added that police and hospital reports, expert affidavits, reference letters, and letters from family members are also submitted. In other countries, advocates indicated that adjudicators accept similar types of evidence, although it was unclear how much weight these different types of evidence are given. A few countries also allow claimants to submit additional evidence during or after the eligibility interview; sometimes the adjudicator requests it.<sup>129</sup>

Key informants cited several challenges with evidence submission at the application stage. In countries where evidence submission must occur before the eligibility interview,<sup>130</sup> lawyers indicated short time frames limit an applicant’s ability to obtain and submit IPV-related evidence for refugee claims. This was particularly true in Canada. Types of IPV-specific evidence that are crucial but difficult to obtain include police reports and medical records from the home country. In some cases, informants noted this evidence may simply not exist if survivors do not go to the police or do not have proof of physical abuse. In other cases, the evidence may exist but is challenging to obtain. Informants also noted that knowing what evidence to submit is especially challenging for claimants without legal representation or support from civil society organizations. In Chile in particular, informants were frustrated by inconsistencies with requirements for evidence submission at the application stage. For example, they relayed instances where some claimants were required to submit evidence at the “admissibility” stage, whereas others brought evidence with them at this stage but adjudicators refused to accept it.

Another important form of evidence for IPV cases can be obtained in countries of asylum: psychological evaluations of a survivor’s trauma from IPV. Attorneys in Canada shared that they regularly submit these for their clients. In Peru, however, informants said that service providers hesitate to offer these evaluations because they do not want to be asked to testify. In Mexico and Chile, informants reported that service

providers working with asylum seekers will not provide adjudicators with these assessments unless requested. Informants in Chile stressed that a service provider must secure client consent before submitting any kind of psychological evaluation to the government adjudicators.

Informants in Chile, Mexico, and Peru commented that the RSD process does not regulate how and when attorneys can submit evidence on behalf of their clients, and legislation says little about the types of evidence that can be submitted. Despite this challenge, lawyers in Chile and Mexico shared strategies of submitting non-required evidence on their own volition at the application stage for their clients. This included information packets with written client testimony and expanded country conditions research.

### **Promising practice: Filing a *carta de ampliación* for clients in Chile and Mexico**

In Chile and Mexico, informants expressed frustration at the lack of direction in domestic legislation concerning the type of evidence counsel can submit on behalf of clients, and when and how to do so. Several legal aid groups developed a template for a *carta de ampliación* that lawyers submit on behalf of clients prior to eligibility interviews. This “extension letter” includes written testimony, original country conditions research, description of the cycle of violence, and discussion of the legal grounds for asylum in each case (eg, naming the particular social group, stating the objective and subjective fear, describing the nexus of the harm to a protected ground). Even if adjudicators did not grant asylum in the first instance, attorneys explained they would then have all necessary evidence to contest denials upon appeal. Particularly in Mexico, lawyers felt this strategy helped secure grants for IPV survivors.

Once all initial documents are submitted, applicants wait for an eligibility interview or hearing in which an officer will ultimately determine whether they qualify for asylum. Long wait times pose another challenge to asylum seekers waiting for decisions on their claims. While every country except Chile imposes time limits on adjudicators for holding eligibility interviews or issuing a final decision,<sup>131</sup> in practice these wait times are much longer. Informants in Chile noted claimants can wait up to four years to have an eligibility interview. This creates myriad issues for IPV survivors. Difficulty obtaining IPV-specific evidence either from the country of origin or in the country of asylum means claims rely heavily on firsthand testimony and country conditions information. Informants commented on the risk of evidence, including testimony, becoming stale or forgotten if applicants must wait several years for an eligibility interview. Lastly, long wait times can pose additional issues for IPV survivors, including unstable immigration status, lack of proper documentation, and access barriers to needed services.

## Screening for IPV and other vulnerabilities

Refugee agencies’ ability to screen for and detect IPV at the application stage varies across countries. Some countries have built-in “vulnerability screenings” during the RSD process that trigger either referrals (Chile) or case transfers to specially trained adjudicators (Mexico). Other countries may be able to detect IPV early on, but adjudicators do not play a role in referring claimants to support services (Canada). Still others lack capacity to detect IPV any time prior to the in-person eligibility interview (Peru). Despite this, most informants agreed that early detection of IPV is crucial for supporting survivors during the RSD process.

In Chile, the “admissibility” screening step provides a brief opportunity to detect IPV. However, this process is not regulated by Chilean legislation. Informants confirmed that during the short interview (often with inexperienced officers), interviewers can request the assistance of a staff psychologist if they suspect certain vulnerabilities. The psychologist is then able to speak with the claimant, mark her application as “vulnerable,” and refer her to a civil society partner for care. In practice, however, informants felt that the

questions asked at this stage are insufficient to properly detect IPV and other vulnerabilities, unless the claimant displays a very obvious need for psychosocial assistance.

Vulnerability screenings are built in to Mexico's application process, with legislation requiring a "needs detection"<sup>132</sup> interview and with a team of adjudicators specifically dedicated to handling vulnerable cases.<sup>133</sup> Mexican legislation defines "vulnerability" as including victims of SGBV,<sup>134</sup> and informants confirmed that the "Vulnerable Groups" division of COMAR takes on IPV cases. Additionally, Mexican law requires that COMAR refer vulnerable claimants to institutions that offer assistance.<sup>135</sup> However, informants pointed to weaknesses in the treatment of "vulnerable" cases. First, they noted that an IPV survivor is not considered "vulnerable" if the form of harm suffered was psychological; only physical or sexual violence were commonly referred to the Vulnerable Groups division. Second, informants observed that "needs detection" interviews do not always occur, despite legislation requiring it for all claimants at the application stage. Third, attorneys shared that even when a case is labeled "vulnerable," assigned adjudicators are not necessarily better equipped to handle the case with sensitivity. Lastly, few COMAR officials who conduct interviews with particularly vulnerable groups are based outside Mexico City.

In Canada, legal counsel may seek to detect IPV for purposes of referral to support services. While claimants could disclose IPV in their application forms or during the required medical exam,<sup>136</sup> adjudicators are not required to provide special assistance or referral. Canada nevertheless has robust guidelines for adjudicators on identifying vulnerable applicants early on and making appropriate procedural accommodations.<sup>137</sup> To access support beyond these accommodations, however, claimants often depend on legal and health care providers' referral and coordination systems.

Informants in Peru repeatedly stated that IPV remains invisible at the application stage. In the current RSD process, there is no established mechanism for the adjudicating agency to detect IPV. Moreover, informants pointed to the absence of specialized legal services for asylum seekers as a barrier to detecting IPV and referring to support services. Of the scant legal aid providers that exist, several informants mentioned that they do not ask clients about SGBV experiences, virtually assuring IPV remains invisible.

#### **Promising practice: Asking appropriate questions to detect potential IPV survivors**

Whether to ask direct or indirect questions to detect IPV can be difficult to intuit. Some informants feared that direct questions re-traumatize survivors, while others worried survivors would not disclose IPV in response to indirect questions and thus not obtain needed services. Ultimately, deciding on the form of questioning is case and context specific. Different actors should consider their responsibilities *vis à vis* the survivor. If they must know about IPV (eg, for legal aid or credible fear determinations), this may merit direct but sensitive questioning (eg, are you afraid of your partner? has anyone at home hurt or threatened to hurt you? do you feel controlled by your partner?).<sup>138</sup> Without a clear benefit to the survivor, service providers should refrain from asking direct and, possibly, indirect questions to detect IPV. Regardless, service providers should systematically provide information to clients and patients about SGBV and the right to seek asylum on this basis. A recent report (*The Silence I Carry*) offers further guidance on safe SGBV disclosure and awareness raising.<sup>139</sup>

## Rights and benefits available to IPV survivors

In each country, legislation outlines the rights and benefits available to asylum seekers waiting for a decision on their claim. In theory, this means that even if adjudicators do not screen for IPV and refer claimants to services, claimants could proactively seek out benefits to which they are entitled. In practice, however, informants elucidated many barriers to access. Moreover, rights guaranteed asylum seekers awaiting a decision vary significantly between countries. This section examines rights and access related to healthcare, government assistance programs, and work authorization for survivors awaiting decisions.

Only Mexico<sup>140</sup> and Chile<sup>141</sup> mention the right to healthcare for asylum seekers in domestic legislation. The right to health is not mentioned in the refugee legislation of other countries, although the Canadian government indicates that asylum seekers are eligible for temporary and limited health care coverage under the Interim Federal Health Program.<sup>142</sup> Peruvian legislation is silent on the right to healthcare, although informants indicated that claimants can access healthcare once they receive a provisional document attesting to their status. In practice, however, informants commented that regardless of legislation, asylum seekers in every country except Canada struggle to access affordable healthcare due to complicated documentation requirements and limited public services. Recent developments in Mexico, for example, have meant that asylum seekers no longer have access to medical assistance and treatment beyond their first 90 days in the country.<sup>143</sup> An IPV survivor's ability to access medical care and, if necessary, temporary shelter is in many cases dependent on local and regional initiatives or organizations that provide these types of services to undocumented or non-citizen women on an ad hoc basis.<sup>144</sup>

Humanitarian assistance or government welfare programs are also key to IPV survivors' ability to subsist while awaiting a decision on their refugee claim. Only Mexico<sup>145</sup> and Chile<sup>146</sup> explicitly describe the right to access humanitarian assistance in their domestic legislation for particularly vulnerable asylum seekers. Nevertheless, informants in Mexico commented that COMAR does not have the budget to administer humanitarian assistance programs in practice, and refers asylum seekers to public or civil society institutions instead. Canada does not guarantee government assistance to asylum seekers, but nevertheless in practice provides welfare assistance more reliably than any other country.<sup>147</sup> Peru's legislation remains silent on the matter, and informants report that government assistance is practically non-existent for refugee claimants.

In contrast with healthcare and government assistance, legislation in every country addresses the right to work. However, informants emphasized that this does not guarantee asylum seekers access to employment in practice. Many noted that employers may not see work authorization documentation provided by refugee agencies as legitimate (Mexico, Peru). With such constraints, many informants feared that asylum seekers, particularly women, may turn to precarious, informal alternatives such as sex work to make ends meet.

With few systematic guarantees or mechanisms to access healthcare, government assistance, and employment, IPV survivors in many countries rely on NGOs that individually determine who they serve and how they do so. While there are many examples of outstanding providers and initiatives focused on supporting IPV survivors in multiple capacities, informants broadly expressed concern at the lack of state-supported assistance for claimants who face many health- and humanitarian-related needs.

# INTERVIEW OR HEARING

In all countries studied, an interview or hearing is a key step in the RSD process. Claimants have the opportunity to present their case directly to an adjudicator, who asks questions to determine the claimant's eligibility for refugee protection. While this step occurs in all countries, differences abound with regard to the nature of the interview, the role of legal counsel, the possibility to submit new evidence, and the support, accommodations or referral options available to vulnerable applicants such as IPV survivors.

## The nature of the interview or hearing

Eligibility interviews or hearings in the four countries studied generally occur in a non-adversarial setting. The principal aim is to establish the facts of a case to determine a claimant's eligibility for refugee protection. While each country's legislation agrees on basic elements of this step, such as confidentiality of information shared,<sup>148</sup> countries diverge on other aspects. Issues of particular concern to women with IPV-based claims include individual interviews, the interview setting, and the length of the interview.

Whereas all countries' legislation emphasizes confidentiality, key informants in some countries shared grave breaches of confidentiality in practice. This is particularly concerning for IPV survivors, who may not disclose harm suffered if they distrust adjudicators. More alarming are the potential safety consequences to a survivor when confidentiality is not upheld; in Mexico, one key informant related an instance where adjudicators shared a woman's location and other private information with her husband, who was the primary applicant. In other cases, informants shared confidentiality issues such as children being present during their mother's eligibility interview, especially if she struggles to find or afford child care. Informants felt this discourages women from openly discussing violence suffered.

Separate interviews for women, without the presence of a partner or children, are key to eliciting IPV-specific testimony. Some countries explicitly address the right to a separate interview (Chile,<sup>149</sup> Mexico<sup>150</sup>), whereas others remain silent (Peru, Canada). Guidelines in some countries (Peru,<sup>151</sup> Canada<sup>152</sup>) mention the option of separate interviews or hearings. In practice, however, key informants observed incomplete adherence to requirements and reasoning for separate interviews. In Chile, for instance, informants commented that adjudicators always interview members of a family group separately, but with the motive of detecting inconsistencies or challenging the credibility of the primary applicant's narrative. A similar practice occurs in Mexico, where informants observed that if a spouse is interviewed at all, it is not with the aim of identifying if she has an individual claim for refugee protection (as required in Mexican legislation), but rather to corroborate her husband's claim. In Peru, informants observed instances of women being interviewed either with their partners or children present.

### **Promising practice: Legal advocates petition adjudicators for separate interviews in Mexico**

One attorney in Mexico explained that she petitions COMAR to separate the claims of a woman and her partner if she detects the woman's need for a separate interview. This request can be justified on the basis of suspected IPV. The attorney reported that COMAR is very responsive to such requests, usually complying within three days. There are no reported instances of COMAR denying applicants this option. In countries where the option for separate interviews exists, therefore, quality legal assistance (where lawyers detect IPV with sensitivity) is key to ensuring claimants access this right.

In addition to an individual interview, other aspects of the interview setting are important for putting claimants at ease. In Canada, informants described that hearings are closed to the public and occur in a small room, where the claimant, lawyer, interpreter, and board member are present. In contrast, informants in Mexico commented that interviews sometimes occur over the phone, particularly if claimants are far from Mexico City or are not represented by counsel.

Lastly, informants mentioned the duration of the interview can pose a problem for IPV survivors in particular. In some countries, informants felt the interviews were too short for applicants to fully discuss and disclose experiences of harm such as IPV. In Chile, informants mentioned interviews can be as short as thirty minutes. In Peru, interviews are usually under one hour. Informants familiar with adjudication processes in Peru acknowledged that this often is not enough time to delve into the specifics of violence. In contrast, eligibility hearings in Canada often last half a day. Long interviews can pose a different set of challenges for IPV survivors, however, including emotional exhaustion and re-traumatization.

## Access to and the role of legal counsel

Many informants emphasized the importance of securing competent legal counsel that can support IPV survivors during eligibility interviews or hearings. However, access to legal representation and attorneys' ability to represent clients during interviews varies. Canada has much higher representation rates than Chile, Mexico, and Peru.<sup>153</sup> In Chile, lawyers are outright barred from accompanying clients to eligibility interviews.<sup>154</sup> Informants noted only three exceptions to this bar were granted over five years for particularly difficult cases, and that the refugee agency justifies this bar on confidentiality grounds. In Peru, informants shared that lawyers can attend eligibility interviews but simply do not have the capacity for this in practice.<sup>155</sup>

In Canada<sup>156</sup> and Mexico,<sup>157</sup> where legislation affirms applicants' right to representation, lawyers regularly accompany clients to their interviews or hearings. Despite this, representation rates in Mexico remain low, with informants alleging that adjudicators often deny protection to eligible claimants when they do not have legal representation. In Canada, informants cautioned that the quality of legal counsel can sometimes be quite poor. For complicated IPV cases, informants felt that incompetent counsel was disastrous for outcomes.

Attorneys enjoy different levels of participation in Canada and Mexico, where they are allowed to go with clients to the interview or hearing.<sup>158</sup> Mexico seems more restrictive. There, lawyers shared that they cannot intervene to argue, provide proof, or clarify facts offered by their clients. Attorneys explained that their role is limited to intervening when claimants are pressed for unnecessary details of the harm suffered, or when the claimant is visibly exhausted, upset, or re-traumatized. In contrast, lawyers in Canada can question claimants during the interview and present a legal argument, in addition to monitoring for procedural fairness.<sup>159</sup>

### **Promising practice: Lawyers navigate restricted interview setting in Mexico**

While attorneys expressed frustration at their limited ability to represent clients during interviews, several also shared promising strategies for supporting clients' cases at this stage. One lawyer shared that when questions are insensitive or difficult for IPV survivors, she interrupts adjudicators and presents psychological evidence detailing how abuse affects the ability to testify and revisit trauma. In other cases, she interrupts questioning to have adjudicators listen to a pre-recorded interview where the claimant already answered sensitive questions concerning abuse. Other lawyers mentioned they take notes during the interview so they can ask guiding questions to the applicant once the adjudicator has finished, to help clarify any points the adjudicator may have missed or misunderstood. Another lawyer states, "We reserve our right to present further documents or clarification" at the end of an interview, to alert adjudicators to the possibility of additional submissions for consideration.

Attorneys in Canada have additional tools at their disposal. The IRB’s Guidelines on Vulnerable Persons specify that legal counsel can request to interview a vulnerable claimant before the board member, request the gender of the adjudicator and interpreter, and make any other accommodation requests. While adjudicators can also make these accommodations for claimants, informants commented that ensuring accommodations usually falls to lawyers. Because of this, informants re-emphasized the importance of securing competent legal counsel for the hearing.

## Submission and treatment of IPV-related evidence

Certain types of evidence are particularly important for IPV-based claims. These include police and medical reports, country conditions information, expert affidavits, and, of course, claimant testimony. Most evidence submission occurs immediately prior to or during the eligibility interview or hearing.<sup>160</sup> All countries allow applicants to submit additional evidence after the hearing, although these allowances may occur on a discretionary basis.<sup>161</sup> Informants in all countries shared common practices, challenges, and strategies for submitting and addressing IPV-specific evidence during the interview or hearing.

### **Promising practice: “Expert Affidavit” about IPV and the Cycle of Violence**

One initial challenge to IPV-related claims for refugee protection is the risk that an adjudicator may not be sufficiently trained about the forms or cycles of this violence, or the ways it can affect a survivor’s ability to function or testify later. To help educate adjudicators about the unique dynamics and impacts of IPV, lawyers in Canada will sometimes submit an “expert affidavit” developed by the Center for Gender and Refugees (CGRS) in San Francisco, California. The affidavit presents the expertise of Professor Nancy Lemon, an internationally recognized expert on domestic violence. In it, Professor Lemon defines domestic violence, explains the cycle of violence that can develop between intimate partners, and describes the various psychological impacts of past domestic abuse. These insights can help explain apparent inconsistencies or illogical reactions to events in a survivor’s narrative. They can also help explain the incomplete or unexpected ways survivors may act or testify about their experiences. Because the affidavit is written as a general informational document, it can be submitted as supplemental and educational evidence in multiple cases. CGRS makes the affidavit available to Canadian as well as U.S. asylum lawyers upon request. See Center for Gender and Refugee Studies, <https://cgrs.uchastings.edu/>.

Psychological evaluations demonstrating the impact of IPV on survivors’ mental health and ability to testify were mentioned repeatedly as key pieces of evidence. Informants in some countries confirmed they submit evaluations prior to the interview or hearing for adjudicators’ consideration (Canada, Peru). Informants in Peru mentioned that the Office of the Public Prosecutor provides guidelines on psychological evaluations, including requirements that psychologists register with the Office. This requirement creates challenges in practice, however, as informants noted psychologists are often hesitant to submit reports when they do not want to be called in to testify. In Canada, informants added that in rare cases, adjudicators may adjourn hearings to request a psychological evaluation, particularly if new evidence emerges or aspects of the testimony point to mental health issues.

In most countries, some form of country of origin information is produced (or endorsed) by the host government itself and either submitted or available to adjudicators as they analyze asylum claims.<sup>162</sup> In certain countries (Canada<sup>163</sup>), these country conditions reports are publicly available for attorneys to consult when preparing submissions for their clients. In all countries, however, informants recommended that claimants and their attorneys gather and prepare their own country conditions reports, especially in IPV



cases. Claimants must often challenge state-produced reports that are out of date, lack sufficient information on IPV, or allege the availability of state protection or internal relocation alternatives. In Canada, where sworn testimony is legally sufficient but adjudicators look for additional evidence,<sup>164</sup> informants highlighted that lawyers should submit briefs countering unfavorable information in the state-produced reports prior to the hearing, or risk the case falling apart.

Oftentimes, though, the only evidence available in IPV-based cases is the applicant's testimony. In these cases, credibility is a serious concern for adjudicators. Informants in most countries shared that adjudicators receive some training on assessing credibility. Canadian<sup>165</sup> and Mexican<sup>166</sup> training materials emphasize that trauma can affect someone's ability to recall specific dates or other facts in a consistent manner, or may cause certain emotional reactions during the retelling of traumatic events. However, not all countries delve into the specific ways that gender-based violence can affect testimony, potentially affecting credibility determinations.

#### **Promising practice: Psychological evaluations and credibility**

To help present their clients' psychological state and how it may impact their testimony or ability to recall specific dates or events, many advocates in Canada engage the services of psychologists or psychiatrists who meet with the applicant (usually once) and write a forensic evaluation of the client. In their reports, these professionals present their diagnostic findings and highlight ways the applicant's mental health status might affect his/her manner of speaking about past events. For example, they may find that an IPV survivor exhibits symptoms consistent with post-traumatic stress disorder (PTSD) and explain how this condition can affect memory, body language, or other functions. *Note: Psychological experts must be careful not to draw conclusions about historical fact or the applicant's eligibility for refugee protection.*

## Detecting IPV and other vulnerabilities

Some applicants do not disclose IPV experiences at early stages of the RSD process, or their experiences of IPV may be invisible if they are not the primary applicant. Adjudicators may thus have a chance to detect IPV during the interview. No countries explicitly require adjudicators to detect IPV at this stage, but guidelines on sensitive interviewing can help them do so.

Informants in all countries confirmed that adjudicators use interview guides to assist with questioning. Canadian adjudicators receive additional training on sensitive interviewing techniques for survivors of gender-based harm, including guidance on supporting the disclosure of gender-based violence and other traumatic experiences. Relevant techniques include beginning the interview with easy topics to build rapport, asking open-ended questions before moving into specific questions about any harm suffered, and reassuring the applicant of confidentiality. In Chile, Mexico, and Peru, informants also mentioned that psychologists are available during one-on-one interviews, either as eligibility officers themselves (Chile, Peru) or to support claimants experiencing emotional distress or re-traumatization (Mexico).

While detection of previously undisclosed IPV during an eligibility interview is possible, informants mentioned several challenges in practice. Despite some guidance on sensitive interviewing techniques, informants in Chile, Mexico, and Peru pointed to a lack of training, protocols, and tools specifically geared toward detecting SGBV and IPV in particular. Informants felt this left the detection of IPV dependent on individual adjudicators' inherent capacities. For example, while some adjudicators may understand the need to ask questions about specific forms of harm, informants in Peru commented that others may only ask

about general “threats” instead of specific instances of gender-based violence. Lastly, a claimant’s reluctance to disclose IPV can also pose a challenge for detection during an interview.<sup>167</sup> Informants in Mexico, for instance, commented that adjudicators lack training in understanding the slow and psychologically difficult process of IPV disclosure, leading to frustration or inadequate interviews. In Peru, informants felt that therapeutic sessions prior to the eligibility interview would help IPV survivors in speaking about their experiences, thus assisting with IPV detection and disclosure.

## Access to support, accommodations, referral

When IPV is detected or disclosed, adjudicators are then faced with providing support to survivors during the interview itself. Support can take many forms, from pre-arranged accommodations such as selecting the gender of an interviewer to in-interview measures such as employing supportive interviewing techniques or enlisting the aid of a psychologist on staff. Beyond the interview, IPV survivors may also need referrals to public or non-governmental service providers for healthcare, shelter, or other assistance.

### Pre-interview support and accommodations

Several pre-interview accommodations may be relevant to IPV survivors. These include the option to select the gender of the interviewer and interpreter, the possibility of expediting one’s case, and being assigned a specially trained adjudicator. Countries are not uniform in offering these options, however, and even those that do may fall short in practice.

Only Chilean law guarantees the right to select an interviewer and interpreter of a certain gender.<sup>168</sup> Key informants confirmed that other countries make this option available and attempt to comply with requests to the extent possible.<sup>169</sup> Informants commented that limited staffing can complicate fulfilling these requests in practice. In some countries, applicants end up waiting longer for their interviews if adjudicators of a requested gender are not available (Mexico); informants shared that this wait time often discourages claimants from insisting on adjudicators of a certain gender. Other informants said that many applicants are not aware they can request the gender of an officer, and so do not do so on their application forms.

Selecting an interpreter of a specific gender is also an important accommodation for IPV survivors. However, not every country guarantees the right to an interpreter, let alone the ability to select one by gender. Canada seems to be the most accommodating, fulfilling most requests for specific genders of adjudicators and interpreters. In Mexico, Chile, and Peru, informants highlighted that a lack of official interpreters in general is the fundamental issue. Informants in Mexico shared that few, if any, interpreters exist for indigenous languages. In Peru, informants commented that adjudicators may often use already recognized refugees from an applicant’s community as interpreters, raising confidentiality concerns. Other pre-interview accommodations mentioned included adjudicators’ prioritization of vulnerable cases (Canada, Peru) and assigning vulnerable cases to adjudicators with extra training on the issue (Mexico).

#### **Promising practice: Preparing clients for eligibility interview with counseling support**

Appearing for an eligibility interview can be stressful and confusing. Some lawyers assist their clients in preparing. In Mexico, some lawyers work with psychologists to prepare their clients for interview. Together, lawyer and psychologist conduct practice interviews with their clients. Doing so helps the client feel more prepared and also helps the lawyer provide the client with better emotional support as he/she testifies. Similarly, a key informant in Canada noted that lawyers often secure counseling for their clients, ensuring that more of the clients’ basic needs are met so they can focus on the case.

## Support available during the interview or hearing

During the interview, adjudicators' capacity to provide emotional support and sensitive interviewing largely depends on the extent of their training. Legislation in some countries requires that adjudicators employ sensitive interviewing techniques (Chile,<sup>170</sup> Mexico<sup>171</sup>). Informants in at least three countries confirmed that adjudicators receive training on interviewing vulnerable groups, including IPV survivors (Canada, Mexico, Peru). However, informants also feared that training received is insufficient.

Several informants expressed concern that some adjudicators' limited understanding of gender, gender-based violence (particularly intimate partner violence), and the cycle of violence lead to inappropriate or insensitive questioning. Without an understanding of the cycle of violence, for instance, informants in some countries related that adjudicators may ask questions such as "why did you stay with him if he was abusing you?" or "how can you claim you were afraid if you lived with him for ten years?" Accounts of adjudicators focusing on specific dates and times related to the abuse also surfaced — details that are often quite difficult for survivors of trauma to accurately recount. Informants also expressed concern that adjudicators may ask more questions than necessary to establish that abuse occurred, at times focusing on minute details of sexual abuse in ways that caused emotional or psychological distress to claimants.

Even when adjudicators ask sensitive questions and work to create a supportive environment, informants felt that adjudicators often lack the tools to adequately respond to situations of emotional or psychological distress during interviews. In Peru, for instance, informants commented that adjudicators trained as lawyers may struggle to know how to counsel a claimant who becomes emotional during an interview. In Mexico, informants shared that adjudicators often lack training in psychological first aid, and may not know how to work with vulnerable women in general. Informants also expressed concern that claimants can be re-traumatized during interviews without recourse to support measures once they leave the room.

Despite these challenges, informants also shared promising practices and ideas for improving support to IPV survivors during the eligibility interview or hearing, such as examples of gestures that can contribute to a safe environment (eg, offering a glass of water, taking a break, empathizing with and reassuring claimants when they become nervous or upset). Informants felt the presence of a psychologist or other trained professional during an interview was promising for offering support to IPV survivors. Ideas for avoiding re-traumatization were also mentioned, such as recording a claimant's interview with her lawyer and playing it for adjudicators. This would negate the need to repeat sensitive questions in an interview, although informants noted this idea would also require careful consideration of confidentiality and security issues. Lastly, some informants mentioned providing the option of re-interviewing a vulnerable claimant as a supportive measure in cases where trauma or distress impedes the claimant from fully presenting her case during the interview (informants in Mexico, for example, indicated that adjudicators offer this option in exceptional cases).

## The role of psychologists on adjudicator teams

Unlike Canada, psychologists in Chile, Mexico, and Peru serve as staff on adjudicating bodies and thus play an active role in eligibility interviews. Informants in Chile and Peru confirmed that some eligibility officers have a psychology or social work background. In Peru, adjudicators will often ensure survivors of trauma are assigned an officer trained as a psychologist for the eligibility interview. Adjudicators can even hand the case to a psychologist on staff mid-interview if they do not feel they can provide adequate support to the claimant. In contrast, staff psychologists in Mexico do not serve as adjudicators but can accompany claimants during interviews and provide counseling sessions, if needed. However, informants noted that resource constraints in Mexico mean that many claimants do not have access to psychologists in practice, particularly for those

pursuing their claims outside of Mexico City. In Chile, one key informant noted that Article 41 of Chile's Refugee Law provides for "special treatment" for victims of sexual or gender-based violence, including access to psychological support. While this law was more intended to provide humanitarian relief than to produce evidence for adjudicators, the informant noted that a strong psychological report from the provider could strengthen a case.

Still, while speaking with a psychologist during eligibility interviews can help claimants experiencing trauma, informants raised concerns about psychologists acting as "second adjudicators," particularly in Mexico where their role should be confined to offering emotional support. Informants noted times where eligibility officers may send a claimant to the staff psychologist to test the credibility of their testimony when, for example, the officer is skeptical about a chronology of events. Informants feared that some psychological support sessions were instead serving to question or confirm the truthfulness of claimants' testimony. To mitigate the risk of psychologists acting as second adjudicators, informants felt eligibility officers should refrain from naming the particular issue at hand or asking the psychologist to ascertain facts. They should make a "request for service" to indicate a claimant's need for psychosocial support.

## Referring IPV survivors to outside services

Apart from offering claimants in-house psychological support, some countries acknowledge vulnerable claimants' need for referral to additional services. For example, Chilean law requires relevant public bodies provide psychological, social, and humanitarian assistance to SGBV survivors seeking asylum.<sup>172</sup> Similarly, Mexican law requires that vulnerable claimants receive institutional assistance.<sup>173</sup> Other countries are silent on the rights of vulnerable applicants to receive additional services, particularly state services, and only specify the rights afforded once recognized as refugees. Claimants in these countries must then rely on the ad hoc services provided by various civil society and non-profit organizations.

Informants in Chile, Mexico, and Peru indicated that adjudicators at times refer IPV survivors to shelter, health, or other services offered by civil society at the interview stage. In Mexico, informants mentioned several promising practices from adjudicators such as referring claimants to medical services when a vulnerability is suspected but not necessarily disclosed. Additionally, informants in Mexico mentioned that COMAR has historically partnered with providers to improve referrals. In Canada, informants commented that lawyers, not adjudicators, often make referrals to service providers. Thus, an applicant's access to services often depends on the availability and quality of legal aid.

While acknowledging these positive examples, informants were also candid about challenges when referring IPV survivors to outside services. Informants in Chile and Mexico expressed concern about revictimizing IPV survivors in the referral process, as many must retell their stories of abuse. Others claimed that adjudicators are often more focused on whether or not to recognize the claimant as a refugee, instead of prioritizing referrals to needed services. Lastly, informants also felt that adjudicators often left the burden of supporting survivors to poorly resourced civil society organizations, and commented that state institutions are often conspicuously absent when it comes to serving asylum seekers.

# ADJUDICATION AND LEGAL ANALYSIS

This section presents approaches to IPV-related claims at the adjudication stage in the four case study countries. First, the legal definitions of refugee generally are noted, including relevant legislative variations. Major trends and challenges associated with adjudicating IPV-related cases are then highlighted, based on desk research and key informant interviews. Finally, this section presents practical and procedural issues that may impact IPV-related claims for protection.

## Definitions of “refugee” in domestic legislation

As noted earlier, these four countries have largely based their domestic laws regarding eligibility for refugee protection on the *1951 Convention Relating to the Status of Refugees* and its *1967 Optional Protocol* (“the 1951 Convention”). Per the 1951 Convention, a “refugee” is defined as any person who:

(...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>174</sup>

All four case study countries also have statutory provisions that expand upon the Convention definition of “refugee.” One expansion addresses the fact that the 1951 Convention does not explicitly list “gender” as a protected ground upon which a “well-founded fear” of future persecution can be based. As the main interpreting authority of the 1951 Convention, UNHCR has clarified that, “Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims.”<sup>175</sup> Still, fears of gender-based violence (including IPV) must, like other forms of persecution, be framed in terms of one or more of the five Convention grounds: race, religion, nationality, membership in a particular social group, or political opinion. In 2011, Mexico’s legislature explicitly added “gender” as a sixth protected ground to its Convention-based definition of “refugee.”<sup>176</sup> While Mexico is the only one of the case study countries to have done so, its statutory expansion is not unique within the region – countries including Costa Rica, El Salvador, Honduras, Nicaragua, and Panama have also done so.<sup>177</sup>

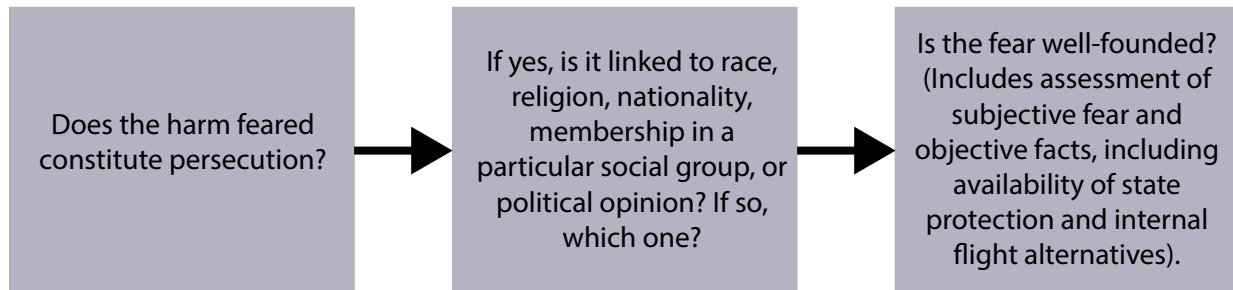
Another set of expansions adds entirely independent definitions, as alternatives to that found in the 1951 Convention. First, in Canada, the Immigration and Refugee Protection Act extends refugee protection to those “in need of protection” due to a risk to life, such as torture, or a risk of cruel or inhumane punishment.<sup>178</sup> Second, legislation in Mexico and Chile incorporates the additional eligibility language found in the *1984 Cartagena Declaration on Refugees*, which includes as refugees,

(...) persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed the public order.

Application of the 1951 Convention definition and the Cartagena Declaration to IPV-related cases will be discussed separately below, given their distinguishable eligibility criteria.

## Eligibility for “Convention Refugee” Status: Analytical Issues in IPV cases

In all four case study countries, national legislation has incorporated the refugee definition found in the 1951 Convention. In its recently revised *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention relating to the Status of Refugees* (Feb 2019), the UNHCR prescribes how claims for Convention-based protection should be analyzed and the procedures to be followed. In its simplest form, adjudicators must generally conduct the following analytical inquiry (also assessing for credibility and potential excludability):



Key informants in the four case study countries noted several trends and challenges arising when adjudicators are faced with claims involving IPV. This section highlights findings regarding how these issues are addressed in theory and in reality.

### Decisions: trends and challenges

Researchers found little official data about claims for asylum or refugee protection in each case study country, much less for IPV-related applications. In Mexico, the Human Rights Center at the Universidad Ibero-Americana has analyzed all COMAR decisions issued from 2011 to 2016, producing insights about adjudication reasoning and patterns in gender-related cases. From key informant interviews in Chile and Peru, it appears that the number of cases filed on IPV-related grounds in those countries is so far quite limited. Aside from results of a narrow Freedom of Information request by one actor in Chile, aggregated data is not publicly available at present.

#### Key findings about IPV-related claims for refugee protection

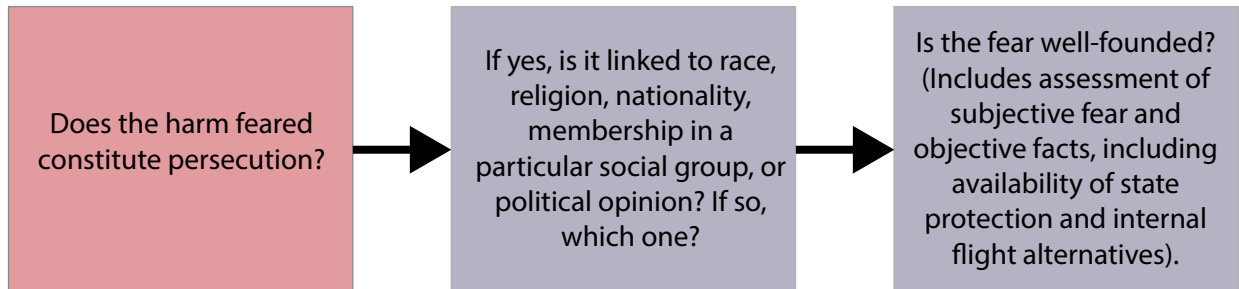
**CANADA:** Between 2013 and 2017, the IRB decided on just under 3,000 claims where applicants indicated domestic violence was the reason for leaving. Of these, 58% were accepted, although the data does not indicate whether grants were on the basis of domestic violence or on the basis of another protected ground. The majority of domestic violence claims in Canada came from Nigeria.<sup>180</sup>

**MEXICO:** Between 2013 and 2018, COMAR reports that 1,589 asylum applications were submitted on the basis of “intrafamilial violence.”<sup>181</sup> Of these claims that received decisions, 1,268 were granted refugee protection, 153 were granted complementary protection, and 2 were denied. Additional analysis conducted by the Universidad Iberoamericana reveals that of those recognized as refugees on the basis of “gender,” 61% were granted due to intrafamilial violence.<sup>182</sup>

Overall, key informants across the four countries flagged several recurring challenges to IPV-related cases. Some challenges were related to the demonstration of legal sufficiency for IPV-related claims.

## Establishing IPV as persecution

For some adjudicators, one question to resolve is whether IPV can constitute persecution. Adjudicators often struggle with two questions here: first, whether IPV is a serious enough form of harm to constitute persecution, and second, whether harm by private actors can constitute persecution for purposes of Convention-based eligibility for protection.



### Can IPV constitute persecution?

UNHCR Guidelines No. 1 on Gender-related Claims for International Protection states that, “There is no doubt that rape and other forms of gender-related violence ... are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by State or private actors.”<sup>183</sup>

UNHCR guidelines also anticipate that gender-based violence can be a basis for refugee protection under the 1951 Convention. Moreover, IPV (often referred to as “domestic violence” in UNHCR materials) is explicitly mentioned several times. For example, UNHCR Guidelines No. 1 on Gender-related Claims for International Protection states, “Gender-related claims have typically encompassed... acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals.”<sup>184</sup>

In Canada, IPV is accepted as a form of persecution. Canada’s 1994 case of *Narvaez v. Canada* confirmed not only that domestic violence could amount to persecution, but that a social group based on gender and domestic violence was valid. In 1996, Canada’s Immigration and Refugee Board issued Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, which lists domestic violence as a form of harm to be considered when assessing a women’s fear of return. Key informants in Canada indicated that there is no question that IPV can constitute persecution. Challenges arise elsewhere in the refugee status determination analysis, but not as to the sufficiency of harm.

In Mexico, the 2012 *Regulations of the Law on Refugees and Complementary Protection* clarify that persecution can include “acts of physical or psychological violence, including acts of sexual violence.”<sup>185</sup> However, key informants reported that while many COMAR officials understood IPV to be a potentially serious form of harm, they also noted that IPV is still considered a private matter.

Recognition of IPV as persecution seemed least settled in Chile and Peru. Informants there indicated that physical harm was more easily understood as persecution than psychological harm. So, while neither country has seen large numbers of IPV-related claims yet (despite some applicants from the Dominican Republic seeking protection in Chile for this form of harm), informants mentioned that emphasis on physically brutal aspects of an IPV claim would be helpful to establish persecution. They noted that evidence of grave

psychological harm might also be accepted. They also commented that gender-based violence was not generally understood to constitute persecution for the purposes of refugee status determination. This seemed particularly true of IPV, which adjudicators may feel is common throughout the region and hence “nothing special” and unlikely to be seen as persecution.

### Can harm by a private actor constitute persecution?

In its revised Handbook on interpretation and implementation of the 1951 Convention and 1967 Protocol (2019), UNHCR clarified that, “Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.”<sup>186</sup>

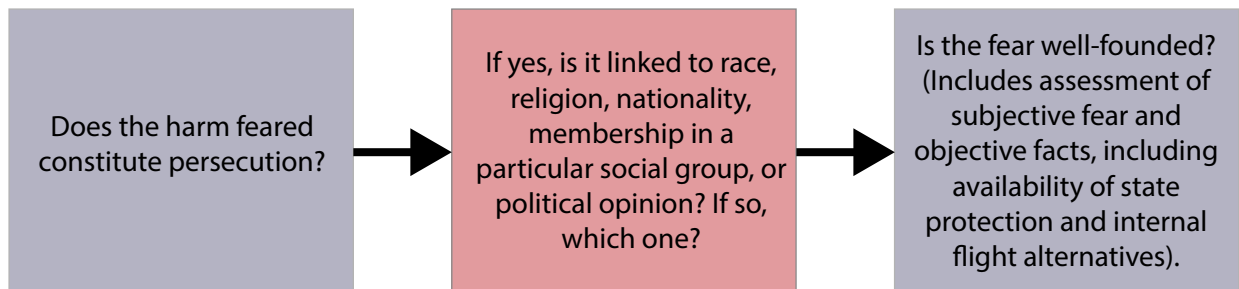
Persecution by private actors is also explicitly accounted for in the asylum laws, regulations, or guidance of Canada and Mexico.

In Canada, for example, the IRB’s *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* recognizes the potential eligibility of “women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender or acts of violence either by public authorities or at the hands of private citizens from whose actions the state is unwilling or unable to adequately protect the concerned persons.”<sup>187</sup> Domestic violence is explicitly included in this category of cases. As a practical matter, Canadian key informants confirmed that the “private actor” status of most perpetrators of IPV does not pose a problem in the cases they see.

Mexico’s 2012 Regulations of the Law on Refugees and Complementary Protection specify that persecutors can include “non-state actors, when they are tolerated by the authorities or if the authorities refuse or are incapable of providing effective protection against the actions of these actors,” and “sectors of the population that don’t respect the norms established by legal instruments.”<sup>188</sup>

In Chile, key informants reported that there were no local directives or interpretive guidance on this question. They felt that private actors were not generally seen as potential persecutors under laws based on the 1951 Convention. However, they noted some possible exceptions, eg, where the persecutor held some official capacity, or was linked to organized crime, armed conflict, or gangs.

### Causal link between persecution and protected ground



One of the key analytical steps for determination of refugee status according to *1951 Convention* is the demonstration of a connection between the fear of persecution and one of the five Convention grounds. This can be challenging in IPV cases, where some adjudicators may simply see the abuse as happening because the abuser is an alcoholic or just a “bad person.” However, individual or contextual facts can indicate deeper motives for the abuse or reasons to fear it.



The UNHCR has suggested a “bifurcated approach” by which such a causal link may be established in either of two ways:

In cases where there is a risk of being persecuted at the hands of a non-State actor ... for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, *but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.*<sup>189</sup> (emphasis added)

Establishing this link was noted as a challenge in each case study country (except in Canada, as discussed below). Many applicants asserting IPV-related claims have difficulty explaining exactly why their abusers mistreated them. Advocates in Mexico, Peru, and Chile mentioned that, as they have limited opportunity to present legal arguments in their cases, they are at the mercy of adjudicators who seem to have little interpretive guidance about evaluating this causal link.

In comparison, adjudicators in Canada had significant guidance regarding “nexus.” In Canada, guidelines from the Immigration and Refugee Board provide that, “The necessary nexus can be found when one (or more) of the Convention grounds is a contributing factor for persecution (...) When determining the applicable grounds, the relevant consideration is the perception of the persecutor.” Canadian guidelines also anticipate mixed motives of a persecutor, providing, “The motivation for persecution may involve more than just one ground or factor. If at least one of the motives for persecution is related to a Convention ground, the necessary link is established.” Finally, Canadian guidelines indicate that nexus may also be established where the protected ground is a factor in the applicant’s inability to secure protection. (“For example, extortionists, whose motive is criminal, may target persons whose race, religion or imputed political opinions make them less likely to be able to access protection.”)<sup>190</sup> These provisions are relevant in IPV-related cases insofar as an abusive partner may have multiple reasons for harming an applicant: he may be stressed, drunk, or angry for seemingly unrelated reasons – however, if he is *also* partly motivated by her gender or social norms governing marriage, for example, then sufficient nexus to a protected ground may be established. Alternately, if a survivor of IPV is demonstrably unable to leave an abuser or secure police protection in a “family matter” due to her indigenous status or social norms around marriage, for example, then nexus may be established. The profound psychological impacts of IPV must be taken into account in such cases.

In terms of Convention-based grounds relevant to IPV-related cases, key informants in Mexico discussed the existence of “gender” as a potentially useful ground. Key informants in Canada noted that these cases are also sometimes framed in terms of political opinion (eg, feminism or resistance to male domination) or religion (eg, insufficient adherence to religious norms around marriage). However, the primary ground implicated in IPV cases across the four case study countries appears to be that of “particular social group.” We discuss these issues below.

### *“Gender” as a sixth ground: Mexico*

Article 13 of Mexico’s 2011 Law on Refugees, Complementary Protection and Political Asylum (*Ley Sobre Refugiados, Protección Complementaria y Asilo Político, updated in 2014*) sets forth criteria for “refugee” eligibility, based on *1951 Convention* and *Cartagena Declaration* definitions. The first subclause mirrors the *1951 Convention* definition, except that it adds “gender” as a sixth possible basis for a well-founded fear of persecution.<sup>191</sup> A refugee is thus defined as any foreigner on Mexican territory who cannot or will not return to a home country due to a well-founded fear of persecution on the basis of: “race, religion, nationality, gender, membership in a particular social group, or political opinions.”

Article 4(IV) of the accompanying Regulations of the Law on Refugees and Complementary Protection (2012) defines gender as: “the gender or sexual preferences of the applicant.” Further, Article 6(I) provides a non-exhaustive list of types of acts that constitute persecution. It specifically includes “acts of physical or psychological violence, including acts of sexual violence.”

While this might help cases involving gender-based violence, it seems that COMAR’s use of “gender” as a protected ground is mixed. Key informants had noticed a few cases in which lesbian, gay, bisexual, transgender, or intersex (LGBTI) applicants fearing homophobic violence and discrimination were recognized on the basis of “gender,” though others were granted on the basis of “particular social group” as well. One key informant mentioned a few non-LGBTI cases in which COMAR had acknowledged “gender” as the basis of claim; they involved rape by gang members or sexual abuse by a family member. Another key informant felt that if a case were presented as involving IPV, COMAR would interpret it as involving a particular social group instead of gender. Overall, informants felt that COMAR’s approach to the “gender” ground was not transparent or consistent.

In 2019, researchers at the Universidad Iberoamericana in Mexico City published a study reviewing COMAR decisions adjudicated between 2011 and 2016. They found that, since 2011, the grounds of “gender” and “membership in a particular social group” have both been used to grant refugee protection in cases involving SGBV.<sup>192</sup> The study found that the “gender” ground was used to recognize refugee status in 415 grants between 2011 and 2016.<sup>193</sup> An additional 556 claims in which the claimant alleged gender-related persecution were granted on the basis of “membership in a particular social group.”<sup>194</sup>

However, the study found discrepancy in COMAR’s application of the “gender” ground in cases involving known LGBT individuals v. non-LGBTI individuals where claimants allege gender-related persecution. The study’s findings for applicants identified as LGBTI individuals whose claims involved gender-related persecution mirrored the observations of key informants: COMAR officers noted “gender” as the relevant protected ground in 50% of the granted cases and “membership in a particular social group” in the other 50% of grants. In contrast, COMAR decisions focused on the “gender” ground in 80% of grants for non-LGBTI applicants whose claims involved gender-related persecution.<sup>195</sup> Fully 100% of the grants for non-LGBTI applicants which were based on the “gender” ground involved “gender violence” as applicants’ principal reason for fleeing. Of these, 61% involved “intrafamilial violence” as the specific form of harm and 15% involved “discrimination.”<sup>196</sup> (Note that there may be multiple forms of harm asserted in a single application.)

### *Political Opinion*

Expression of a “political opinion” should not be viewed only in the narrow sense of participation in a political party or the political process. As one expert explained, the meaning of “political opinion” in the refugee definition “should be understood in the broad sense, to incorporate ... any opinion on any matter in which the machinery of state, government and police may be engaged.”

Guy Goodwin-Gill. *The Refugee in International Law* (Oxford: Clarendon Press, 1983), p. 30.

Some key informants raised the issue of “political opinion” as a relevant ground in IPV-related cases. This was not seen often in Mexico, Chile, or Peru. One informant in Chile did mention that in cases involving armed actors and gender-based violence in Colombia, political opinion may be relevant if the applicant is seen as an opponent of the armed actors. However, this key informant felt that “political opinion”-based claims would not likely work in a “regular” IPV-related case; the informant felt it would be difficult for most women to show they were fleeing death because of their feminist views.

Canadian adjudicators benefit from substantial guidance on the issue of political opinion. For example, IRB guidance cites the *Ward* case as holding two key rules: first, that “the political opinion at issue need not have been expressed outright” and second, that “political opinion ascribed to the claimant [by the persecutor] need not necessarily conform to the claimant’s true beliefs.” In terms of the role of the adjudicator in detecting political opinion, the IRB guidelines again cite to the *Ward* case: “... Where the facts support a well-founded fear of persecution based on political opinion, a reviewing court is free to consider that ground even if the parties had framed the issue in the context of membership in a particular social group.”<sup>197</sup> These provisions are helpful in cases involving IPV, since applicants may have difficulty proving that they “articulated” a traditional “political opinion.” However, they may have expressed reactions to abuse in ways that in fact indicate a resistance to domination, which can be interpreted as an expression of feminism or other political right.

As a practical matter, though, key informants reminded that it can be difficult for some IPV-survivors to see themselves as holding a “political opinion” that their partners targeted. If a lawyer can document an applicant’s desire for greater equality and the negative consequences of demanding it, this may indicate persecution based on a political opinion related to feminism or gender equality.

**Promising Practice: Using the “Power and Control Wheel” and “Equality Wheel” to Explore Political Opinion**

One key informant in Canada recalled using a “Power and Control Wheel” (initially developed by the Domestic Violence Intervention Programs in the U.S.) with her clients to help illuminate a broad range of non-physical harms related to IPV. She has also used an “Equality Wheel” with clients, which helps survivors of IPV envision a more balanced relationship. Using this Power and Control Wheel with asylum applicants fleeing IPV can help them explore the kinds of harm they have experienced in addition to physical and sexual violence. In addition, use of the Equality Wheel can facilitate discussion about what kind of relationship an applicant would prefer to have with a partner, including the desire to feel respected, enjoy equal decision-making roles, and feel supported in her personal goals, activities, and other needs. This kind of discussion with a client can help IPV survivors applying for asylum to articulate their experiences and feelings about their relationships – often for the first time. This can help articulate a political opinion the applicant possesses, which may be useful to her case. Both Wheels have been translated into Spanish.<sup>198</sup>

*“Particular social group”: Canada*

“Particular social group” was the focus on UNHCR’s second Guidelines document, issued in 2002. In it, UNHCR proposed interpretation of the ground, including the following:

- “A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.”<sup>199</sup>
- “An applicant need not demonstrate that all members of a particular social group are at risk of persecution in order to establish the existence of a particular social group.”<sup>200</sup>
- “Cases in a number of jurisdictions have recognized ‘women’ as a particular social group. This does not mean that all women in the society qualify for refugee status. A claimant must still demonstrate a well-founded fear of being persecuted based on her membership in the particular social group, not be within one of the exclusion grounds, and meet other relevant criteria.”<sup>201</sup>

In the context of this research, key informants in Mexico, Chile, and Peru reported that analysis of “particular social group” was not subject to clear criteria. Most mentioned that they believed adjudicators considered UNHCR guidelines on the issue to some degree. It is in Canada that the meaning of “particular social group” has been most heavily examined, evolving over time.

In Canada, early litigation outlined criteria for a valid “particular social group” and confirmed that this ground could accommodate IPV-related claims for asylum. First, in a 1993 case called *Canada (AG) v. Ward*, the court identified three types of social groups for the purposes of asylum eligibility:

1. Groups defined by an innate or unchangeable characteristic;
2. Groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and
3. Groups associated by a former voluntary status, unalterable due to its historical permanence.<sup>202</sup>

The *Ward* court found that the first category included groups of individuals fearing persecution based on immutable characteristics such as gender, linguistic background, and sexual orientation.<sup>203</sup> In doing so, the *Ward* judgment clarified that “gender” could provide the basis for a “particular social group.” Shortly afterwards, in a 1995 case called *Narvaez v. Canada*, a Canadian court addressed IPV-related social groups directly. It held that “[w]omen in Ecuador subject to domestic violence belong to a particular social group.”<sup>204</sup> This established precedent that “gender”, as qualified by a particular country and experience of domestic violence, can constitute a valid “particular social group” for the purpose of refugee eligibility.<sup>205</sup> These jurisprudential developments in Canada are supplemented by the Immigration and Refugee Board Guidelines No. 4 on women refugee claimants fearing gender-related persecution, which reiterate that women (or sub-groups of women) can constitute a social group, though sub-groups of women should also share additional, “unchangeable” characteristics.<sup>206</sup>

### *Arguing and adjudicating “particular social group”*

In terms of practice, the development of potential “particular social groups” seems impacted not only by laws but also by a variety of advocate and adjudicator roles.

Key informants in Chile and Peru explained that local advocates do not typically propose an applicant’s “particular social group” in their submissions; this legal characterization is seen as the adjudicator’s responsibility. As such, adjudicators seem to “check the box” for the protected ground they feel is best suited to the facts of the case. In Chile, key informants mentioned cases involving gender-based violence in which the SRR officer had granted protection on the basis of the applicant’s membership in a particular social group of “partners of leaders of criminal groups.” However, several Chilean informants felt that social groups based on gender and country in IPV-related cases would be invalid because “not all women from country X are at risk of IPV.” This view persists despite UNHCR Guidelines specifying that not all members of a particular social group need be at risk of the harm feared – it suffices that the shared characteristics increase a group member’s risk.<sup>207</sup>

In Peru, informants had not seen many IPV-related cases. However, in terms of cases involving gender-based violence generally, they believed some had been granted based on membership in a particular social group. In one case, the Technical Report submitted to the Commissioners had presented the applicant as a “Woman from Venezuela, victim of impunity in her country of origin.” However, it was unknown whether the Commissioners maintained this social group formulation in their final decision or if the case had been granted based on the Cartagena Declaration definition instead.

In Mexico, key informants noted that while advocates can emphasize relevant facts and country conditions in their *ampliación* (submissions), COMAR officials still determine the specific ground themselves. In fact, adjudicators are expected to state the social group formulation underlying the decision. However, the criteria used or level of analysis conducted are unclear to advocates – they felt the decisions can be hard to follow or do not seem to treat the specific facts of a case in depth. Some key informants felt there was no rhyme or reason to COMAR’s determinations regarding “particular social group.”<sup>208</sup> They noted, for example, that an adjudicator reviewing an IPV-related case might find a family-related social group but not a gender-related group. Or an adjudicator might find a social group based on serious systemic discrimination in an LGBTI case but not an IPV-related one. Finally, in certain cases, key informants noted that even where a COMAR officer may acknowledge a particular social group in an IPV-related case, he or she will not find a “nexus” or causal link between the applicant’s membership in the group and the harm inflicted. Advocates expressed concern that, without a clear analysis of “particular social group” in the decision, COMAR’s approach can be difficult to understand and cases can be difficult to appeal.

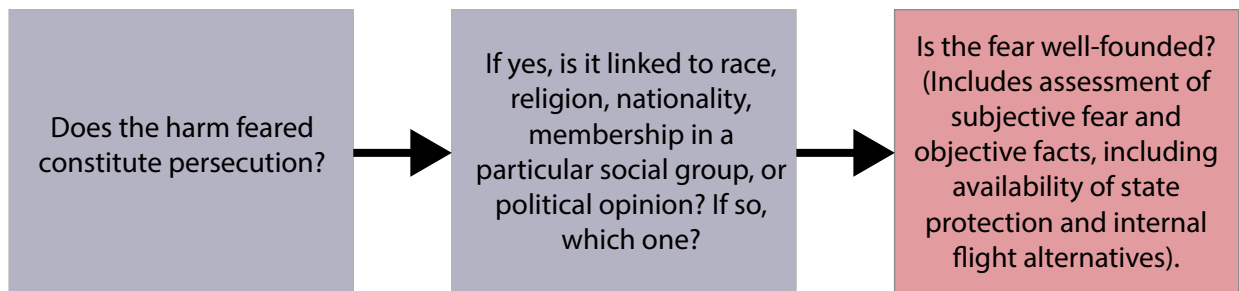
In Canada, informants explained that advocates generally propose a social group in IPV cases. The *Narvaez*-based construction of gender + country + experience of domestic violence goes uncontested.

**Promising practice: Proposing “Particular Social Groups” in Canada**

In Canada, lawyers play a crucial role in shaping the legal theory around an asylum case. They are permitted to argue a proposed basis of eligibility, including the way one or more protected grounds may motivate persecution. A lawyer pursuing a claim wholly or partly based on “membership in a particular social group” usually proposes at least one group to which the client belongs and which motivated the persecutor to harm him/her. Characteristics of the proposed group(s) can be indicated during oral submissions at refugee status determination hearings in front of the Refugee Protection Division or, occasionally, in post-hearing submissions if there was not sufficient time during the hearing itself. Evidence of what constitutes a “particular social group” is largely country-specific, so lawyers try to include ample evidence of social norms and the treatment of similar individuals in the home country. The adjudicator can then take the proposed “particular social group” into consideration or can devise a separate one, based on the testimony and evidence presented.

Proving a well-founded fear

Eligibility for refugee protection under the 1951 Convention requires that the applicant’s fear of persecution be well-founded. This analysis of well-foundedness often involves an adjudicator’s assessment of whether, if returned, the applicant would be in future danger.



## State Protection

Across the four case study countries, one of the main stumbling blocks for cases involving gender-based violence (including IPV) was the question of “state protection”. Often, IPV and other forms of gender-based violence are criminalized in the home country and there are institutions and policies in place to fight it. Does this mean state protection is available, so the applicant would be safe if returned home? If so, the applicant’s fear of future harm might be seen as unfounded. State protection was, in fact, noted as the priority area of inquiry for adjudicators in Peru and Chile; it was cited as a priority issue in Canada, as well. In Mexico, a study reviewing six years of COMAR decisions found that “access to state protection” was the reason cited in 50% of denials.<sup>209</sup>

In its *Guidelines No. 1 on Gender-related Persecution*, the UNHCR clarifies that, “Even though a particular State may have prohibited a persecutory practice (eg, female genital mutilation), the State may nevertheless continue to condone or tolerate the practice, or may not be able to stop the practice effectively. In such cases, the practice would still amount to persecution.”<sup>210</sup>

Unsurprisingly, the practical assessment of “well-foundedness” is still complicated.

### **Promising Practice: Guidelines for evaluating the likelihood of future SGBV**

Canadian officers have helpful guidance on the issue of “well-foundedness” in cases of gender-based violence in particular. For example, IRB Guidelines No. 4, focused on claims of refugee women, includes the following relevant points:

- There may be little or no documentary evidence presented with respect to the inadequacy of state protection as it relates to gender-related persecution. There may be a need for greater reliance on evidence of similarly situated women and the claimant’s own experiences.
- The claimant need not have approached non-state organizations for protection.
- Factors including the social, cultural, religious, and economic context in which the claimant finds herself should be considered in determining whether it was objectively unreasonable for the claimant not to have sought state protection.
- Where a woman’s fear relates to personal-status laws or where her human rights are being violated by private citizens, an otherwise positive change in country conditions may have no impact, or even a negative impact, on a woman’s fear of gender-related persecution.<sup>211</sup>

Key informants in Canada note that with a non-functional state, lack of protection is obvious. Sometimes, though, there is scant documentation about an otherwise functional state’s response to gender-based violence and IPV so one must rely on the claimant’s testimony to understand why he/she would be unable to seek or secure protection. Even if law enforcement may be generally functional, there may be evidence (eg, indication of social norms about gender violence, risk of sexual harassment, rampant corruption, etc.) that explain why a survivor of IPV would avoid the police or have little chance of receiving assistance.

Peruvian informants noted that, as IPV is a problem everywhere, adjudicators may feel a grant of protection is only appropriate in the most extreme cases or where a state is totally unable to intervene. They noted that it was generally helpful to see if an applicant had attempted to report IPV to the police. However, if an applicant had concrete proof of IPV – such as physical scars – this could compensate for lack of a police report. In Chile, key informants noted that it can be helpful to look beyond IPV; they may research insecurity generally or state protection from other forms of violence, including femicide.<sup>212</sup>

On the question of state protection, key informants mentioned that adjudicators often relied on country human rights profiles issued by their foreign ministries or other relevant agencies. These ranged in length and degree of detail; they rarely include in-depth treatment of gender-related violence. Key informants in Mexico expressed concern that COMAR decisions often used these country reports selectively, citing information about the passage of protective laws but not information about poor implementation. Informants also pointed to country-specific gaps. For example, adjudicators in Chile and Peru mentioned a need for country information about the Dominican Republic in particular, as there were a number of IPV-related applications from Dominican women under review.

### *Internal flight / relocation alternative*

Adjudicators must also assess whether an applicant could relocate to another part of his/her home country and be safe there. This is commonly referred to as the “internal flight alternative.” In its interpretive guidance related to gender-based claims, the UNHCR adds a cautionary note: “It can be presumed that if the State is unable or unwilling to protect the individual in one part of the country, it may also not be able or willing to extend protection in other areas. This may apply in particular to cases of gender-related persecution.”<sup>213</sup>

In the four case study countries, informants noted that adjudicators may find internal flight to be possible in most IPV-related cases because the persecutor is generally a private actor – not someone connected to the state authorities, so unlikely to have countrywide reach. This concern seemed particularly warranted when applicants came from large countries – for example, key informants mentioned India, Russia, or Nigeria. However, this seemed more relevant to cases in Canada, where adjudicators receive applicants from countries all over the world. In Mexico, Chile, and Peru, the majority of claims involve smaller countries of origin (Honduras, Guatemala, El Salvador, Dominican Republic, Haiti).<sup>214</sup> In Mexico, a report examining COMAR decisions from 2011 to 2016 found that 72% of denials listed “internal flight alternative” as “an obstacle for recognition of refugee status.”<sup>215</sup>

Even when faced with large countries of origin, however, adjudicators in Canada might find that internal flight might not be reasonable. A former adjudicator in Canada would ask questions like, “Are there national databases, such as a national registry, one could use to track someone else down?” If adjudicators do find that internal flight is reasonable, they are supposed to propose a specific geographic area where an applicant could allegedly relocate. One key informant in Canada explained that the applicant must then have an opportunity to present an argument in response to this determination. In their response, applicants must prove that even if they do not face a risk in the proposed area, it would be “unreasonable” to live there. No specific adjudicator guidance or legislation outlines the criteria for “reasonableness” – these factors are instead enumerated in Canadian case law.

## Eligibility for “Cartagena” Refugee Status

As noted above, three of the four case study countries (Chile, Mexico, Peru) have incorporated all or part of the *Cartagena Declaration* refugee definition into their domestic legislation. The *Cartagena* definition expands refugee status eligibility to those fleeing one of five threats to life, safety, or freedom: generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or “other circumstances which have seriously disturbed the public order.”<sup>216</sup> The UNHCR has summarized the *Cartagena* definition as requiring three things: i) the person needs to be outside his/her country; ii) the country in question is experiencing at least one of the situational events; and iii) the person’s life, security, or freedom is threatened (at risk) as a result of one or more of the situational events.<sup>217</sup> Desk and interview research presented three main takeaways with respect to the relevance of Cartagena-based protection and IPV-related cases.

Though the *Cartagena* refugee definition is part of national legislation in Mexico, Peru, and Chile, its application appears limited. In Mexico, some key informants mentioned that Venezuelans had received refugee status on *Cartagena* grounds due to the existence of generalized violence and massive human rights violations. A few key informants, however, were unaware of such decisions. In October 2019, key informants in Mexico updated researchers on the application of *Cartagena* grounds, indicating that COMAR is now using *Cartagena* in Central American asylum claims. In Peru, key informants had seen discussion of *Cartagena*-based considerations in decisions but reported that CEPR was not ultimately granting protection based on the *Cartagena* definition for Venezuelans in general. Instead, despite invoking *Cartagena* factors, adjudicators seem to be technically basing protection on the *1951 Convention* (through a “particular social group” centered on being Venezuelan). One informant explained that this may be because the formal invocation of *Cartagena* grounds is a highly political step which indicates that a neighboring country is unable to protect its citizens (“No one wants to be the first to declare that...”) Another informant noted the fear that once *Cartagena* is applied to nationals of a country, the gates are open for everyone in that country. Despite these hesitations, key informants in Peru noted that *Cartagena* is being applied to grant refugee status to applicants from other nationalities, such as Syrians. Finally, in Chile, key informants reported that grants of protection based on the *Cartagena* definition are extremely rare. They recalled its use in a few Syrian cases and in one Ukrainian case. In any event, they observed that in Chile, *Cartagena* provisions were only applied to situations where applicants were fleeing armed conflict. Generally speaking, informants felt adjudicators at SRR are not applying *Cartagena* or other obligations under international law in their decision-making.

Even apart from a general hesitation to apply *Cartagena* broadly, it was unclear to most key informants whether the Declaration could apply to IPV-related cases. The majority expressed doubts. (“*Cartagena* is about generalized violence; it applies to entire groups, not individual people,” or “I don’t think so. IPV is not a massive violation of human rights.”) However, a few informants felt there may be creative ways to argue for protection under *Cartagena* in IPV cases where *1951 Convention* criteria would be difficult to meet (eg, for lack of nexus to a protected ground). One informant in Peru felt it possible in cases where country information indicates a clear lack of access to women’s rights or functioning institutions. Another informant in Chile felt that IPV and other forms of widespread gender-based violence could meet *Cartagena*’s “massive violation of human rights” criteria if one could prove government failure to protect victims throughout the country. For example, a government’s inability to protect could be seen as itself contributing to widespread violation of women’s rights to safety and bodily integrity. She mentioned the high rates of femicide in Honduras, for which there is effectively no state protection.

In any event, there was consensus among key informants that the *Cartagena Declaration* was not being widely applied in Mexico, Peru, or Chile. Informants noted a general lack of clear policies and interpretive guidance with respect to the *Cartagena*-based provisions in domestic law. (Uptake of the CIREFCA guidance seems limited.) For now, UNHCR has issued various guidance documents to assist adjudicators in interpreting and applying the *Cartagena Declaration*, including UNHCR’s Guidelines on International Protection No. 12 (2016).<sup>218</sup>

## Alternative forms of relief relevant to IPV cases

In the four case study countries, there were a few alternative forms of humanitarian relief available to applicants not deemed to meet the “asylum” or “refugee” criteria of the *1951 Convention*. In addition, certain forms of regular immigration relief are being awarded to migrants who might otherwise have applied (or could potentially apply) for humanitarian protection. This research highlights two main takeaways with respect to alternative forms of relief most relevant to IPV survivors who find themselves in the four case study countries.



First, IPV survivors who are not deemed eligible for asylum or refugee status may benefit from other forms of humanitarian relief. For example, in Canada, there are different avenues for a person in danger of torture or facing certain risks to life to be recognized as a “person in need of protection”. If granted “protected person” status in Canada, the individual benefits from the same rights as those granted asylum. This may be an important option for some IPV survivors who struggle to indicate a nexus between the harm they fear and a protected ground, as required for asylum status in Canada. Similarly, “complementary protection” can be granted in Mexico to asylum applicants who do not meet the criteria for refugee status but who would face a risk to life or torture upon return. In practice, informants felt that complementary protection is often granted on a completely discretionary basis and is often awarded to IPV survivors who are denied refugee status. Complementary protection allows the applicant to live and work in Mexico and offers a path to citizenship. The only de facto difference with refugee protection is that recipients are not entitled to family reunification benefits. Some key informants mentioned that COMAR will grant complementary protection to IPV survivors in cases where the alleged abuser is a gang member, to block the possibility of family reunification (which, unlike asylum, complementary protection does not permit.)

Second, some forms of temporary migration status awarded to IPV survivors may address their short-term needs but not necessarily their long-term ones. These include the status of “visitor for humanitarian reasons” in Mexico, available to asylum seekers and individuals who have been victims of “grave crimes” on Mexican territory – though whether IPV constitutes a “grave crime” seems up to the discretion of the immigration officer at INM. Moreover, this status is not available to survivors who suffered IPV in their home countries and not while in Mexico. Peruvian legislation allows for a more robust form of humanitarian relief, called a “calidad migratoria humanitaria,” available to individuals who do not qualify as refugees but whose lives would still be in danger if they left Peru.<sup>219</sup> Under the law, this permit would allow the grantee to live and work in Peru for a period of 183 days and can be renewed until the conditions for which the humanitarian permit was granted disappear. However, at the time of research (November 2018), this humanitarian permit was not yet being granted in practice, likely due to its very recent introduction under Peru’s new 2017 Migration Law.<sup>220</sup> In more recent discussions with key informants (September 2019), it seems Peru is now issuing a “humanitarian visa,” but informants were unclear as to this visa’s relationship to the “calidad migratoria humanitaria” provided for in Peru’s Migration Law. Key informants also mentioned that particularly vulnerable migrants in Peru are able to apply for “calidad migratoria especial,” a form of humanitarian relief that is reviewable every year and that makes the grantee eligible to access social services. Survivors of sexual and gender-based violence are among the profiles of migrants who may qualify for this special status.<sup>221</sup> Lastly, Venezuelan migrants in Peru could also apply for a “Temporary Permanency Permit,” or “PTP”, that allowed them to live and work legally in Peru while in status for one year. However, this option expired on December 31, 2018,<sup>222</sup> and Venezuelans must now obtain a humanitarian visa in their passports prior to arriving in Peru.<sup>223</sup> In any case, some informants in Peru felt that “PTP” was unnecessary and illogical, as Venezuelans should in fact be eligible for refugee status.

## Practical and Procedural Issues

Aside from the complexity of legal analysis in IPV-related claims, key informants noted practical and procedural challenges at the adjudication stage of these cases.

### Adjudicator competence, training, use of interpretive guidance

Key informants perceived a range of adjudicator capacity and competence across case study countries. In some countries, adjudicators are not necessarily lawyers – in one country, some decisions are even made by law or social work students. Not surprisingly, the strength of the legal analysis may be inconsistent. Limited

resources and high caseloads were believed to contribute to the insufficient quality of decisions as well, with adjudicators often forced to rush their analysis and writing. For example, an informant in Mexico noted that COMAR officials are under pressure to resolve fifteen cases per day. Under such time pressure, it can be difficult to render high quality decisions consistently. (In one country, key informants showed researchers asylum decisions in which the analysis included the name and personal details of the wrong applicant.)

One part of the challenge is training. There is apparently no specialized training for adjudicators in any case study country (except Canada) specifically focused on substantive and procedural issues related to gender-based claims. Informants noted an absence of gender-related training for adjudicators in Mexico, Chile, and Peru – aside from what UNHCR might provide on an ad hoc basis (as in Peru). Some indicated that this absence of gender training is not unique to asylum adjudication units – for example, in Chile, public officials generally do not receive training on gender-related matters. Instead, SRR officers in Chile were seen as applying their personal sensitivity and understanding of gender-based violence to each case. In Canada, where informants indicated that adjudicators do receive some degree of training on jurisprudence related to IPV cases, informants also felt that this training was limited and insufficient.

Another part of the challenge is the inconsistent use of, or access to, interpretive guidance related to the assessment of gender-based claims according to 1951 Refugee Convention criteria. Across the four countries, key informants noted that adjudicators were in theory informed by UNHCR guidelines, including No. 1 focused on “gender-related persecution” and No. 2 interpreting “membership in a particular social group.” Informants in Mexico, Peru, and Chile also noted the availability of some country-specific guidance issued by UNHCR. However, they felt that interpretation and application among adjudicators varied dramatically.

Adjudicators in Mexico and Canada have access to national-level guidance on gender-related matters arising in refugee status adjudications. In Mexico, informants noted the existence of protocols for approaching applications from vulnerable groups and also for assessing refugee applications with a gender perspective. However, there is reportedly no guidance for COMAR officers specifically addressing IPV cases. In Canada, IRB Guidelines No. 4 address legal and procedural considerations to take into account in gender-based claims.<sup>224</sup>

## Credibility determinations

Across the four countries, the issue of credibility was a major concern in IPV-related cases. One can imagine many reasons for this, ranging from lack of corroboration to perceived illogic or inconsistency and the impact of past trauma on survivors’ testimony.

### *Lack of corroboration*

One basic credibility challenge is evidentiary: not only are incidents of IPV often unwitnessed (so hard to corroborate), but so many non-physical aspects of IPV (eg, psychological violence, financial control, social isolation) are also difficult to document. For example, key informants across case study countries noted that, while police reports would be valuable corroboration of IPV incidents, such documentation can be hard to come by. This is particularly true where social norms about marriage and gender may keep a survivor of IPV from reporting to the authorities or even other members of the community, out of fear she will be sent home to deal with her “family matter.” However, many key informants mentioned that adjudicators in their countries routinely requested evidence in the form of police reports.

In terms of corroboration, key informants noted that adjudicators often seek photographs of injury, hospital records, or even newspaper coverage of abuse. These forms of evidence can be hard to come by. They are also of limited value in demonstrating the broader dynamics and non-physical aspects of IPV. In terms of demonstrating evidence of past psychological abuse, adjudicators in Canada routinely accept psychological evaluations from experts (often volunteers) who have assessed the applicant. (Though a key informant in Canada noted that not all adjudicators give weight to these assessments.) In some cases, an adjudicator might adjourn a hearing and request such an evaluation. However, this is rare due to pressure to move cases forward quickly. In Chile, key informants explained that SRR officers often request psychological support for survivors of SGBV from a local social service provider. As part of this process, the provider usually submits a psychological evaluation to SRR, though it is unclear if adjudicators consider these reports as evidence of past psychological harm.

### *Illogic, inconsistency, and the impacts of trauma*

Some IPV-related dynamics can seem illogical or self-contradicting to outsiders. For example, it may be hard to understand why an IPV survivor may express loyalty to the father of her children while also fearing he might one day kill her. Or it may not make sense that a battered spouse might run away from home but then return to her abuser time and time again. It may also seem strange that periods of brutal violence are followed by weeks, even months, of peace in the home. These are all common features of IPV. Unfortunately, they can easily be missed or misunderstood by an adjudicator unfamiliar with IPV dynamics, leading to adverse credibility findings and denials of protection.

This can present challenges for adjudicators, who must make sense of seemingly illogical or incoherent testimony. For example, Mexican regulations to the Refugee law require adjudicators to assess the following: congruence between information provided by the applicant and information provided by the SRE or other authorities whose opinion was requested; the logical coherence of the declared facts in light of available information; whether there is sufficient detail regarding the fundamental facts provided; consistency within the story and absence of contradictions.<sup>225</sup> Without training about the cycle of violence and psychological dynamics often involved in IPV situations, adjudicators may find many aspects of an IPV survivor's story to be inconsistent or improbable.

In Canada, a key informant explained that adjudicators assess for inconsistency as well as overall plausibility. Inconsistencies can arise either internally to an applicant's claim or between that claim and external country conditions information. Most of these inconsistencies can be evaluated through questioning – some inconsistencies are minor, some can be explained by the applicant if given the chance. The informant emphasized the need to assess both the magnitude of and the likely reason for an apparent inconsistency or misrepresentation. For example, the passage of time can affect consistency, as when a process entails multiple stages of interview – does the applicant's testimony at hearing match what he/she said to the border officer weeks or months or even years earlier? In these cases, an informant in Canada suggested asking the simple question, "Why didn't you mention this earlier?" The informant advised that even-handed consideration of apparent inconsistency or misrepresentation can help adjudicators determine whether and how much to believe an applicant going forward.

Several key informants also acknowledged that psychological impacts of IPV can affect the way survivors testify about their experiences. Some described applicants' inability to speak in detail or with temporal coherence about their longtime abuse as likely attributable to their abuse. This can be particularly problematic where officers demand a clear and linear accounting of past persecution. For example, in Mexico, key informants mentioned that COMAR officials request a complete, coherent timeline of events. In these situations, psychological evaluations submitted by applicants or produced by adjudicators' own

colleagues may help adjudicators reach reasonable conclusions when assessing applicants' credibility. This practice is common in Canada; a few key informants mentioned that this was also possible, though rare, in Chile. Similarly, an informational document about IPV, such as an expert affidavit that explains the cycle of violence in IPV and how this may affect a survivor's testimony, can be helpful in educating adjudicators about both psychological forms of partner abuse as well as the way it can impact how survivors speak about past experiences.

Overall, key informants in Mexico, Chile, and Peru felt that adjudicators receive insufficient training on the potential psychological impacts of sexual and gender-based violence generally – and almost none on the specific complications raised by IPV.

### *Adjudicator perceptions and bias*

A key informant in Chile raised the observation that even a well-trained adjudicator's political and moral positions may affect her perceptions of an IPV survivor's credibility. For example, with many people from the Dominican Republic entering Chile without possibility of a visa, some informants felt that adjudicators generally suspected fraud in Dominican applications for refugee protection – including those citing IPV as a reason for flight. A few key informants mentioned that adjudicators may also be influenced by unfortunate stereotypes about women from certain countries (eg, Venezuelan and Colombian women as seductresses), which may affect their ability to see these applicants as victims. Another informant expressed concern that adjudicators who are not sensitized to cycles of IPV may find it implausible or even immoral for a woman to have sexual relations with an abuser. Others might expect survivors of brutal violence to have behaved in specific ways (eg, *Why didn't she fight back?*) or to now speak in specific ways (eg, *Why isn't she crying?*), which may not be the case with many IPV survivors. Finally, one informant noted that adjudicators, including female officers, may subscribe to gender norms about marriage and feel that a certain degree of subservience on the part of a wife is natural. These adjudicators may not only reject IPV as a form of persecution – they may also find it incredible that a survivor of IPV fears for her life.

### Weighing evidence and other submissions

In addition to the evidentiary matters discussed earlier, key informants highlighted two additional points about adjudicators' treatment of evidence and other documentary submissions in IPV-related cases.

The first point relates to adjudicators' access to submissions from applicants. As noted earlier, in the common law system of Canada, advocates for asylum applicants typically submit not only individual documentation (identification, medical records, photographs, letters, etc.) and country conditions information (UN, state, and NGO reports about gender-based violence and IPV, news articles, etc.) for a case, but also a short legal argument (oral or in writing) outlining the applicant's eligibility for protection. Adjudicators may lean heavily on the submissions of the applicant's lawyers, even adopting the legal argument in its entirety. Other adjudicators might give these materials little weight or still find flaws in the legal argument as to eligibility. However, at least there is opportunity for adjudicators to consider submissions from the applicant. In the three civil law countries of Mexico, Chile, and Peru, informants described a much more limited role for applicants' lawyers. The adjudicator's role as "fact finder" is entirely appropriate in a civil law system. However, key informants expressed concern that, due to massive case backlog, adjudicators do not have sufficient time to conduct meaningful research needed to properly evaluate each case. This can come at the detriment of applicants. This is particularly true when claims are based on under-documented forms of harm, such as IPV, where more in-depth research may be needed.

In addition, informants noted that most adjudicators rely heavily on country of origin reports produced by other state agencies. However, they expressed concern that these reports can be flawed either in content or in application. For example, in Mexico, COMAR officials request country reports from the Ministry of Foreign Affairs (SRE) for cases they are adjudicating. The resulting reports do not necessarily include information about gender-based violence – even when the case in question involves this form of harm. One key informant noted SRE country reports can be quite general because there is only one person producing these memos for the entire country. Where a report *does* mention SGBV, informants worry about COMAR’s selective use of report contents. They noted decisions citing report findings about protective legislation in a country, but then excluding report information about how these laws are not enforced.

## Political considerations

Three political factors emerged as relevant to refugee protection in the case study countries: foreign policy and national security interests, changes in political administration, and general prioritization of women’s rights. Prospects for IPV survivors applying for asylum must be seen in this overall context.

In several case study countries, key informants felt that foreign policy and security concerns may affect adjudicators’ refugee status determinations. For example, informants in more than one country mentioned government pressure to reject as many applications as possible or to decide cases on the basis of countries of origin. In Mexico, Peru, and Chile, informants also reported hesitation in extending refugee protection through Cartagena Declaration-based provisions, due to political implications of criticizing the protection capacity of a neighboring state. For example, one informant in Mexico stated flatly that COMAR officials are reluctant to extend Cartagena-based protection to Central Americans - it may seem easier to grant an alternate form of temporary relief in these cases (eg, complementary protection), if the 1951 Convention criteria are not met. Other informants felt that decisions were influenced by national security concerns. For example, an informant in Chile felt that officers were concerned that applicants for refugee protection were trying to subvert the regular migration process, which could be seen as a national security concern.

Another political factor affecting the adjudication of IPV-related cases in countries like Mexico and Chile is recent changes of administration. Political transitions that trigger complete repopulation of adjudication units are one challenge. In Mexico and Chile, for example, recent elections brought dramatic overhaul of the entities administering refugee-related matters. Key informants in Mexico, for example, worried that expertise and institutional memory developed in COMAR with certain well-trained officers could suffer in the transition to a new political administration in January 2019. Informants in Chile also mentioned the change of administration following the November 2017 election. Experts who had developed good relationships with the previous SRR unit expressed hope that the new administration’s team would also call upon them to provide technical assistance, particularly on issues of gender and vulnerable migrants.

Finally, some key informants mentioned that valuation of women’s rights in a host country impacted the way SGBV- or IPV-related claims were received and adjudicated. For example, informants in Peru and Chile mentioned that IPV in their own countries was not well understood or prioritized so it was difficult to extend protection to survivors from other countries.

# RECOMMENDATIONS

In light of the above findings on IPV and refugee claims, we offer the following recommendations, some of which may be about general practices but are nevertheless relevant to IPV-based claims:

## Accessing the Application Process

- 1. Permit meaningful access to counsel.** Counsel should be permitted to advise and guide claimants throughout the application stage, including for “form filling” (whether that occur at home, online, or at the asylum office) and any admissibility-related interactions. Generally, lawyers should be allowed to accompany clients through different stages of the RSD process in order to ensure their substantive and procedural rights. Any limitations to lawyers’ role should be reasoned and transparent.
- 2. Eliminate or limit scope of “admissibility” interviews.** The application process should be accessible and streamlined. States should evaluate the fairness of any “admissibility interviews” used to determine whether an individual may apply for international protection. Where admissibility screenings are deemed necessary, ensure that these do not function as “mini-hearings” where unrepresented and unprepared applicants can be excluded for failure to articulate a fully developed claim. Hire competent lawyers trained in psychological first aid to conduct any pre-eligibility assessments; focus these interactions on the detection of emergency needs and indication of a possible claim for international protection (eg, ask broadly if individuals fear for their lives and why; avoid detailed questioning at this stage to prevent re-traumatization of survivors). Allow applicants to be accompanied at this stage by their lawyers or other trusted professionals (eg, personal counselors).
- 3. Simplify application forms and access to them.** Forms should be possible to complete by applicants with limited education and without legal representation; translation should be available for those speaking languages other than Spanish (eg, Mam dialects). Introductory text on the form can explain the kind of information that would be helpful to note (eg, nature of past and feared harm, specific actors, reasons for not seeking state protection) and how to highlight specific experiences of harm, including those relevant to IPV survivors (eg, beatings, forced intercourse, humiliation, etc. from a partner). Ensure private, confidential spaces for appointments or when filling out forms. If applicants fill out forms in person at an asylum office, appropriate agents (lawyers, interpreters) should be available to assist. Avoid limiting the number of application forms or admissibility interviews available in a day. Expand options for remote application (eg, secure mail-in or online application processes) to minimize the burden of multiple in-person appearances.
- 4. Provide proof of application.** Asylum-seekers often need proof of applicant status in order to access support services and other benefits such as access to housing, school, and healthcare. Without ability to independently care for herself or her children, an IPV survivor may be at greater risk of abuse.
- 5. Accommodate needs for mobility of applicant or application.** Freedom of movement is crucial to IPV survivors who may be traveling with, or at risk of location by, their abusers. Where internal mobility within a host country is restricted during the application and adjudication process, establish clear exceptions for applicants demonstrating reasonable fear of detection by or exposure to a perpetrator. Increase coordination between border authorities and inland adjudication units to ensure the transfer and tracking of applications.

- 6. Improve detection of and response to potential applicants trapped in complex situations of vulnerability, including SGBV.** Strengthen immigration and RSD agents' competence to detect and support potential asylum-seekers in detention. Develop mechanisms to improve access to legal representation and alternatives to detention for vulnerable claimants. Train border officers and admissibility analysts to detect possible IPV survivors traveling with abusive partners. Note that it may be impossible or even dangerous to signal survivors' option to file a separate application in these situations. At a minimum, explore the feasibility of safely communicating the availability of support services nearby, such as designated members of UNHCR's Regional Safe Spaces Network. Train service providers and other relevant state institutions on the RSD process, including how to identify and refer SGBV survivors who may be able to seek asylum on the basis of IPV.
- 7. Adopt a survivor-centered and trauma-informed approach for SGBV survivors, including IPV.** Train border agents and other officers interacting with potential applicants for international protection to conduct sensitive interviews and enable safe disclosure of intimate forms of harm. Doing so requires time, active listening, and the ability to detect and respond to psychological distress. Train all officers on psychological first aid and gender issues, particularly gender-based violence, to help create a safe environment where survivors may feel able to disclose IPV. Provide confidential spaces and access to safe childcare for applicants accompanied by young children. Provide accommodation or exceptions for filing deadlines for members of vulnerable groups including victims of trauma.
- 8. Improve referral to support services, including on the part of national asylum offices.** Train officers to detect immediate threats to applicant security or other emergency needs. Develop clear referral pathways and service provision partnerships to assist in these urgent cases. For other cases, promote applicants' access to support services generally. This can be as simple as providing a list of resources in the area (eg, low-cost legal counsel, emergency shelter, and medical care or counseling support). Ideally, asylum offices and service providers should develop two-way referral mechanisms and training partnerships to improve survivors' access to both RSD processes and needed support.
- 9. Raise awareness of IPV as a potential basis for international protection.** Train border agents and adjudicators about gender-based violence generally as well as the ways in which IPV can constitute a basis for refugee status within a given legal system. Where possible, support outreach efforts to inform state institutions, service providers, advocacy groups, and migrant communities about the RSD process and possible claims, including IPV-related. Service providers and advocates can include information about IPV as a possible basis for asylum in their outreach materials and discuss this possibility with their clients.

#### **At interview / hearing stage**

- 10. Ensure that RSD or asylum interviewers are trained and sensitized to sexual and gender-based violence, including IPV.** Ensure all adjudicators are trained on IPV, the cycle of violence, and how this form of harm can affect survivors' testimony. Train all adjudicators on sensitive, direct interviewing that involves guidance on how to detect IPV during an interview and how to identify needs for support services. Training should also cover psychological first aid and how to provide emotional support during the interview (eg, taking breaks as needed). Consider all possible options related to the safe separation of claims where a well-trained interviewer has reason to suspect abuse between a primary applicant and a beneficiary family member.
- 11. Take a survivor-centered approach to the RSD or asylum interview, including accommodation of applicants' expressed needs.** Improve applicants' ability to speak comfortably by providing opportunity for them to indicate certain needs in advance of interview. For example, allow applicants to indicate

whether they have a preference for the gender of the interviewing officer or whether they will need access to childcare during the interview appointment. Solicit applicant requests early enough to ensure highest possible chance of accommodation. Take specific security needs of IPV survivors into account when scheduling and holding the interview.

- 12. Engage psychologists to support applicants and help clarify their claims.** To better address the psychosocial pressures that can affect applicants during RSD interviews, adjudication units should explore the possibility of mixed teams, where psychologists and lawyers work and train together. Where psychologist are asked to speak with applicants, the role of these experts should be clearly delineated. These roles should be made clear to all parties. Psychologists on adjudicating staff should be bound by patient confidentiality and, where possible, should not be used to make credibility determinations. For applicants deemed particularly vulnerable, adjudicators can explore the option of allowing an applicant's own psychologist or social worker to accompany her to the interview so as to provide emotional support. Applicants' lawyers should also consider engaging the support of psychologists or other counselors to help prepare their clients for interview, where possible. Psychologists and service providers should always seek survivors' consent before sharing psychological evaluations or notes from ongoing counseling sessions with adjudicators.
- 13. Allow meaningful access to counsel.** Permit legal representatives to attend eligibility interviews or hearings. Permit legal representatives to pose any necessary clarification questions and have the opportunity to present a summary of their clients' eligibility for protection.
- 14. Provide adequate interpretation with trained and vetted interpreters.** Relevant state actors should either provide access to interpretation in applicants' native language during interview or permit applicants to bring a native-speaking companion who can swear under oath to truthful and complete interpretation of testimony. Interpreters should be trained and vetted, particularly on working with vulnerable applicants and those affected by SGBV. Interpretation should also be made available to claimants with visual, auditory, or other impairments.
- 15. Continue to strengthen referral mechanisms.** Ensure that interviewing officers are not only able to detect IPV survivors but provide referral to support services. This can be as simple as providing an up-to-date list of organizations providing legal aid, psychosocial or medical care, or shelter.
- 16. Take an open and constructive approach to evidence.** Adjudicators might benefit from non-traditional forms of evidence that may shed light on complex historical, political or psychological dimensions of a case. Such information may be particularly valuable in cases involving under-documented forms of violence such as IPV. For example, expert affidavits that provide insight about the ways past trauma can affect memory, cognitive function, or manner of testimony may be instructive. Note that adjudicators should take a holistic approach to evidence and not require specific documentation such as police reports or psychological evaluation. Adjudicators should allow for well-presented and relevant submissions by applicants at various stages of the RSD process. For their part, applicants and their advocates should consider sharing useful resources for specific case profiles or generating "expert affidavits" that can be used as general background in multiple cases.

#### **At adjudication stage:**

- 17. Strengthen adjudication skills and capacity.** States should ensure that adjudicators possess expertise in refugee law and sexual and gender-based violence – including state obligations under international, regional, and domestic legal instruments. Where adjudicators are not all lawyers, provide sufficient and routine training in legal analysis of eligibility for international protection and how to draft clear decisions reflecting each step of this analysis.



- 18. Sensitize adjudicators on the legal and practical aspects of IPV-related claims.** Adjudicators should be trained and sensitive to the many ways sexual and gender-based violence can affect a case before them. They should be able to assess forms of SGBV for potential eligibility for protection (assessing potential forms of persecution, understanding the persecutory capacity of non-state actors, determining the possible implication of persecutor motives and protected grounds, the realistic options for state protection or internal relocation, etc). Further, adjudicators assessing for credibility should be aware of how survivors of stigmatized or intimate forms of harm such as IPV may testify in unexpected ways or have limited access to traditional documentation of harm.
- 19. Increase team capacity to deliver quality judgments for gender-based claims.** Adjudication units must be properly equipped and staffed to address existing backlog and accommodate ever-increasing caseloads. Adequate capacity is crucial in order to ensure that officers have sufficient time to properly assess each case, including upon review of relevant country of origin information, and draft well-reasoned and legally sound decisions.
- 20. Ensure faithful interpretation of the 1951 Convention and its 1967 Optional Protocol.** Signatory states should ensure the proper implementation of their international law obligations. The UNHCR is the principle interpretive and monitoring authority for the 1951 Convention. With respect to IPV-related cases in particular, UNHCR has issued relevant guidance on gender-based persecution and interpretation of “membership in a particular social group.” Adjudicators in states that have domesticated the 1951 Convention and/or the 1967 Protocol should be trained on these (and all) UNHCR guidelines and apply them to cases.
- 21. Develop interpretive guidance regarding the 1984 Cartagena Declaration.** States should support the development of guidance on how to apply the Cartagena Declaration’s definition of refugee. Academic and civil society partners should contribute input as to the potential application of Cartagena-derived provisions to cases of IPV and other forms of widespread gender-based violence.
- 22. Improve the quality and scope of official country reports, including information about SGBV in countries of origin.** Given adjudicators’ frequent reliance on country information produced by other state sources (typically the host government’s Ministry of Foreign Affairs), it is vital that departments generating these reports produce full and accurate data. Where general country reports are published annually, these reports should include information about gender-based violence and women’s rights – with coverage of both protective legislation and actual implementation or availability of state protection. Where individualized reports are generated in response to case-specific requests, reporters should cover specific topics relevant to the case at hand and avoid issuing a generalized report. To fulfill this informational function properly, states should ensure adequate capacity of state units responsible for country information reports.
- 23. Enable meaningful appeal.** This requires detailed, substantive analysis in decisions and applicants’ prompt access to written decisions in case of denial. Options for appeal should be made clear to applicants in writing. Offer referrals to counsel, with special mention of any lawyers or support services competent to assist SGBV and/or IPV survivors. Develop and make available a list of pro bono counsel who assist particularly vulnerable claimants on appeal, if possible.

## ENDNOTES

1. See UN High Commissioner for Refugees (UNHCR), UNHCR Glossary, <https://www.unhcr.org/449267670.pdf>; UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (7 May 2002), HCR/GIP/02/01, <https://www.unhcr.org/3d58ddef4.pdf>; UNHCR, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (23 Oct. 2012), HCR/GIP/12/01, <https://www.unhcr.org/509136ca9.pdf>; UNHCR, UNHCR Master Glossary of Terms Rev. 1 (Jun. 2006), <https://www.refworld.org/docid/42ce7d444.html>; UNHCR, SGBV: Prevention and Response Training Package (Oct. 2016), <https://www.unhcr.org/583577ed4.pdf>; United Nations, “Refugees and Migrants: Definitions,” <https://refugeesmigrants.un.org/definitions>. The definition of “intimate partner violence” is based on the World Health Organization’s definition, found in World Health Organization and Pan American Health Organization, “Understanding and Addressing Violence Against Women” (2012), WHO/RHR/12.36, [https://www.who.int/reproductivehealth/publications/violence/rhr12\\_36/en/](https://www.who.int/reproductivehealth/publications/violence/rhr12_36/en/).
2. United Nations Office on Drugs and Crime (UNODC), Global Study on Homicide, gender-related killing of women and girls (Vienna: 2018), 9, [https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18\\_Gender-related\\_killing\\_of\\_women\\_and\\_girls.pdf](https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf).
3. Sarah Bott, Alessandra Guedes, Ana P. Ruiz-Celis, and Jennifer Adams Mendoza, “Intimate partner violence in the Americas: A systematic review and reanalysis of national prevalence estimates,” *Revista Panamericana de Salud Pública* 43 (2019):43:e26, <https://doi.org/10.26633/RPSP.2019.26>.
4. For example, in the last four years, over 3.7 million people have fled economic and political crisis in Venezuela - 3 million of them moving elsewhere in Latin America and the Caribbean. The majority are going to Colombia. Colombia had a reported 48,714 Venezuelans living in the country in 2015, but around 1,174,000 as of May 2019. Other Venezuelans are moving elsewhere in the region, making up the greatest number of migrants and refugee applicants in most of their destination countries. See United Nations International Organization for Migration (IOM), Migration Trends in the Americas: Bolivarian Republic of Venezuela (Jul. 2018), [http://robuenosaires.iom.int/sites/default/files/Informes/Tendencias\\_Migratorias\\_Nacionales\\_en\\_Americas\\_\\_Venezuela\\_EN\\_Julio\\_2018\\_web.pdf](http://robuenosaires.iom.int/sites/default/files/Informes/Tendencias_Migratorias_Nacionales_en_Americas__Venezuela_EN_Julio_2018_web.pdf); compare UNHCR, Venezuela Situation (May 2019), <http://reporting.unhcr.org/sites/default/files/UNHCR%20Update%20on%20Venezuela%20Situation%20-%20May%202019.pdf> to UNHCR Perú, “Perú,” <https://www.acnur.org/peru.html>.
5. The collaboration between UNHCR’s RLU and UC Berkeley’s Human Rights Center was expanded to include the Center for Human Rights, Gender and Migration at Washington University because the authors changed institutions.
6. UNODC, Global Study on Homicide, 10-11.
7. E.g., Gudrun Østby, “Violence Begets Violence: Armed conflict and domestic sexual violence in Sub-Saharan Africa” (working paper, Households in Conflict Network, The Institute of Development Studies, University of Sussex, Brighton, 2016); Lindsay Stark and Alastair Ager, “A Systematic Review of Prevalence Studies of Gender-Based Violence in Complex Emergencies,” *Trauma, Violence, & Abuse* 12, no. 3 (2011): 127-134; Jocelyn T. D. Kelly, Elizabeth Colantuoni, Courtland Robinson, and Michele R. Decker, “From the battlefield to the bedroom: a multilevel analysis of the links between political conflict and intimate partner violence in Liberia,” *BMJ Global Health* (2018), doi:10.1136/bmjgh-2017-000668; Gudrun Østby, Michele Leiby, and Ragnhild N. Ordås, “The Legacy of Wartime Violence on Intimate-Partner Abuse: Microlevel Evidence from Peru, 1980–2009,” *International Studies Quarterly* (2019): 1-14, doi:10.1093/isq/sqy043; Mazeda Hossain, Cathy Zimmerman, Ligia Kiss, Drissa Kone, Monika Bakayoko-Topolska, David K. Manan, Heidi Lehmann, and Charlotte Watts, “Men’s and women’s experiences of violence and traumatic events in rural Côte d’Ivoire before, during and after a period of armed conflict,” *BMJ Open* 4, no. 2 (2014), doi:10.1136/bmjopen-2013-003644.
8. Regina Saile, Frank Neuner, Verena Ertl, and Claudia Catani, “Prevalence and predictors of partner violence against women in the aftermath of war: A survey among couples in Northern Uganda,” *Social Science & Medicine* 86 (2013): 17-25.
9. Cari Jo Clark, Susan A. Everson-Rose, Shakira Franco Suglia, Rula Btoush, Alvaro Alonso, and Muhammad M. Haj-Yahia, “Association between exposure to political violence and intimate-partner violence in the occupied Palestinian territory: a cross-sectional study,” *Lancet* 375 (2010): 310-316.
10. E.g., Selim Gulesci, “Forced Migration and Attitudes Towards Domestic Violence: Evidence from Turkey,” in *Towards Gender Equity in Development*, ed. Siwan Anderson, Lori Beaman, and Jean-Philippe Platteau (Oxford:

Oxford University Press, 2018), doi:10.1093/oso/9780198829591.001.0001; Etobssie Wako, Leah Elliott, Stacy De Jesus, Marianne E. Zotti, Monica H. Swahn, and John Beltrami, “Conflict, Displacement, and IPV: Findings From Two Congolese Refugee Camps in Rwanda,” *Violence Against Women* 21, no. 9 (2015): 1087-1101.

11. For a helpful review of theories on the relationship between political violence and domestic violence, see Østby, “Violence Begets Violence,” 5-9. See also Rebecca Horn, Eve S. Puffer, Elisabeth Roesch, and Heidi Lehmann, “Women’s perceptions of effects of war on intimate partner violence and gender roles in two post-conflict West African Countries: consequences and unexpected opportunities,” *Conflict and Health* 8, no. 12 (2014): 1-13.

12. Belgium, Ireland, Italy, Guatemala, Honduras, Mexico, Norway, Romania, and Uganda, among others, define “persecution” in their national legislation on refugee protection as including acts of SGBV, such as IPV. Many countries also have gender-related guidelines for their adjudicators to consider when interpreting the refugee definition (e.g., Australia, Canada, Italy, the Netherlands, New Zealand, Norway, Romania, Sweden, and the United Kingdom).

13. Costa Rica, El Salvador, Kenya, Mexico, Nicaragua, Panama, Paraguay, Spain, South Africa, Uganda, Uruguay, and Venezuela explicitly include “gender” or “sex” in their national asylum legislation as a sixth ground on the basis of which someone can claim refugee protection. Belgium, Germany, South Africa, Spain, Sweden, Switzerland, and the United Kingdom include “gender,” “sex,” or “women” in their definition of a “particular social group.”

14. Bott et al., “Intimate partner violence in the Americas.”

15. The UNHCR estimates that 68.5 million people were forcibly displaced globally as of the end of 2017 (UNHCR, *Global Trends: Forced Displacement in 2017* (Geneva: UNHCR, 2018), <https://www.unhcr.org/5b27be547.pdf>). The Americas region hosted over 1.5 million refugees and asylum seekers at the end of 2017 (UNHCR, *Global Trends*, 68), although this number does not include all of the 3.5 million Venezuelans living in other countries of the Americas as of May 2019 (UNHCR, *Venezuela Situation, May 2019*, <http://reporting.unhcr.org/sites/default/files/UNHCR%20Update%20on%20Venezuela%20Situation%20-%20May%202019.pdf>).

16. *Supra* note 4.

17. UNHCR and IOM, “The Regional Interagency Coordination Platform for Refugees and Migrants from Venezuela” (last updated for Peru on 30 Apr. 2019), <https://r4v.info/en/situations/platform>.

18. As of 2016, the top five countries comprising Canada’s migrant population are the Philippines, India, China, Iran, and Pakistan. “Top 10 countries of birth of recent immigrants, Canada, 2016,” Statistics Canada, *Census of Population, 2016*, <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/t002b-eng.htm>.

19. Immigration and Refugee Board Canada, “Refugee Protection Claims (New System) by Country of Alleged Persecution – 2018,” <https://irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat2018.aspx>.

20. Convention Relating to the Status of Refugees (Geneva, 28 Jul. 1951), U.N.T.S., vol. 189, p. 137 (1951), entered into force 22 Apr. 1954 [hereinafter 1951 Refugee Convention]; Protocol relating to the Status of Refugees (New York, 31 Jan. 1967), U.N.T.S., vol. 606, p. 267 (1967), entered into force 4 Oct. 1967 [hereinafter 1967 Optional Protocol to the Refugee Convention].

21. Cartagena Declaration on Refugees, Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Cartagena de Indias, 22 Nov. 1984) [hereinafter 1984 Cartagena Declaration on Refugees]. Subsequent instruments building off of the Cartagena Declaration include: San Jose Declaration on Refugees and Displaced Persons, Adopted by the International Colloquium in Commemoration of the ‘Tenth Anniversary of the Cartagena Declaration on Refugees’ (San José, 7 Dec. 1994); Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America (Mexico City, 16 Nov. 2004); Brazil Declaration and Plan of Action, “A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean” (Brasilia, 3 Dec. 2014).

22. Initially, the Convention was limited to protecting European refugees created by the horrors of World War II, but the Protocol removed the Convention’s original time and geographic limits, expanding the Convention’s protection to refugees arising at anytime, anywhere in the world. See 1951 Refugee Convention and 1967 Optional Protocol to the Refugee Convention.

23. See Appendix B. See also United Nations Treaty Collection (UNTC) Status of Treaties, “Chapter V(2): Refugees and Stateless Persons, Convention relating to the Status of Refugees,” [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en); UNTC Status of Treaties, “Chapter V(5): Refugees and Stateless Persons, Protocol relating to the Status of Refugees,” [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&clang=_en).

24. 1951 Refugee Convention, art. 1(A)(2).

25. 1951 Refugee Convention, art. 33.

26. Some of the other rights refugees are entitled to under the 1951 Refugee Convention include: the right not to be

punished for illegal entry into the territory of a contracting State (art. 31); the right to work (arts. 17-19); the right to housing (art. 21); the right to education (art. 22); the right to freedom of movement within the territory (art. 26); and the right to be issued identity and travel documents (arts. 27-28).

27. Michael Reed-Hurtado, *The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America* (Geneva: Legal and Protection Policy Research Series, 2013), 6-12.

28. The initial signatories to the 1984 Cartagena Declaration, a non-binding regional legal instrument, were Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Venezuela (see 1984 Cartagena Declaration). However, Costa Rica, Panama, and Venezuela never incorporated the Cartagena definition into their national refugee legislation.

29. 1984 Cartagena Declaration on Refugees § III(3).

30. *Supra* note 21. See also Carlos Maldonado Castillo, “The Cartagena process: 30 years of innovation and solidarity,” *Forced Migration Review* (6 May 2015), <https://www.fmreview.org/climatechange-disasters/maldonadocastillo>.

31. Six other countries use a slight variation of the definition, bringing the total to 15. See Appendix B.

32. See International Conference on Central American Refugees (CIREFCA), *Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America* (Guatemala City: 29-31 May 1989). See also Reed-Hurtado, *The Cartagena Declaration*, 12-16.

33. The roundtable proposed expanded definitions for the five Cartagena situations. See UNHCR, *Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration*, Expert Roundtable on the Interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees (Montevideo: 15 - 16 Oct. 2013), 7 July 2014, 4-8, <https://www.refworld.org/docid/53c52e7d4.html>.

34. Reed-Hurtado asserts that the CIREFCA guidelines have “transcended unabated and without critique and [continue] to be the most frequently, if not the only, source cited by most national authorities to interpret the regional refugee definition in current day practice.” Reed-Hurtado, *The Cartagena Declaration*, 15.

35. See James L. Cavallaro, *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System* (Washington, DC: General Secretariat, Organization of American States, 2015), <https://www.refworld.org/docid/5821c778b.html>.

36. I/A Court H.R., *Familia Pacheco Tineo v. Plurinational State of Bolivia*, Judgement of November 25, 2013, Series C, No. 272. For discussion of this case, see Fernando Arlettaz, “El caso Familia Pacheco Tineo: expulsión de extranjeros, niñez migrante y asilo,” *Anuario de Derechos Humanos* 11 (2015): 86-87, <https://anuariocdh.uchile.cl/index.php/ADH/article/download/37490/39168/>.

37. I/A Court H.R., *Familia Pacheco Tineo*. In particular, the Court found Bolivia had violated the right to physical, mental, and moral integrity under art. 5(1) of the American Convention (para. 208), the right to a fair trial under art. 8 of the Convention (para. 189), the rights of the family and the child under arts. 19 and 17 (para. 229), the right to seek and be granted asylum under art. 22(7) (para. 189), non-refoulement obligations as under art. 22(8) of the American Convention (para. 189), and right to judicial protection under art. 25 of the Convention (para. 199).

38. *Ibid.* For example, the Inter-American Court affirmed the declarative nature of refugee status (para. 147) and reaffirmed the principle of non-refoulement (paras. 128-199). The Court also enumerated the obligations of States vis à vis asylum seekers, such as providing a competent interpreter (para. 159(a)), access to legal advice and representation (para. 159(a)), guidance on the application procedure (para. 159(a)), conducting a personal interview (para. 159(b)), and properly and explicitly substantiating decisions (para. 159(c)), among other requirements (paras. 159(d)-(f) and 160)).

39. I/A Court H.R., *The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection*, Advisory Opinion OC-25/18 of May 30, 2018, Series A, No. 25, paras. 200(2), 200(4) and 200(5). See also UNHCR’s submission to the Court for consideration in developing this Advisory Opinion, which included discussion of SGBV in relation to the right to seek and receive asylum: UNHCR, *UNHCR Submissions to the Inter-American Court of Human Rights in the framework of the request for an Advisory Opinion on the scope and purpose of the right to asylum* (Apr. 2017), 9-10, <https://www.refworld.org/docid/5c87ee77c.html>.

40. Monica Boyd, *Gender Aspects of International Migration to Canada and the United States*, International Symposium on International Migration and Development (21 Jun. 2006), 1, [http://www.un.org/esa/population/migration/turin/Symposium\\_Turin\\_files/P08\\_Boyd.pdf](http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P08_Boyd.pdf).

41. Immigration and Refugee Board (IRB) Canada, “Refugee Protection Claims (New System) Statistics,” <https://irb-cisr.gc.ca/en/statistics/protection/Pages/RPDStat.aspx>

42. IRB Canada, “Refugee Protection Claims (New System) Statistics.”

43. An Access to Information request to IRB Canada yielded this data from 2013-2017, which was analyzed by Tara Carman and Anita Elash, “Gender persecution the top reason women seek asylum in Canada,” *CBC News* (7 Feb.

2018), <https://www.cbc.ca/news/canada/asylum-seekers-data-gender-persecution-1.4506245>.

44. Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, § 96 (Can.).

45. IRPA § 97 (Can.). Note that a “person in need of protection” in Canada is not the same as a refugee. IRPA defines a person in need of protection as someone in Canada “whose removal to their country or countries of nationality or [...] former habitual residence, would subject them personally (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country; (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country; (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards; and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.”

46. IRPA § 25 (Can.).

47. According to official government statistics in Chile (Departamento de Extranjería y Migración, “Minuta Refugio en Chile” (Sep. 2019), <https://www.extranjeria.gob.cl/estadisticas-migratorias/>). Key informant sources claimed that the number of pending asylum cases in Chile was approaching 12,000 as of October 2018.

48. Ibid.

49. Instituto Nacional de Estadísticas and Departamento de Extranjería y Migración, “Estimación de Personas Extranjeras Residentes en Chile: 31 de Diciembre 2018” (Feb. 2019), <https://www.extranjeria.gob.cl/media/2019/02/Presentacion-Extranjeros-Residentes-en-Chile.-31-Diciembre-2018.pdf>.

50. Key informants recounted this data from a public information request made to Chile’s Refugee and Resettlement Section (SRR).

51. *Supra* note 47.

52. Ley Núm. 20430 Establece Disposiciones Sobre Protección de Refugiados [Law No. 20430 Establishing Protection of Refugees], April 8, 2010, Diario Oficial (D.O.) (Chile).

53. Decreto Núm. 837 Aprueba Reglamento de la Ley Núm. 20430, Que Establece Disposiciones Sobre Protección de Refugiados [Decree No. 837 Approving Regulation of Law No. 20430 Establishing Protection of Refugees], October 14, 2010, D.O. (Chile).

54. For example, as of April 2018, Chile offers a “Visa de Responsabilidad Democrática” (Democratic Responsibility Visa) to Venezuelans that allows one-year residency and that can be extended for up to one year (Gobierno de Chile, Ministerio de Relaciones Exteriores, “Información sobre visa de responsabilidad democrática,” <https://chile.gob.cl/chile/blog/venezuela/informacion-sobre-visa-de-responsabilidad-democratica>). However, as of August 2019, Venezuelans seeking to enter Chile using this or other special visas (eg, a tourist visa or visa for humanitarian reasons) must obtain them in Chilean consulates abroad (Resolución Núm. 3042 Imparte Instrucciones para el Otorgamiento de Salvoconductos a Nacionales Venezolanos [Resolution No. 3042 Providing Instructions for the Granting of Safe Passage to Venezuelan Citizens], August 20, 2019, D.O.). As of February 2019, 325,025 Venezuelans had received residency or other forms of regularized stay in Chile (UNHCR and IOM, “Plataforma Regional de Coordinación Interagencial para Refugiados y Migrantes de Venezuela” (5 Oct. 2019), <https://r4v.info/es/situations/platform>).

55. Secretaría de Gobernación (SEGOB), “Estadísticas de la Coordinación General de la Comisión Mexicana de Ayuda a Refugiados” (Jun. 2019), [https://www.gob.mx/cms/uploads/attachment/file/474982/INFORME\\_PRESIDENCIA.pdf](https://www.gob.mx/cms/uploads/attachment/file/474982/INFORME_PRESIDENCIA.pdf).

56. Grant rate calculated based on COMAR’s reported numbers from January to September 2018: 1,327 granted refugee status, 654 granted complementary protection, 472 denied any form of protection, and the remaining 14,663 cases abandoned, withdrawn, or pending decisions. COMAR and UPM, “Boletín Estadístico de Solicitantes de Refugio en México: 2018” (Dec. 2018), <https://www.gob.mx/cms/uploads/attachment/file/427549/COMAR2018.pdf>. However, other data sources report COMAR’s acceptance rate as much lower: a statistical analysis of all of COMAR’s decisions from 2013 to 2016 concluded that the recognition rate averaged 43%. See Mtro. David Fernández Dávalos, Mtra. Araceli Téllez Trejo, Ing. Pablo Reyna Esteves, and Mtra. Denise González Núñez, *El género como causal del reconocimiento de la condición de refugiado en el sistema de asilo mexicano*, Universidad Iberoamericana, Observatorio de Protección Internacional (2019), 15.

57. Numbers combined from COMAR’s annual statistical reports, 2013-2018. COMAR uses the term “intrafamiliar violence” to refer to “persons who declared having suffered domestic violence, independently of whether they are women, girls, boys or adolescents, or [having suffered domestic violence] for their sexual preferences” [author’s translation]. COMAR and UPM, “Boletín Estadístico de Solicitantes de Refugio en México.”

58. Ley Sobre Refugiados, Protección Complementaria y Asilo Político (LRPCAP) [Law on Refugees, Complementary Protection and Political Asylum], Diario Oficial de la Federación (DOF) 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.). See also Reglamento de la Ley Sobre Refugiados y Protección Complementaria (RLRPC) [Regulations of the Law on Refugees and Complementary Protection], DOF 21-02-2012 (Mex.).
59. Ley de Migración (LM) [Law on Migration], DOF 25-05-2011, últimas reformas DOF 09-11-2017 (Mex.). See also Reglamento de la Ley de Migración (RLM) [Regulations of the Law on Migration], DOF 28-09-2012, últimas reformas DOF 23-05-2014 (Mex.).
60. LRPCAP art. 13(I) (Mex.).
61. Mexico offers complementary protection to individuals who do not meet the refugee definition but whose lives would be at risk or where there exists well-founded reasons to believe that they would be subject to torture or other forms of cruel, inhuman, or degrading punishment if returned to a country (LRPCAP art. 28).
62. Mexico offers a visa to “visitors for humanitarian reasons” (visitante por razones humanitarias) when foreigners: are offended by, victims of or witnesses to a crime committed in Mexico; are unaccompanied children or adolescents; are awaiting decisions on claims for refugee protection, complementary protection, or political asylum; or when there are other humanitarian or public interests reasons to grant a foreigner temporary residency. While there are no clearly established or circulated criteria for determination of who is granted this visa and on what basis, it guarantees the right to work, to move freely, and to live in the country for up to one year, or until completion of the RSD process or any criminal investigation (LM art. 52(V) (Mex.)).
63. UNHCR Operational Data Portal, “Refugee Situations: Venezuela Situation” (last updated 5 Oct. 2019), <https://data2.unhcr.org/en/situations/vensit>.
64. Supra note 17.
65. UNHCR Operational Data Portal, “Refugee Situations: Venezuela Situation” (as of 30 Apr. 2019).
66. UNHCR, “Population Statistics: Time Series,” [http://popstats.unhcr.org/en/time\\_series](http://popstats.unhcr.org/en/time_series).
67. Percentage estimated based on 2017 data from UNHCR. See UNHCR, “Population Statistics: Demographics,” <http://popstats.unhcr.org/en/demographics>.
68. Ley del Refugiado Núm. 27891 [Refugee Law No. 27891], Diario Oficial ‘El Peruano’ [El Peruano D Of] 20-12-2002 (Peru).
69. Decreto Supremo No. 119-2003-RE Aprueban Reglamento de la Ley del Refugiado [Supreme Decree No. 119-2003-RE Approving Regulations of the Refugee Law], El Peruano D Of 23-12-2002 (Peru).
70. Peru offers a Calidad Migratoria Especial (CME) (Special Migration Permit) to foreigners in “extreme situations of vulnerability.” These can include victims of domestic and sexual violence (Decreto Supremo No. 007-2017-IN, Reglamento del Decreto Legislativo No. 1350, Decreto Legislativo de Migraciones [Supreme Decree No. 007-2017-IN, Regulations of the Legislative Decree No. 1350, Legislative Decree on Migrations], El Peruano D Of 27-03-2017, art. 227 and 230.3).
71. In theory, Peru offers a Calidad Migratoria Humanitaria (Humanitarian Migration Permit) to people who do not qualify for refugee status but whose lives would be in danger if they left Peru (Decreto Legislativo No. 1350, Decreto Legislativo de Migraciones [Legislative Decree No. 1350, Legislative Decree on Migrations], El Peruano D Of 07-01-2017, art. 29.2(k)). In practice, key informants were unclear as to whether or not this specific permit is being issued.
72. Peru established the Permiso Temporal de Permanencia (PTP) (Temporary Permanency Permit) in 2017 via Decreto Supremo No. 002-2017-IN Aprueban lineamientos para el otorgamiento del Permiso Temporal de Permanencia para las personas de nacionalidad venezolana [Supreme Decree No. 002-2017-IN Approving guidelines for the granting of the Temporary Permanency Permit for persons of Venezuelan nationality], El Peruano D Of 02-01-2017 (Peru).
73. Decree No. 837 Approving Regulation of the Law Establishing Protection of Refugees, art. 36 (Chile).
74. RLRPC arts. 16(II), 18, and 19 (Mex.).
75. Supreme Decree No. 119-2003-RE Approving Regulations of the Refugee Law, arts. 18 and 21 (Peru).
76. IRPA §§ 99(3) and 100(1) (Can.).
77. In Chile, Peru, and Canada, legislation does not indicate that border authorities are required to actively detect potential asylum seekers or ask about fear of persecution.
78. RLRPC art. 16(I) (Mex.).
79. IRPA § 100(1) (Can.).
80. Decree No. 837 Approving Regulation of the Law Establishing Protection of Refugees, art. 36 (Chile).
81. RLRPC arts. 16(II), 18, and 19 (Mex.).
82. Supreme Decree No. 119-2003-RE Approving Regulations of the Refugee Law, arts. 18 and 21 (Peru).
83. IRPA § 101(1) (Can.). Eligibility screenings are meant to establish claimants’ identity, verify that they are not security risks and have not committed serious human rights violations, that they are not from a “designated country,”

and that they are not recognized as Convention refugees in another country to which they can safely return.

84. In Canada, the situations that would make an application ineligible for referral to the Refugee Protection Division are outlined in IRPA §§ 100, 101; key informants added that border officers should not be assessing the merits of a claim beyond those legal provisions.

85. For example, informants note that different authorities give claimants divergent instructions on what to do next and provide little information about the RSD process (Chile, Mexico). In Chile and Peru, informants report there is no mechanism to receive and transfer applications at the border, despite legislation indicating this option, leaving applicants to start over once inland. Informants also noted that applicants in Chile do not receive a copy of the statement made to a border official, depriving them of proof of beginning the RSD process if they attempt to continue inland.

86. Refugee Protection Division Rules [RPDR], SOR/2012-256, § 4 (Can.); Law No. 20430 Establishing Protection of Refugees, art. 26 (Chile); LRPCAP art. 19 (Mex.); Supreme Decree No. 119-2003-RE Approving Regulations of the Refugee Law, art. 20 (Peru).

87. RLRPC art. 23 (Mex.).

88. LM art. 99 (Mex.).

89. RLRPC art. 16 (Mex.).

90. RLM art. 178 (Mex.).

91. Mexico defines “vulnerability” to include victims of sexual abuse and gender-based violence (LRPCAP art. 20).

92. LM art. 113 (Mex.).

93. Recent attempts in Mexico to institute alternatives to detention for asylum seekers were buffered by a ruling of the Twentieth Collegiate Court on Administrative Matters (Vigésimo Tribunal Colegiado en Materia Administrativa), which established that deprivation of liberty during the asylum application process should be the exception and not the rule (see Recurso de Revisión 311/2016, RA-311/2016, Vigésimo Tribunal Colegiado en Materia Administrativa del Primer Circuito, April 17, 2017). Despite this positive development, key informants in Mexico claimed that administrative detention of asylum seekers continues unabated.

94. If foreigners state a desire to apply for asylum when in detention, Canadian officials must ask about their fear of persecution and transmit information about the claimant to Canada’s Refugee Protection Division (RPDR § 3(5)(d)). Otherwise, Canada’s legislation is silent on border or detention officials’ obligations to ask about fear of return.

95. IRPA § 99(3) (Can.).

96. IRPA §§ 112-114 (Can.).

97. IRPA § 112 and IRPR § 160.1 (Can.).

98. IRPR § 160.1 (Can.).

99. Filing deadlines of each country: in Canada, individuals wanting to apply for refugee protection at a port of entry have 15 days to submit their basis of claim form to the Refugee Protection Division (if applying inland, there is no filing deadline) (IRPR § 159.8(2)); in Chile, if irregular entry or stay, claimant must make initial approach to refugee agency within 10 days to avoid sanctions for migratory status (Decree No. 837 Approving Regulation of the Law Establishing Protection of Refugees, art. 35); in Mexico, claimant must submit initial written narrative application (not formal questionnaire) within 30 days of entry (LRPCAP art. 18); in Peru, claimant must submit application within 30 days of irregular entry or stay, or prior to the lapse of regular status (Refugee Law No. 27891, art. 13).

100. IRPA §§ 36(2) and 98 (Can.). Note that this exclusion emerges partly from Canada’s obligations under the 1980 Hague Convention (Convention on the Civil Aspects of International Child Abduction (The Hague, 25 Oct. 1980), U.N.T.S., vol. 1343, p. 89 (1980), entered into force 1 Dec. 1983).

101. Contralor General de la República, Número Dictamen 000892N19, “Extranjería, protección refugiados, solicitudes de refugio, petición, tramitación, resolución subsecretario del interior” (11 Jan. 2019) (Chile).

102. Key informants in Chile cited additional concerns with this unofficial pre-screening stage, including short interviews being conducted by interns, no consideration of the Cartagena definition of “refugee” in assessments, and admission or denial to the RSD process occurring orally, with no written record of the meeting.

103. Contralor General de la República, “Extranjería, protección refugiados” (Chile) (author’s translation).

104. Despite the decision rendered by Chile’s Comptroller General, key informants reported that “admissibility” practices continue to occur.

105. If screened for eligibility at the border or port of entry, claimants submit a Basis of Claim form inland within 15 days (IRPR § 159.8(1) (Can.)). If applying inland, claimants submit the Basis of Claim form at the same time as they are screened for eligibility to apply (IRPR § 159.8(2) (Can.)).

106. Supreme Decree No. 119-2003-RE Approving Regulations of the Refugee Law, art. 19 (Peru).

107. Peru: Ministerio de Relaciones Exteriores, “Comisión Especial para los Refugiados” (last visited 17 Oct. 2019), <http://www.rree.gob.pe/refugiados/SitePages/Home.aspx>.

108. Law No. 20430 Establishing Protection of Refugees, art. 30 (Chile); RLRPC art. 31 (Mex.).
109. RLRPC art. 31 (Mex.).
110. The Peruvian government provides a model application form on its website: Ministerio de Relaciones Exteriores, “Modelo de Solicitud,” <http://www.rree.gob.pe/Documents/2017/SOLICITUD%20SSN-MODELO.pdf>. Key informants noted that Venezuelan applicants in particular frequently submit the exact same application form, using a standardized version for Venezuela available online.
111. Key informants in Chile mentioned that in prior years, the UNHCR and the Refugee Section (SRR) attempted to develop a joint protocol to delineate the role of legal representatives in the RSD process; however, this protocol never came to fruition.
112. IRPR § 161(1) (Can.). However, Canada’s Department of Justice website states in its section on “Representation for Immigrant and Refugee Claimants” that, “In current practice, persons being interviewed at ports of entry are generally not permitted to have a representative at the interview. Persons who make an inland claim, that is, persons who claim refugee status after entering Canada, can be accompanied at the interview, but the accompanying person is generally not permitted to play any active role as the claimant’s representative” ([https://www.justice.gc.ca/eng/tp-pr/other-autre/ir/rr03\\_la16-rr03\\_aj16/p3.html#sec31](https://www.justice.gc.ca/eng/tp-pr/other-autre/ir/rr03_la16-rr03_aj16/p3.html#sec31)).
113. RLRPC art. 20 (Mex.).
114. Refugee Law, art. 13 (Peru).
115. Neil Yeates, Report of the Independent Review of the Immigration and Refugee Board: A Systems Management Approach to Asylum (2018), 96. However, certain provinces in Canada do not offer free legal support to asylum applicants, increasing access barriers to representation (Sasha Baglay and Martin Jones, Refugee Law (Toronto: Irwin Law, 2d ed. 2017), 107).
116. Canada has list of legal aid providers on the IRB website: Canada IRB, “List of legal aid offices,” June 20, 2018, <https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/legal-aid-office.aspx>.
117. Michael Barutciski, The Impact of the Lack of Legal Representation in the Canadian Asylum Process (Toronto: UNHCR, 2012), 24.
118. These include: UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol relating to the Status of Refugees (7 May 2002), HCR/GIP/02/01, <https://www.unhcr.org/publications/legal/3d58ddef4/guidelines-international-protection-1-gender-related-persecution-context.html> (hereinafter Guidelines No. 1 on Gender); UNHCR, Guidelines on International Protection No. 2: ‘Membership of a particular social group’ within the Context of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol relating to the Status of Refugees (7 May 2002), HCR/GIP/02/02, <https://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html> (hereinafter Guidelines No. 2 on Social Group).
119. UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Geneva: 2019), HCR/1P/4/ENG/REV.4.
120. Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 Dec. 1979) U.N.T.S., vol. 1249, p. 13 (1980), entered into force 3 Sept. 1981 [hereinafter CEDAW].
121. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belém do Pará” (Belem do Para, 9 June 1994), General Secretariat of the Organization of American States, entered into force 5 Mar. 1995.
122. LRPCAP art. 21 (Mex.).
123. Supra note 17.
124. Government of Canada Department of Justice, “Representation for Immigrants and Refugee Claimants,” December 2, 2016, [https://www.justice.gc.ca/eng/tp-pr/other-autre/ir/rr03\\_la16-rr03\\_aj16/p3.html#sec31](https://www.justice.gc.ca/eng/tp-pr/other-autre/ir/rr03_la16-rr03_aj16/p3.html#sec31).
125. RLRPC art. 20 (Mex.).
126. Canada requires claimants to submit all additional evidence no later than ten days prior to the eligibility hearing (RPDR § 9(2)). In Chile, claimants can submit evidence when formalizing their applications, but the law only mentions that additional evidence should be provided “within the timeframe established by the authority” (Law No. 20430 Establishing Protection of Refugees, arts. 28 and 33, and Decree No. 837 Approving Regulation of the Law Establishing Protection of Refugees, art. 37 and 44). In Mexico, the Refugee law allows applicants to submit evidence up until COMAR emits its decision (LRPCAP art. 23). In Peru, the regulations do not mention any rules for evidence submission, although key informants indicate that claimants can submit additional evidence up until their eligibility interview.
127. RPDR § 3(5) (Can.); Law No. 20430 Establishing Protection of Refugees, arts. 26 and 28 (Chile); LRPCAP art. 23 (Mex.).



128. Immigration and Refugee Board of Canada, “Claiming refugee protection – 3. Gathering and submitting evidence,” January 4, 2019, <https://irb-cisr.gc.ca/en/applying-refugee-protection/Pages/index3.aspx>.

129. E.g., Mexico (LRPCAP art. 23). In Canada, additional evidence can be submitted on appeal, but only if it was not reasonably available upon first application (IRPA § 110(4)). The Refugee Protection Division Rules also state that a party must “make an application to the Division” if they want to submit evidence after a hearing but before the IRB makes a decision (RPDR § 43). In Chile, key informants indicated evidence submission is allowed after the eligibility interview, although this is not indicated in any legal provision.

130. E.g., Canada requires claimants submit all additional evidence by ten days prior to the hearing (RPDR § 9(2)).

131. In Canada, eligibility hearings should occur within 60 days of filing a claim (IRPR § 159.9(1b)). In Mexico, COMAR should emit decisions within 45 days (LRPCAP art. 24). In Peru, CEPR should emit a decision within 60 days (Refugee Law, art. 15).

132. RLRPC art. 61 (Mex.).

133. Informants in Mexico described a process wherein adjudicators review initial asylum application forms and attempt to identify any potential vulnerabilities. Then, adjudicators conduct a “needs detection interview”, where vulnerabilities may also be identified. If a claimant is identified as vulnerable, she is channeled through the “Vulnerable Groups” Division, which has a dedicated team of adjudicators separate from the regular process. This means her eligibility interview will be conducted by an adjudicator with additional training.

134. LRPCAP art. 20 (Mex.).

135. RLRPC art. 61 (Mex.).

136. IRPA § 16(2)(b) (Can.).

137. Immigration and Refugee Board of Canada, Chairperson Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB (15 Dec. 2006), as amended 15 Dec. 2012, <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir08.aspx#a4> (hereinafter Guideline on Vulnerable Persons).

138. For guidance on disclosure approaches and considerations for different types of service providers and state actors working with refugees and migrants, see “Appendix A: SGBV Disclosure: A Proposed Typography,” in Kim Thuy Seelinger and Julia Uyttewaal, *The Silence I Carry: Disclosing gender-based violence in forced displacement* (San Jose, Costa Rica: UNHCR and Berkeley, United States: Human Rights Center, University of California, Berkeley, School of Law, 2018).

139. Ibid (see entire report).

140. LM art. 8 (Mex.).

141. Decree No. 837 Approving Regulation of the Law Establishing Protection of Refugees, art. 17 (Chile).

142. Minister of Justice, Order Respecting the Interim Federal Health Program, 2012, SI/2012-26 (Can.).

143. In September 2019, key informants updated researchers of new restrictions to healthcare access for asylum seekers in Mexico. Specifically, they mentioned changes in federal policy, budget redistribution, and the cessation of access to “Seguro Popular” (social security). COMAR apparently assists asylum seekers in temporarily registering with the basic health care system through referrals, but medical assistance beyond the first 90 days in country is not provided.

144. For example, Peru’s Ministry of Women and Vulnerable Populations (Ministerio de la Mujer y Poblaciones Vulnerables, MIMP) runs or coordinates IPV shelters and services; however, these are limited to women who have suffered IPV committed in Peru. In Chile, the National Women’s Service (Servicio Nacional de la Mujer, SERNAM) also runs IPV centers and shelters available to all women in Chile, regardless of immigration status. In Canada and Mexico, ad hoc non-profit or county-level shelters are also available to IPV survivors.

145. LRPCAP art. 21 (Mex.).

146. Decree No. 837 Approving Regulation of the Law Establishing Protection of Refugees, art. 39 (Chile).

147. Asylum seekers in Canada receive a “Refugee Protection Claimant Document” while awaiting their hearing, allowing them to apply for social assistance, access refugee shelters, apply for a work permit, and, for minors, access education up to high school (see Canadian Council for Refugees, “Refugee determination system: a practical guide,” <https://ccrweb.ca/en/refugee-determination-practical#refugee-protection-claimant-document-rpcd->). Canada’s health care coverage for refugee claimants is robust, with a 2012 ministerial order extending coverage for services including basic and supplemental health care services, prescription drug coverage, and coverage for the cost of a required Immigration Medical Exam (Order Respecting the Interim Federal Health Program, 2012).

148. IRPA § 78(b), 166(b) and 181(2) (Can.); Law No. 20430 Establishing Protection of Refugees, art. 41 (Chile); RLRPC art. 28 (Mex.); Supreme Decree No. 119-2003-RE Approving Regulations of the Refugee Law, art. 3 (Peru).

149. Law No. 20430 Establishing Protection of Refugees, art. 30 (Chile) states that all members of the group shall be interviewed separately to guarantee the opportunity to present their own independent case.

150. RLRPC art. 31 (Mex.) states the right to separate interviews for all those accompanying the applicant, with the

objective of identifying if they are foreigners who could present an independent application.

151. According to key informants, adjudicators in Peru acknowledge the importance of separate interviews for members of a family group and attempt to ensure they occur.

152. Canada allows refugee claimants to apply to separate the claims within a family group (RPDR § 56(2)). However, claims of spouses are automatically joined at first, unless “it is not practicable to do so” (RPDR § 55(1)).

153. In Canada, a 2018 IRB review noted that only 4% of asylum seekers are not represented (Neil Yeates, Report of the Independent Review of the Immigration and Refugee Board, 96). Key informants in Chile, Mexico, and Peru indicated only a handful of asylum claimants (or none at all) have access to a lawyer during RSD procedures.

154. Chilean refugee law is silent on applicants’ right to legal counsel during the RSD process. Informants thus posited that restrictions on lawyers’ ability to attend eligibility interviews stemmed from the SRR’s internal policies.

155. Peruvian refugee law does not mention the role of legal counsel in the RSD process beyond an attorney’s ability to submit an initial application for refugee protection on behalf of a client (Refugee Law, art. 13).

156. IRPA § 167(1) (Can.).

157. RLRPC art. 20 (Mex.).

158. In Chile and Peru, where lawyers currently cannot or do not accompany clients to eligibility interviews, informants posited that if lawyers were to eventually accompany clients to eligibility interviews, adjudicators would not welcome any sort of legal analysis or interpretation of the case from an attorney.

159. RPDR § 10 (Can.).

160. Supra note 126. In Canada, key informants also mentioned that in some cases, an IRB Board member may make submissions prior to the refugee claim hearing outlining what the applicant will need to prove during testimony.

161. RPDR § 43 (Can.); Legislation in Chile does not specify time periods during which applicants can submit evidence, but informants relayed that claimants may occasionally be permitted to submit additional evidence after the eligibility interview; LRPCAP art. 23 (Mex.); While legislation in Peru does not indicate whether applicants can submit additional evidence after the eligibility interview, key informants mentioned that adjudicators may allow for this on a discretionary case-by-case basis.

162. The known state bodies that produce these country of origin information reports in each country are: the IRB (Canada), the Refugee and Resettlement Section (Sección Refugio y Reasentamiento, SRR, Chile), and the Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores, Mexico).

163. Canada’s IRB maintains “National Documentation Packages” for adjudicators to assess country conditions. These are publicly available on the IRB website: IRB Canada, “National Documentation Packages,” <https://irb-cisr.gc.ca/en/country-information/ndp/Pages/index.aspx>.

164. Canada’s Refugee Protection Division is not bound by any technical rules of evidence (IRPA § 170). Key informants therefore noted that testimony alone could, theoretically, be sufficient; in practice, however, informants felt that Board members at the IRB look for or expect additional forms of evidence to analyze the case.

165. IRB Canada, “Assessment of Credibility in Claims for Refugee Protection” (2004), <https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/Credib.aspx>.

166. COMAR, Manual para Determinar el Reconocimiento de la Condición de Refugiado en México, 2017, 73-79. Key informants at the time of interview noted that this manual had not yet been implemented in practice.

167. For further discussion of the challenges that refugees face in disclosing gender-based violence, see Seelinger and Uyttewaal, *The Silence I Carry*.

168. Law No. 20430 Establishing Protection of Refugees, art. 30 (Chile).

169. For example, Canadian guidelines state that asylum seekers’ preferences for an IRB Board Member to be of one gender or the other should be accommodated wherever possible. See IRB Canada, Chairperson Guidelines No. 4: Women Refugee Claimants Fearing Gender-related Persecution ( 13 Nov. 1996, <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx> (hereinafter Guidelines on Women Refugee Claimants). Informants in Mexico and Peru also affirmed that asylum offices will attempt to accommodate applicants’ requests for an interviewer of a specific gender whenever possible.

170. In Chile, Law No. 20430 Establishing Protection of Refugees, art. 30 states that interviewers and interpreters should be specially trained to identify any cultural, religious, gender based or other factor (including age and level of education) that can affect claimants’ ability to present their case.

171. In Mexico, LRPCAP art. 23 requires interviewers to keep in mind the social and cultural context of the applicant, including characteristics such as sex, gender, age and other particular circumstances.

172. Law No. 20430 Establishing Protection of Refugees, arts. 32 and 41 (Chile).

173. LRPCAP art. 20 (Mex.).

174. 1951 Refugee Convention, art. 1(A).

175. UNHCR, Guidelines No. 1 on Gender, para 6.
176. LRPCAP art. 13(i) (Mex.).
177. See Appendix B.
178. IRPA § 97 (Can.).
179. 1984 Cartagena Declaration on Refugees § III(3); Law No. 20430 Establishing Protection of Refugees, art. 2(2) (Chile); LRPCAP art. 13(II) (Mex.); Refugee Law, art. 3(b) (Peru).
180. An Access to Information request to the IRB yielded this data, which was analyzed by Tara Carman and Anita Elash, “Gender persecution the top reason women seek asylum in Canada,” CBC News, February 7, 2018, <https://www.cbc.ca/news/canada/asylum-seekers-data-gender-persecution-1.4506245>.
181. Supra note 56. COMAR defines “intrafamilial violence” as “persons who declared having suffered domestic violence, regardless of if the person claiming this was a woman, a girl, a boy, or teens, or for their sexual preference” [translation by author]. COMAR and UPM, “Boletín Estadístico de Solicitantes de Refugio en México.”
182. Fernández Dávalos et al., *El género como causal del reconocimiento de la condición de refugiado en el sistema de asilo mexicano*, 22.
183. UNHCR, Guidelines No. 1 on Gender, para 9.
184. UNHCR, Guidelines No. 1 on Gender, para 3.
185. RLRPC art. 6 (Mex.).
186. UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Geneva: 2019), HCR/1P/4/ENG/REV.4, para 65.
187. IRB Canada, Guidelines on Women Refugee Claimants.
188. RLRPC art. 7(iii) and 7(iv) (Mex.).
189. UNHCR, Guidelines No. 1 on Gender, para 21.
190. IRB Canada, “Chapter 4 – Grounds of persecution – Nexus,” in Interpretation of the convention refugee definition in the case law (Canada: March 31, 2018), <https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef04.aspx>.
191. LRPCAP art. 13(i) (Mex.).
192. Fernández Dávalos et al., *El género como causal del reconocimiento de la condición de refugiado en el sistema de asilo mexicano*, 26. It should be noted that many grants of refugee protection in Mexico are based on Artículo 13(II) in the Law on Refugees, Complementary Protection, and Political Asylum (2011), which does not require that the persecution be connected to a ground enumerated in the 1951 Refugee Convention.
193. *Ibid.*, 12.
194. *Ibid.*, 14.
195. *Ibid.*, 17-18.
196. *Ibid.*, 22.
197. IRB guidelines Chapter 4, citing *M.C.I. v. A068* (F.C., no. IMM-8485-12), Gleason, November 19, 2013; 2013 FC 1119, at para. 37. *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 739 (Can.).
198. National Center on Domestic and Sexual Violence, “‘Wheels’ Adapted from the Power and Control Wheel Model,” June 9, 2016, [http://www.ncdsv.org/publications\\_wheel.html](http://www.ncdsv.org/publications_wheel.html). See Appendix C. Also available in Spanish.
199. UNHCR, Guidelines No. 2 on Social Group, para 11.
200. UNHCR, Guidelines No. 2 on Social Group, para 17.
201. UNHCR, Guidelines No. 2 on Social Group, para 19.
202. IRB Canada, “Chapter 4 – Grounds of persecution – Nexus.” In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R., the court formulated this test based off tests in *Mayers v. Canada (Minister of Employment and Immigration)*, [1992] CanLII 2412; *Matter of Acosta*, Interim Decision 2986, 1985 WL 56042 (BIA); and *Cheung v. Minister of Employment and Immigration*, [1993] CanLII 2946.
203. *Canada v. Ward*, [1993] 2 S.C.R. 689, 739.
204. *Narvaez v. Canada (Minister of Citizenship and Immigration)*, [1995] 2 FCR 55, 1995 CanLII 3575 (FC). (Hereinafter, *Narvaez*.)
205. Maciej Lipinski, “Can domestic abuse victims qualify as refugees? A Comment on *Matter of A-R-C-G et al.*,” *The Court* (29 Sep. 2014), <http://www.thecourt.ca/can-domestic-abuse-victims-qualify-as-refugees-a-comment-on-matter-of-ar-c-g-et-al/> (citing *Narvaez v. Canada (Minister of Citizenship and Immigration)*, [1995] 2 FC 55).
206. Immigration and Refugee Board of Canada, Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-related Persecution [1996].
207. UNHCR, Guidelines No. 2 on Social Group, paras 17-19.
208. For insightful discussion of earlier COMAR practices during eligibility interviews and case analysis, including

- for gender-related claims, see Comisión Mexicana de Defensa y Promoción de Derechos Humanos, “Anexo 1: Observaciones sobre la actuación de la Comisión Mexicana de Ayuda a Refugiados” (México DF: CMDPDH, 2017), available at [http://cmdpdh.org/wp-content/uploads/2017/05/Anexo1SEGOB\\_Solicitantes.pdf](http://cmdpdh.org/wp-content/uploads/2017/05/Anexo1SEGOB_Solicitantes.pdf).
209. Fernández Dávalos et al., *El género como causal del reconocimiento de la condición de refugiado en el sistema de asilo mexicano*, 26.
210. UNHCR, *Guidelines No. 1 on Gender*, para 11.
211. IRB Canada, *Guidelines on Women Refugee Claimants*, part D.
212. For a discussion of femicides and the relationship to IPV, see Geneva Declaration of Armed Violence and Development, *Global Burden of Armed Violence - 2011*, at Chapter 4: “When the Victim is a Woman.” Available at [http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011\\_CH4\\_rev.pdf](http://www.genevadeclaration.org/fileadmin/docs/GBAV2/GBAV2011_CH4_rev.pdf).
213. UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, July 23, 2003, HCR/GIP/03/04, para 15, <https://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html>.
214. Chile and Peru receive relatively large numbers of cases from Colombia and Venezuela, as well. However, key informants explained that these cases are often either granted under Cartagena-based provisions or awarded alternative forms of protection.
215. Mtro. David Fernández Dávalos, SJ, Mtra. Araceli Téllez Trejo, Ing. Pablo Reyna Esteves, and Mtra. Denise González Núñez, *La alternativa de huida interna y la protección estatal en el procedimiento de asilo en México*, Universidad Iberoamericana, Observatorio de Protección Internacional (2019), 11.
216. 1984 Cartagena Declaration on Refugees § III(3).
217. Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration (2013), para 11. <https://www.refworld.org/docid/53c52e7d4.html>
218. UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the regional refugee definitions* (2 Dec. 2016), HCR/GIP/16/12, paras 44 to 93, <https://www.unhcr.org/en-us/publications/legal/58359afe7/unhcr-guidelines-international-protection-12-claims-refugee-status-related.html>.
219. Supreme Decree No. 007-2017-IN, Regulations of the Legislative Decree No. 1350, Legislative Decree on Migrations, art. 91 (Peru).
220. Legislative Decree No. 1350, Legislative Decree on Migrations, art. 29.2(k) (Peru).
221. Supreme Decree No. 007-2017-IN, Regulations of the Legislative Decree No. 1350, Legislative Decree on Migrations, art. 227 (Peru).
222. Superintendencia Nacional de Migraciones de Perú, “Permiso Temporal de Permanencia para ciudadanos venezolanos” (2018), <https://www.migraciones.gob.pe/index.php/ptp-venezolanos/>.
223. “Perú exigirá visado a los venezolanos a partir del 15 de junio,” *El Nuevo Herald* (6 Jun. 2019), <https://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/article231282593.html>.
224. IRB Canada, *Guidelines on Women Refugee Claimants*.
225. RLRPC art. 43 (Mex.).

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Cover photo by Alejandra Dominguez of a mural painted by artist Nery and refugee women in Tapachula, Mexico. Report design by Matthew Ho and Julia Uyttewaal.

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# APPENDICES

**Appendix A | Refugee Status Determination (RSD) processes by country**

**Appendix B | The refugee definition in the Americas**

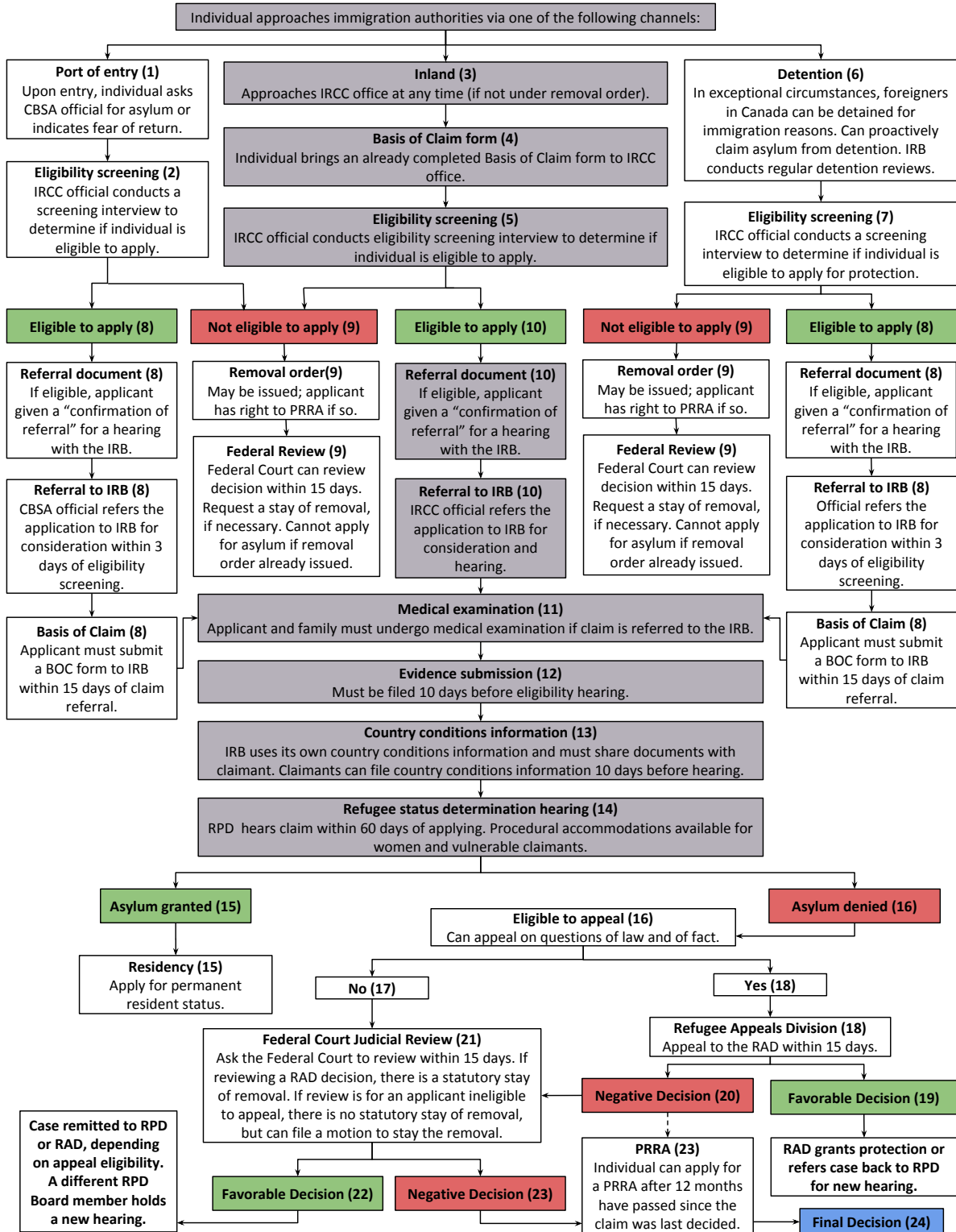
**Appendix C | Using the Power and Control Wheel in IPV-related asylum claims**

**Appendix D | Country of origin information for IPV-related asylum cases**

# APPENDIX A

## Official Refugee Status Determination Process | CANADA

*Note: This chart reflects the RSD process in Canada at time of research (December 2018). Changes to the process may have occurred since then. Be sure to check for changes before using this chart as a resource.*



#### Guide to Abbreviations

BOC: Basis of Claim	IRPA: Immigration and Refugee Protection Act	
CBSA: Canada Border Services Agency	IRPR: Immigration and Refugee Protection Regulations	
DCO: Designated Country of Origin	NTA: Notice to Appear	
IRB: Immigration and Refugee Board	POE: Port of Entry	RCMP: Royal Canadian Mounted Police
IRCC: Immigration, Refugees and Citizenship Canada	PRRA: Pre-Removal Risk Assessment	RPD: Refugee Protection Division (in IRB)
	RAD: Refugee Appeals Division (in IRB)	RPDR: Refugee Protection Division Rules

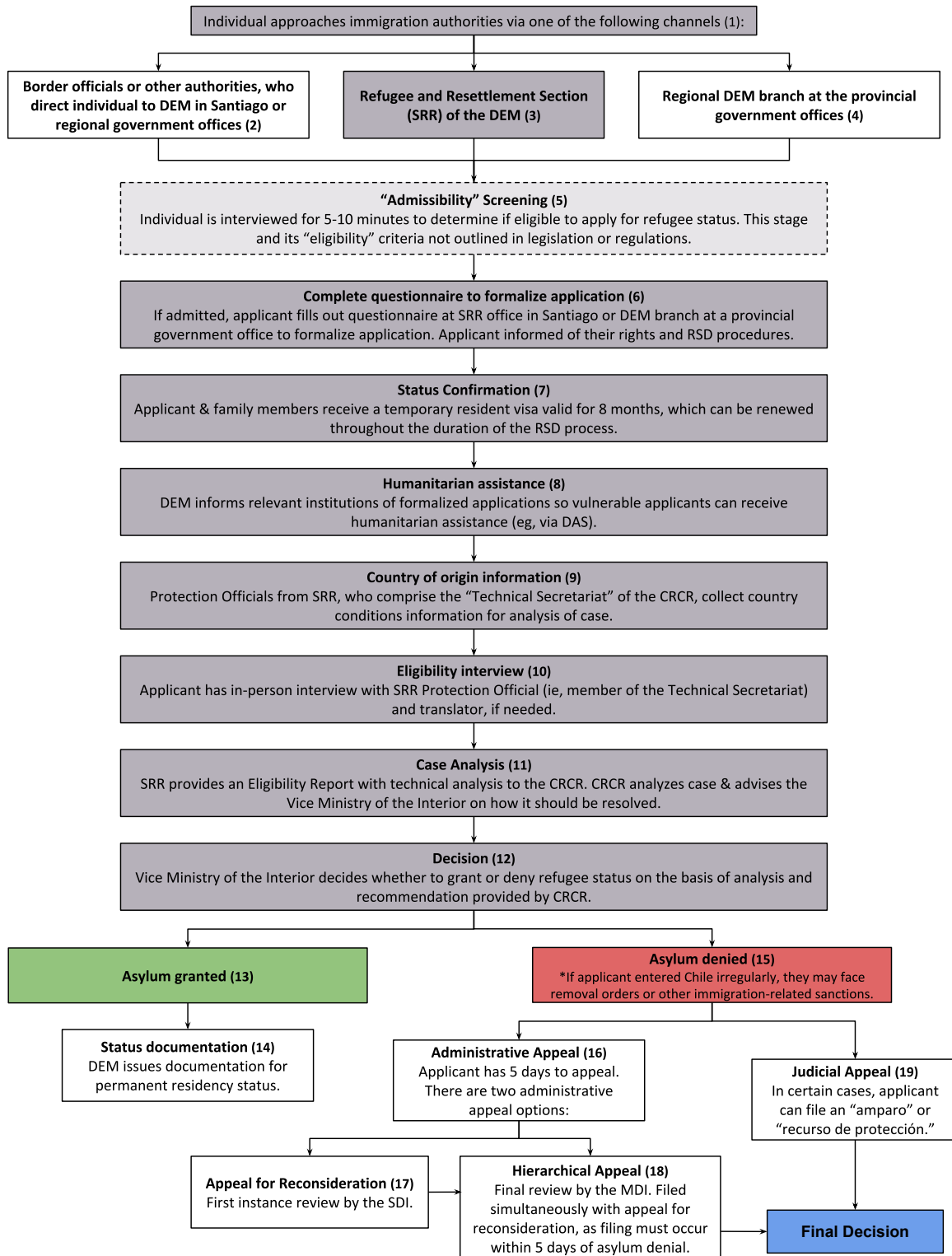
- (1) IRPA § 99(3). CBSA officers not obligated to ask about fear of return unless the individual raises this fear.
- (2) IRPA § 100(1). For helpful diagram of asylum application process, see UNHCR, “Claiming Asylum in Canada,” 2019, [https://www.unhcr.ca/wp-content/uploads/2019/07/Making-an-Asylum-Claim-in-CAN-Flowchart-Eng\\_June2019.pdf](https://www.unhcr.ca/wp-content/uploads/2019/07/Making-an-Asylum-Claim-in-CAN-Flowchart-Eng_June2019.pdf).
- (3) IRPA § 99(3.1). Canada’s legislation is silent on deadlines for submitting an asylum application.
- (4) IRPA § 99(3.1) and IRPR § 159.8(1). Information included in a BOC form is outlined in RPDR § 1 (Schedule 1).
- (5) IRPR § 159.8(1).
- (6) Foreigners intercepted by RCMP or local law enforcement soon after irregularly crossing the border are brought to the nearest CBSA or IRCC office. Officials conduct an immigration examination, including whether detention is warranted, along with health and security screenings (“Claiming asylum in Canada — what happens?” Government of Canada: Immigration, Refugees and Citizenship Canada, <https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming-asylum-incanadawhathappens.html>). If undocumented foreigners are detained for other reasons, they can proactively claim asylum but officials are not obligated to ask about their fear of return.
- (7) IRPA § 100(1). Foreigners intercepted by law enforcement soon after irregularly crossing the border undergo an eligibility screening with a CBSA or IRCC official (“Claiming asylum in Canada — what happens?”). Detained foreigners without regular immigration status must indicate a desire to apply for asylum in order to undergo an eligibility screening with a CBSA or IRCC official (RPDR §§ 3(4) and 3(5)).
- (8) If individual is considered eligible to apply after a screening at a POE or in detention, the CBSA or IRCC official must refer the claim to the IRB within 3 working days (IRPA § 100(1) and 100(3); IRPR § 159). The official gives the claimant a “confirmation of referral” document. Claimant will later receive an NTA for an eligibility hearing with the IRB (RPDR §§ 3(1) – 3(4)). The claimant then has 15 working days to submit a BOC form to the RPD (IRPR § 159.8(2)). For those in detention, Immigration Detention Reviews continue every 30 days to determine if continued detention is warranted (IRPA § 57(2)).
- (9) Ineligibility to apply for asylum is outlined in IRPA § 101 and IRPR §§ 159.2 – 159.6. To contest an ineligibility determination, claimant files an application for leave and judicial review to the Federal Court within 15 days (IRPA § 72). The Court decides whether ‘leave’ is granted, scheduling a hearing for oral arguments if so. If judicial review is allowed, the ineligibility decision is overturned and remitted to a different officer for a new decision (IRPA §§ 72 – 75). If claimants are deemed ineligible and inadmissible on other grounds, however, they may be issued a removal order (IRPA § 45). Once a removal order is issued, the individual is no longer eligible to apply for asylum (IRPA § 99(3)), but can apply for a PRRA (IRPA §§ 112 – 114).
- (10) If individual is eligible to apply, IRCC official refers the claim to the IRB (IRPA §§ 100(1) and 100(3); IRPR § 159) and gives claimant a “confirmation of referral.” Claimant later receives an NTA (RPDR §§ 3(1) – 3(4)).
- (11) IRPR § 30(1)(a)(v).
- (12) RPDR § 34(3).
- (13) RPDR §§ 33(2) and 34(1) – 34(3). IRB only required to share documents with claimant if not in public IRB packages.
- (14) IRPA §§ 111.1 and 170; IRPR § 159.91(1). In practice, hearings are being scheduled 1.5 - 2 years after claim referral to the IRB. For procedural accommodations, see the IRB’s Chairperson Guidelines No. 4 and No. 8.
- (15) Canada confers refugee protection to persons meeting the definition of a “Convention Refugee” (IRPA § 96) or a “person in need of protection” (IRPA § 97). Protected persons are issued documentation and can apply for permanent residency (IRPA § 21(2)). Decisions are rendered in accordance with IRPA §§ 169(a) – 169(c).
- (16) IRPA § 110(1).
- (17) IRPA § 72(1). Claimants cannot appeal to RAD if they meet criteria enumerated in IRPA § 110(2).
- (18) IRPR § 159.91(1a). Ability to present new evidence at appeal level is governed by IRPA § 110(4).
- (19) IRPA § 111(1).
- (20) IRPA § 111(1).
- (21) IRPA § 72(1). Enforcement of removal orders outlined in IRPA §§ 48 – 50.
- (22) Federal Court decisions on judicial review described in Canada’s Federal Courts Act § 18.1(3).
- (23) A negative decision in Federal Court means claimants must seek other forms of protection, eg, via PRRA (IRPA §§ 112 – 114) or an application under humanitarian and compassionate grounds (IRPA § 25).
- (24) If PRRA application approved, the individual receives refugee protection or a stay of removal (IRPA § 114(1)).



# APPENDIX A

## Official Refugee Status Determination Process | CHILE

*Note: This chart reflects the RSD process in Chile at time of research (December 2018). Changes to the process may have occurred since then. Be sure to check for changes before using this chart as a resource.*



### Guide to Abbreviations

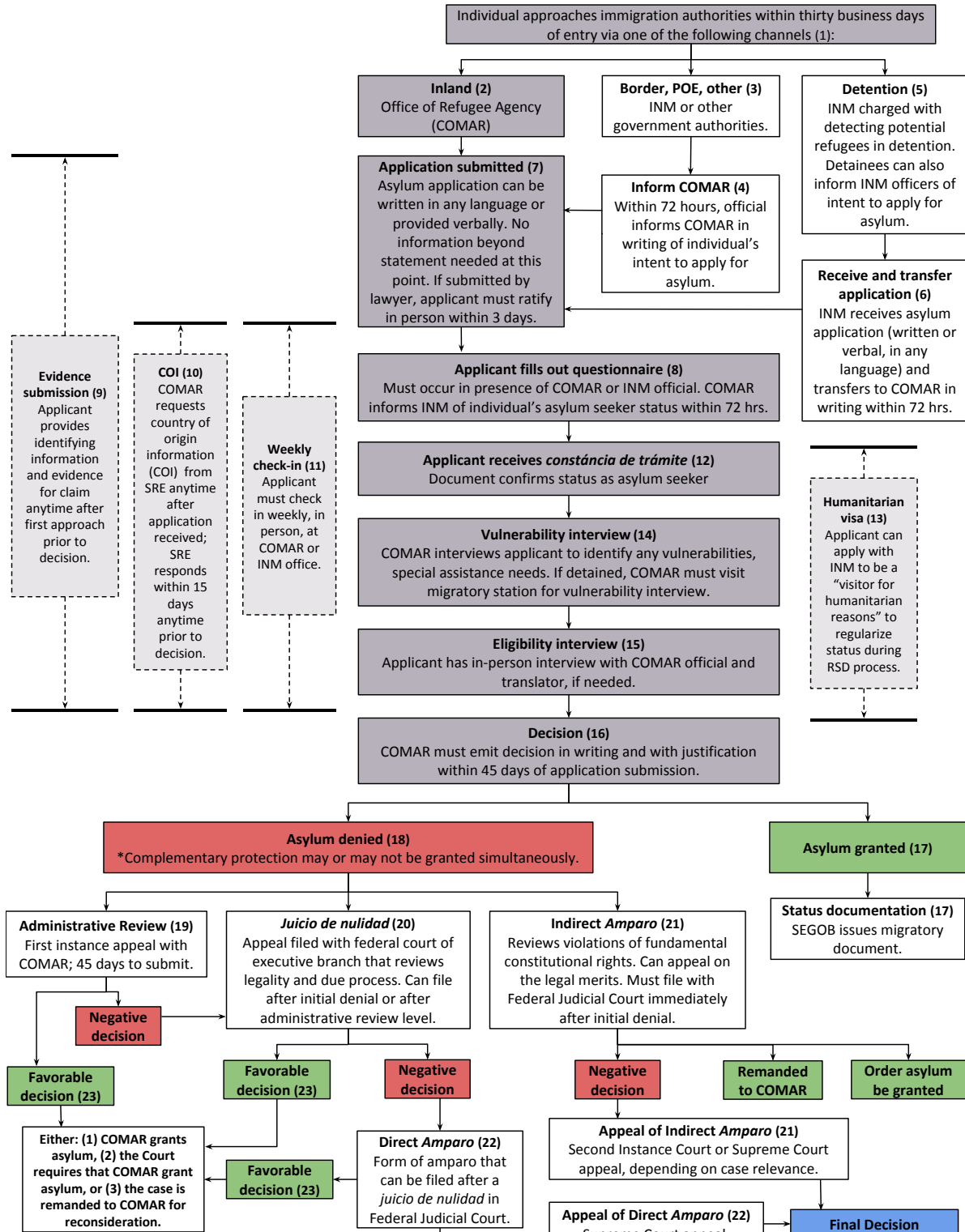
Constitution:	Constitución Política de la República de Chile (Political Constitution of the Republic of Chile)
CRCR:	Comisión de Reconocimiento de la Condición de Refugiado (Commission for Recognition of Refugee Status)
DAS:	Departamento de Acción Social (Department of Social Action)
Decree 837:	Decreto 837 Aprueba Reglamento de la Ley No. 20.430, Que Establece Disposiciones Sobre Protección de Refugiados (Decree 837 Approving Regulations of Law No. 20,430, that Establishes Provisions on the Protection of Refugees)
DEM:	Departamento de Extranjería y Migración (Department of Foreigners and Migration)
Law 19880:	Ley No. 19.880 Establece las Bases de los Procedimientos Administrativos que Rigen los Actos de los Órganos de la Administración del Estado (Law No. 19880 Establishing the Administrative Procedures Governing the Acts of Administrative Entities of the State)
Law 20430:	Ley No. 20.430 Establece Disposiciones Sobre Protección de Refugiados (Law No. 20430 Establishing Provisions on the Protection of Refugees)
MDI:	Ministerio del Interior (Ministry of the Interior)
RSD:	Refugee Status Determination
SDI:	Subsecretaría del Interior (Vice Ministry of the Interior)
SRR:	Sección Refugio y Reasentamiento (Refugee and Resettlement Section)

- (1) Law 20430 art. 26.
- (2) Decree 837 art. 36.
- (3) Decree 837 art. 35.
- (4) Decree 837 art. 35.
- (5) This step is not prescribed by law, regulations, or policy, but multiple actors confirmed its occurrence at DEM offices in Santiago and provincial government offices. Though no criteria exist, if individuals are deemed eligible to apply for asylum, they will be able to formalize an application. Otherwise, they cannot enter the RSD process.
- (6) Decree 837 art. 36. Applicants provide motives for requesting refugee status, evidence to support their application, and additional identity information and travel documents. The MDI facilitates access to an interpreter who can assist with the presentation in writing of the facts that form the basis of the applicant's petition, if needed (Decree 837 art. 38). Informants indicated that provincial government offices must first send the results of the initial "admissibility" interview to the SRR in Santiago, who will determine whether or not the individual can proceed with formalizing their application for refugee status.
- (7) Applicant and accompanying family members receive a visa for temporary residence valid for eight months. The visa can be extended for equal periods of time until the application is definitively resolved (Decree 837 art. 42).
- (8) Decree 837 art. 39. Basic humanitarian assistance is provided to vulnerable applicants and members of their accompanying family, especially with regard to accessing food, health, and work.
- (9) Decree 837 art. 41. The SRR compiles information about the applicant's country of nationality or habitual residence.
- (10) All applicants are interviewed in person, individually, and confidentially by SRR personnel (Decree 837 art. 40). The DEM facilitates access to an interpreter to assist during interviews (Decree 837 art. 38). Those who are not principal applicants but are family members may also be interviewed individually, so as to guarantee that they have the opportunity to present their case and formalize their own application independently (Decree 837 art. 40). The applicant and their family members can elect interviewers and interpreters of the same sex (Decree 837 art. 40).
- (11) Each case is first analyzed by the SRR (Technical Secretariat of the CRCR). The SRR then presents technical reports on eligibility to the CRCR, to serve as a basis for discussion and evaluation of applications for recognition of refugee status, family reunification, and resettlement (Law 20.430 art. 22, Decree 837 art.29). The CRCR votes on each case to decide whether to recommend a grant or denial to the SDI (Decree 837 art. 27, RI CRCR art. 5).
- (12) Law 20430 art. 19.
- (13) Law 20430 art. 45.
- (14) Law 20430 art. 45.
- (15) Decree 837 art. 46.
- (16) There are two forms of administrative appeal: "appeal for reconsideration" and "hierarchical appeal" (Law 20430 art. 43, Decree 837 art. 60). These are detailed in art. 59 of Law 19880 Establishing Rules for the Administrative Procedures that Govern the Acts of the Administrative Bodies of the State (Ley N° 19.880, que Establece las Bases de los Procedimientos Administrativos que Rigen los Actos de los Órganos de la Administración del Estado).
- (17) The applicant can submit an "appeal for reconsideration," which is reviewed by the SDI — the same entity that originally denied the application (Law 19880 art. 59).
- (18) The applicant can simultaneously submit a "hierarchical appeal" with the MDI (who has authority over the SDI), which provides final administrative review and whose decisions are binding upon the SDI (Law 19880 art. 59).
- (19) In cases where there has been a breach of fundamental rights, such as violations of the right to personal liberty including deprivation of freedom of movement, individuals can also file an amparo (Constitution art. 21). A recurso de protección may be filed for violations of other fundamental rights (Constitution art. 20).

# APPENDIX A

## Official Refugee Status Determination Process | MEXICO

*Note: This chart reflects the RSD process in Mexico at time of research (December 2018). Changes to the process may have occurred since then. Be sure to check for changes before using this chart as a resource.*



### Guide to Abbreviations

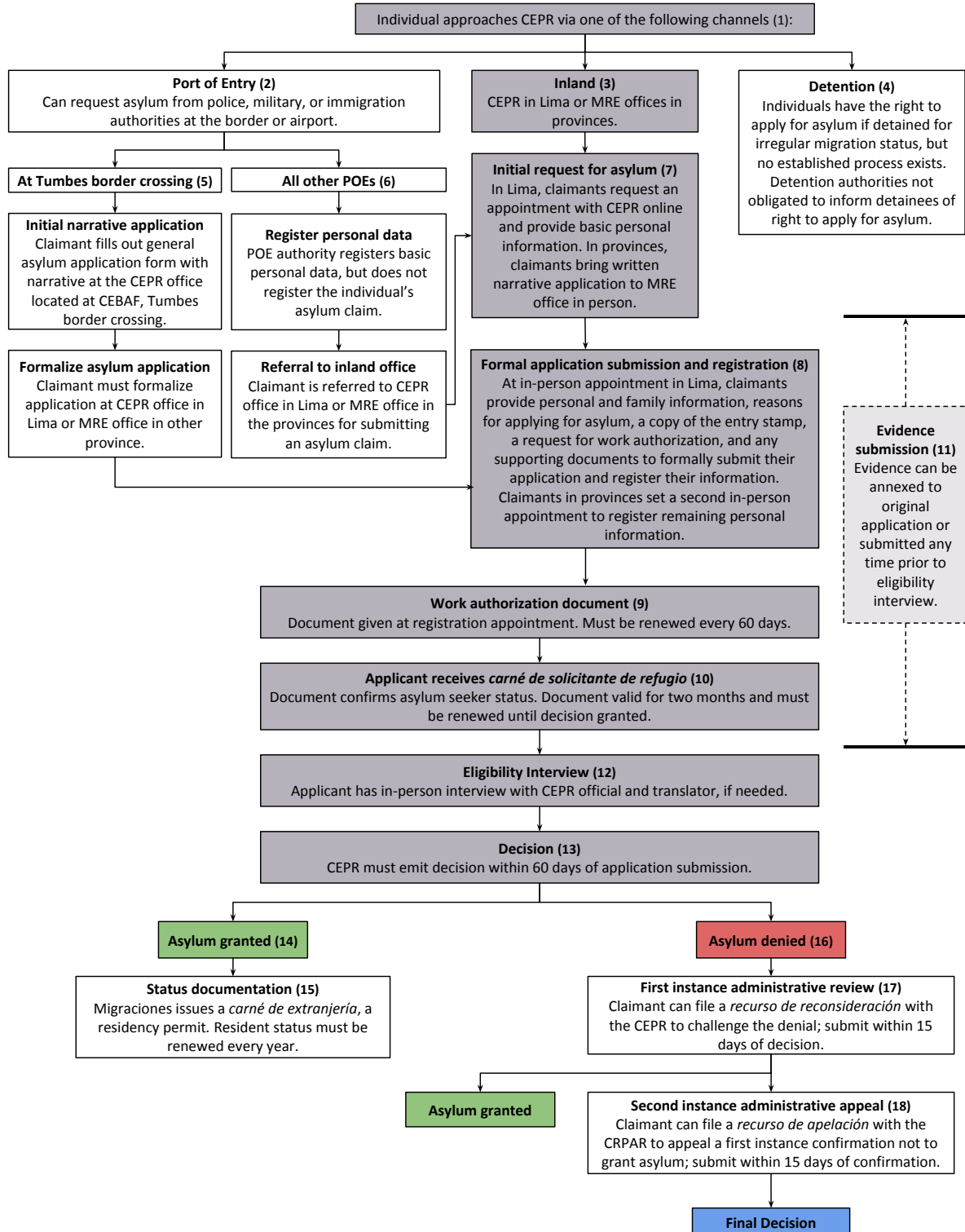
COI:	Country of Origin Information (ie, country conditions information)
COMAR:	Comisión Mexicana de Ayuda a Refugiados (Mexican Commission for Refugee Assistance)
INM:	Instituto Nacional de Migración (National Migration Institute)
LRPCAP:	Ley Sobre Refugiados, Protección Complementaria, y Asilo Político (Law on Refugees, Complementary Protection and Political Asylum)
POE:	Port of Entry
RLRPC:	Reglamento de la Ley Sobre Refugiados y Protección Complementaria (Regulations of the Law on Refugees and Complementary Protection)
RSD:	Refugee Status Determination process
SEGOB:	Secretaría de Gobernación (Secretariat of the Interior)
SRE:	Secretaría de Relaciones Exteriores (Ministry of Foreign Affairs)

- (1) LRPCAP art. 18. Exceptions to the 30-day deadline are outlined in RLRPC art. 19.
- (2) LRPCAP art. 18.
- (3) Applications can be submitted to the INM or any other authority who may have knowledge of an individual's intent to apply for refugee status (LRPCAP art. 21; RLRPC arts. 17 and 18).
- (4) RLRPC arts. 17 and 18.
- (5) RLRPC art. 16(I).
- (6) RLRPC art. 16(II) and 17. Key informants noted that detained asylum seekers who are released may be granted a visa for "Visitors with Permission to Undertake Remunerated Activities" (Migration Law, 2011, art. 52(II)).
- (7) The application consists of a written declaration in any language (LRPCAP art. 18) explaining the individual's circumstances and motives for applying (LRPCAP art. 23). If the claimant is not literate, the alternate process is outlined in RLRPC art. 17(III). Lawyers can submit on behalf of clients in accordance with LRPCAP art. 11.
- (8) RLRPC art. 21.
- (9) Evidence can be submitted anytime during the RSD process prior to COMAR's decision (LRPCAP art. 23).
- (10) LRPCAP art. 24; RLRPC art. 40.
- (11) RLRPC art. 24.
- (12) LRPCAP art. 22; RLRPC art. 38.
- (13) This visa for "Visitors for Humanitarian Reasons" is granted to foreigners in a variety of situations, including asylum seekers (Migration Law art. 52(V)(c)). The visa guarantees the right to work, to move freely, and to live in the country until completion of the RSD process (Migration Law art. 52(V)(c)).
- (14) "Vulnerable" individuals include victims of sexual abuse and gender-based violence (LRPCAP art. 20). COMAR must interview applicants to identify if they need institutional assistance (RLRPC art. 61). If in detention, COMAR officials must visit the stations to evaluate the applicant's situation of vulnerability (RLRPC art. 34). COMAR may request INM to transfer vulnerable applicants to specialized institutions (RLRPC art. 62). However, the Regulations also state that vulnerable applicants may remain in migratory detention centers if COMAR deems they are able to receive needed services there (RLRPC art. 62 and 63). When applicants only need temporary specialized attention, or when the vulnerabilities have ceased to exist, they are transferred back to a detention center (RLRPC art. 65).
- (15) COMAR must conduct interviews in person and be sensitive to applicant's identity characteristics (LRPCAP art. 23; RLRPC art. 27). COMAR must also "guarantee all persons accompanying the applicant the opportunity to be interviewed individually, in order to identify if they [...] could present an independent application" (RLRPC art. 31).
- (16) LRPCAP art. 24; RLRPC art. 45.
- (17) Refugees are told their rights and duties (RLRPC art. 67) and receive permanent residency (LRPCAP art. 44).
- (18) LRPCAP art. 29 and 30. Complementary protection is granted if an individual's life would be threatened or they would be in danger of being subjected to torture or other ill-treatment if returned (LRPCAP art. 28).
- (19) LRPCAP art. 25; Federal Law of Administrative Procedure, 2012, art. 86.
- (20) A juicio de nulidad can be filed at the Federal Court of Fiscal and Administrative Justice for due process issues. This can occur immediately after initial denial, or if first instance administrative review confirms the asylum denial.
- (21) Applicants can file an indirect amparo in judicial court for violations of fundamental constitutional rights. It must be filed immediately after initial denial and can be appealed all the way up to the Supreme Court.
- (22) A direct amparo can be filed if the federal court upholds the asylum denial in the juicio de nulidad. The decision can be appealed all the way to the Supreme Court.
- (23) Courts technically cannot grant asylum but can order COMAR to do so if they find the applicant is a refugee. Courts can also remand the case to COMAR for reconsideration, usually when procedural issues were found.

# APPENDIX A

## Official Refugee Status Determination Process | PERU

*Note: This chart reflects the RSD process in Peru at time of research (December 2018). Changes to the process may have occurred since then. Be sure to check for changes before using this chart as a resource.*



### Guide to Abbreviations

CEBAF:	Centro Binacional de Atención Fronteriza (Binational Border Services Center)
CEPR:	Comisión Especial para los Refugiados (Special Commission for Refugees)
CRPAR:	Comisión Revisora para Asuntos de Refugiados (Committee for the Review of Refugee Issues)
LR:	Ley del Refugiado, Ley N. 27891 (Refugee Law)
MRE:	Ministerio de Relaciones Exteriores (Ministry of Foreign Affairs)
POE:	Port of Entry
RLR:	Reglamento de la Ley del Refugiado, Decreto Supremo N. 119-2003-RE (Regulations of the Refugee Law)
RSD:	Refugee Status Determination process

- (1) Individual can apply before expiration of temporary residency in Peru (LR art. 13(a)) or no more than 30 days after irregular entry (LR art. 13(b)). Late claims can be made but must be justified (LR art. 13(b)). Currently, CEPR allows flexibility in the timing of asylum application submissions, and is not enforcing the 30-day rule.
- (2) LR art. 10.2; RLR art. 18(a).
- (3) RLR art. 18(b). The CEPR website specifies that applicants outside of Lima must approach one of twelve “decentralized offices” of the MRE (Peru: Ministerio de Relaciones Exteriores, “Comisión Especial para los Refugiados,” <http://www.rree.gob.pe/refugiados/SitePages/Home.aspx>).
- (4) Key informants indicated that detained migrants can proactively ask to apply for asylum but that there are no currently established procedures for doing so from detention. Informants also specified that Peru does not have any migratory detention centers.
- (5) Key informants explained that Peruvian authorities at the Binational Border Services Center in Tumbes, located on Peru’s border with Ecuador, have been registering initial asylum claims and transferring them to the CEPR in Lima (see Babar Baloch, “UNHCR reinforces border response as Venezuelans rush to beat Peru deadline,” UNHCR, <https://www.unhcr.org/news/briefing/2018/11/5bdc1b2d4/unhcr-reinforces-border-response-venezuelans-rush-beat-peru-deadline.html>).
- (6) Key informants in Peru said that no mechanism currently exists for authorities at POEs to receive asylum applications and transfer them to the CEPR, although art. 21 of the RLR requires these authorities to formally transfer asylum applications and any additional documentation to the CEPR within 15 calendar days. Instead, key informants said that asylum seekers are currently given “reference cards”
- (7) “Comisión Especial para los Refugiados,” Peru: Ministerio de Relaciones Exteriores, <http://www.rree.gob.pe/refugiados/SitePages/Home.aspx>. The online appointment request system requires applicants to provide their full name, country of origin, identity document information, names of accompanying family members, date of entry into Peru, phone number, and email address. The appointment confirmation document specifies additional documents applicants need to bring to the in-person appointment (“Registro de cita,” <http://www.citasrefugiados.gob.pe>). The CEPR website also specifies that applicants located outside of Lima must bring their written application to MRE offices in person.
- (8) Required documents are listed on CEPR website (“Requisitos para solicitar la condición de refugiado,” Peru: Ministerio de Relaciones Exteriores, [http://www.rree.gob.pe/Documents/2018/Ref\\_volantes.pdf](http://www.rree.gob.pe/Documents/2018/Ref_volantes.pdf)). Key informants noted that formal application occurs at a second appointment for claimants located outside of Lima. LR art. 11 requires CEPR to maintain registry of asylum applicants.
- (9) Normally, the provisional document given to asylum seekers (carné de solicitante de refugio) also grants work authorization (LR 14.2). However, key informants noted that since the carné currently takes many months to issue, asylum seekers receive a separate, stamped document attesting to their right to work on the day of their CEPR appointment to formalize their application. Work authorization still must be renewed every 60 days (LR art. 14.3).
- (10) LR art. 14. The carné authorizes asylum seekers to remain in Peru and work, but is not an identity document.
- (11) While not specified in Peruvian legislation, key informants confirmed that evidence can be annexed to the initial application form or provided to CEPR at any time prior to the eligibility interview.
- (12) RLR art. 22 and 23.
- (13) LR art. 15 and RLR art. 35. The 60-day deadline can be extended under “reasonable circumstances.”
- (14) LR art. 20.
- (15) LR art. 22 and 23.
- (16) LR art. 17.
- (17) LR art. 12.1 and 17; RLR art. 26. The recurso de reconsideración must be resolved within 30 days.
- (18) LR art. 12.2 and 18. The recurso de apelación can take new information into account (eg, via re-interviewing the applicant).

## APPENDIX B | The refugee definition in the Americas

The refugee legislation of countries in the Americas addresses gender and sexual and gender-based violence (SGBV) in different ways, or not at all. Table 1, below, compares the refugee laws of countries that incorporate the definition of “refugee” from the 1951 Refugee Convention. Along with the name and year of each country’s current refugee law, the table compares whether countries have adopted the expanded Cartagena Declaration definition of “refugee” (column “B”). Column “C” depicts whether domestic law includes any additional grounds for refugee eligibility and/or any variations from the Cartagena and 1951 Convention definitions. Column “D” shows whether SGBV, including, intimate partner violence (IPV), is considered persecution under domestic law. Any additional domestic provisions in the refugee law related to gender, SGBV, or “vulnerable groups” are included in column “E.” Table 2 lists countries in the Americas who do not have national refugee laws in place, and indicates whether these countries are party to the 1951 Convention despite lack of legislation.

While some countries do not reference gender or SGBV in their refugee laws, states may still grant asylum on the basis of gender, or may use gender- and SGBV-specific guidance to assess claims. Some states have case law setting precedent on gender-based claims. Lastly, these tables only include relevant provisions from refugee laws; regulations, decrees, and other authoritative legislation are not included.

**Table 1 - Countries with Refugee Laws which include the 1951 Convention “refugee” definition.**

Country	Cartagena definition included?	Additional grounds, variation?	SGBV as persecution?	Other gender, “vulnerability,” and <i>non-refoulement</i> provisions
<b>Argentina</b> <i>Ley General de Reconocimiento y Protección al Refugiado, 2006</i>	Yes (art. 4)	No	No	<ul style="list-style-type: none"> <li>• <i>Art. 31(f)</i>: Psychological care available for women victims of violence.</li> <li>• <i>Art. 53</i>: Observe UNHCR guidelines on women and on gender-based persecution.</li> </ul>
<b>Belize</b> <i>Refugees Act, 2000</i>	Yes (art. 4(c))	<p><i>Cartagena Definition:</i></p> <ul style="list-style-type: none"> <li>• Missing grounds include generalized violence, internal conflicts, and massive violation of human rights.</li> <li>• Added grounds include external occupation and foreign domination.</li> </ul>	No	N/A
<b>Bolivia</b> <i>Ley de Protección a personas refugiadas, 2012</i>	Yes (art. 15(b))	No	No	<ul style="list-style-type: none"> <li>• <i>Art. 16</i>: Consider gender, age, diversity when applying refugee definition.</li> <li>• <i>Art. 29(a)</i>: Right to individual interview by someone of applicant’s own sex.</li> </ul>

Country	Cartagena definition included?	Additional grounds, variation?	SGBV as persecution?	Other gender, “vulnerability,” and <i>non-refoulement</i> provisions
<b>Brazil</b> <i>Law 9474 establishes arrangements for the implementation of the 1951 Status of Refugees and related provisions, 1997</i>	Yes ( <i>art. 1(III)</i> )	<i>Cartagena Definition: Modified to only include those “compelled to leave their country of nationality [...] due to severe and generalized violation of human rights.”</i>	No	N/A
<b>Canada</b> <i>Immigration and Refugee Protection Act, 2001</i>	No	No	No	N/A
<b>Chile</b> <i>Law No. 20430 Establece Disposiciones Sobre Protección de Refugiados, 2010</i>	Yes ( <i>art. 2(2)</i> )	No	No	<ul style="list-style-type: none"> <li>• <i>Art. 30:</i> Right to individual interview for members of family group to present their own claim; Right to request gender of interviewer and interpreter.</li> <li>• <i>Art. 41:</i> Efforts made to provide psychological and social assistance to victims of sexual and gender-based violence.</li> </ul>
<b>Colombia</b> <i>Decreto 2840 por el cual se establece el Procedimiento para el Reconocimiento de la Condición de Refugiado, se dictan normas sobre la Comisión Asesora para la Determinación de la Condición de Refugiado y otras disposiciones, 2013</i>	Yes ( <i>art. 1(b)</i> )	No	No	<ul style="list-style-type: none"> <li>• <i>Art. 16:</i> Women accompanied by male relatives are privately informed of right to submit a separate, independent claim; Women have right to same-sex interviewer and interpreter with relevant training.</li> </ul>
<b>Costa Rica</b> <i>Leyes no. 8764, Ley General de Migración y Extranjería, 2010</i>	No	<i>1951 Definition: “Gender” added as a sixth ground (art. 106(1))</i>	No	<ul style="list-style-type: none"> <li>• <i>Art. 115:</i> Non-refoulement. “Refugees and those seeking asylum who, due to well-founded fears of being persecuted for reasons of [...] gender [...] cannot or, due to such fears, do not want to benefit from the protection of that country, cannot be deported to the territory of the country of origin.”</li> </ul>
<b>Dominican Republic</b> <i>Decreto Presidencial n. 2330, Reglamento de la Comisión Nacional para los Refugiados, 1984</i>	No	No	No	N/A



Country	Cartagena definition included?	Additional grounds, variation?	SGBV as persecution?	Other gender, “vulnerability,” and <i>non-refoulement</i> provisions
<b>Ecuador</b> <i>Ley Orgánica de Movilidad Humana, 2007</i>	Yes (art. 98(2))	No	No.	<ul style="list-style-type: none"> <li>• <i>Art. 2</i>: Non-refoulement. “The person may not be returned or expelled to another country [...] where their rights to life, liberty or integrity or that of their relatives are at risk of being violated because of their [...] gender, sexual orientation, belonging to a certain social group, political opinions, or when there are well-founded reasons that they would be in danger of being subjected to serious human rights violations in accordance with this Law and international human rights instruments.”</li> <li>• <i>Art. 99(2)</i>: Right to choose sex of interviewer in cases of gender-based violence.</li> <li>• <i>Art. 99(8)</i>: Priority processing of applications from victims of sexual abuse or SGBV.</li> </ul>
<b>El Salvador</b> <i>Decree No. 918, Ley para la Determinación de la Condición de Personas Refugiadas, 2002</i>	Yes (art. 4(c))	<i>1951 Definition</i> : “Gender” added as a sixth ground (art. 4(a))	No	<ul style="list-style-type: none"> <li>• <i>Art. 31</i>: Applicants can be interviewed by person of same sex.</li> </ul>
<b>Guatemala</b> <i>Acuerdo Gubernativo 383-2001, Reglamento para la protección y determinación del estatu de refugiado en el territorio del estado de Guatemala, 2001</i>	Yes (art. 11(c))	<i>Other</i> : The law provides a third definition of refugee, saying “those who suffer persecution through sexual violence or other kinds of gender persecution based on violations of human rights consecrated in international instruments have the right to be granted the status of refugee” (art. 11(d)).	Yes. Refugee definition includes “persecution through sexual violence or other kinds of gender persecution” (art. 11(d)).	<ul style="list-style-type: none"> <li>• <i>Art. 28</i>: Women must be interviewed separately by officials of the same sex.</li> </ul>
<b>Honduras</b> <i>Ley de Migración y Extranjería, 2004</i>	Yes (art. 42(3))	<p><i>1951 Definition</i>: Modification of “political opinion”: “membership in a social or political group, as well as [the individual’s] opinions” (art. 42(1)).</p> <p><i>Cartagena Definition</i>:</p> <ul style="list-style-type: none"> <li>• Missing the ground “other circumstances that have gravely disturbed the public order.”</li> <li>• Modifies wording on other grounds (art. 42(3)).</li> <li>• Adds a sixth ground: “those suffering persecution by way of sexual violence or other forms of gender persecution based on human rights violations consecrated in international instruments” (art. 42(3)(e)).</li> </ul>	Yes. Expanded refugee definition includes “those suffering persecution by way of sexual violence or other forms of gender persecution based on human rights violations consecrated in international instruments” (art. 42(3)(e)).	N/A

Country	Cartagena definition included?	Additional grounds, variation?	SGBV as persecution?	Other gender, “vulnerability,” and <i>non-refoulement</i> provisions
<b>Jamaica</b> <i>Refugee Policy, 2009</i>	No	No	No	N/A
<b>Mexico</b> <i>Ley Sobre Refugiados, Protección Complementaria y Asilo Politico, 2011</i>	Yes (art. 13(II))	<i>1951 Definition:</i> “Gender” added as a sixth ground (art. 13(I)).	No*  <i>*However, the regulations for the Refugee Law do define persecution as acts including SGBV.</i>	<ul style="list-style-type: none"> <li>• <i>Art. 6:</i> Non-refoulement. “No applicant or refugee can in any way be rejected at the border or returned [...] to the territory of another country where their life would be in danger due to the motives laid out in Article 13 of this Law, or where founded reasons exist to consider that this person would be in danger of being tortured or undergoing other cruel, inhumane, or degrading treatments or hardships.”</li> <li>• <i>Art. 20:</i> Provide institutional assistance to applicants requiring special attention, including pregnant women and victims of torture, of other cruel treatment or hardship, of sexual abuse and gender violence, and of human trafficking (among others).</li> </ul>
<b>Nicaragua</b> <i>Ley de Migración y Extranjería, 2011</i>	Yes (art. 1(C))	<i>1951 Definition:</i> “Gender” added as a sixth ground (art. 1(A)).	No	<ul style="list-style-type: none"> <li>• <i>Art 8:</i> Non-refoulement. “In no way can access to national territory be denied to any refugee or applicant for refuge, nor can they be expelled or returned to a territory where their life or their freedom is at risk of the reasons listed in parts A, B, and C of article 1 of the [Ley de Migración y Extranjería].”</li> <li>• <i>Art 10(C):</i> No detention of applicants with special needs, including victims of sexual or gender violence. Provides for their transfer to institutions that can provide the necessary assistance.</li> <li>• <i>Art. 13:</i> Interpret and apply law with consideration of special protection needs that persons could have due to age, sex, gender, sexual violence, torture, or any other vulnerabilities.</li> </ul>
<b>Panama</b> <i>Decreto Ejecutivo no. 5 que dicta nuevas disposiciones para la protección de personas refugiadas, 2018</i>	No	<i>1951 Definition:</i> “Gender” added as a sixth ground (art. 5(1)).	No	<ul style="list-style-type: none"> <li>• <i>Art. 4:</i> Interpret from a gender, age, diversity perspective.</li> <li>• <i>Art 39:</i> Individual interviews for all family members; try to make available an interviewer of preferred gender.</li> <li>• <i>Art. 62:</i> If minor alleges having been victim of violence, be it sexual, for motives of gender, or of another nature, case will be referred to the competent public entities and protection measures adopted.</li> <li>• <i>Art. 102(4):</i> Defines “gender” according to UNHCR Manual for the Protection of Women and Girls.</li> </ul>
<b>Paraguay</b> <i>Ley No. 1938 - General Sobre Refugiados, 2002</i>	Yes (art. 1(b))	<i>1951 Definition:</i> “Sex” added as a sixth ground (art. 1(a)).	No	N/A

Country	Cartagena definition included?	Additional grounds, variation?	SGBV as persecution?	Other gender, “vulnerability,” and <i>non-refoulement</i> provisions
<p><b>Peru</b> <i>Ley del Refugiado</i>, 2002</p>	Yes ( <i>art. 3(c)</i> )	<p><i>Cartagena Definition:</i></p> <ul style="list-style-type: none"> <li>• Missing the ground “generalized violence.”</li> <li>• Adds the ground “foreign occupation or domination.”</li> </ul>	No	N/A
<p><b>United States</b> <i>Refugee Act</i>, 1980, and <i>Immigration and Nationality Act</i>, as amended, 1952.</p>	No	No	No	N/A
<p><b>Uruguay</b> <i>Derecho al Refugio y a los Refugiados</i>, 2006</p>	Yes ( <i>art. 2(B)</i> )	<p><i>1951 Definition:</i> “Gender” added as a ground and social group modified to read “membership in a particular social or ethnic group” (<i>art. 2(A)</i>).</p> <p><i>Cartagena Definition:</i> “Terrorism” added as a ground and foreign aggression modified to read “foreign aggression or occupation” (<i>art. 2(B)</i>).</p>	No	N/A
<p><b>Venezuela</b> <i>Ley Orgánica Sobre Refugiados o Refugiadas y Asilados o Asiladas</i>, 2001</p>	No	<p><i>1951 Definition:</i> “Sex” added as a ground (<i>art. 5</i>).</p>	No	<ul style="list-style-type: none"> <li>• <i>Art. 7:</i> Non-refoulement clause refers to the reasons for persecution enumerated in the expanded refugee definition, including sex: “All persons who apply to be recognized as a refugee cannot be rejected or subjected to any means that will force them to return to the territory where their life, physical integrity or personal freedom is at risk due to the reasons mentioned in article 5.”</li> </ul>

**Table 2 - Countries that have no domestic refugee law in place.**

Country	Acceded and State Party to the 1951 Convention	Other legal provisions providing definitions of “refugee”
Antigua & Barbuda	Yes	N/A
Bahamas	Yes	N/A
Barbados	No	N/A
Cuba	No	<p>Cuba defines “refugees” and “political asylees” in its <i>Decreto No. 26, Reglamento de la Ley de Migración, de 19 de Julio de 1978</i></p> <ul style="list-style-type: none"> <li>• <i>Capítulo II, Sección VI, Art. 80</i>: Political asylees are foreigners and persons without citizenship who are obligated to leave their country due to being persecuted for fighting for the democratic rights of the many; for national liberation; against imperialism, fascism, colonialism and neocolonialism; for the suppression of racial discrimination; for the rights and grievances of workers, farmworkers and students; for their progressive political, scientific, and artistic activities; for socialism and for peace, and who look for and obtain the hospitality and shelter of our Republic, being allowed to stay with the duty or declared intention of returning to their country as soon as the causes motivating their exile cease. Refugees are foreigners and persons without citizenship whose entrance into national territory is authorized due to having to emigrate from their country because of social calamity, war, cataclysm or other natural phenomena and who will temporarily remain in Cuba, while normal conditions are reestablished in their country of origin.</li> </ul>
Dominica	Yes	N/A
Grenada	No	N/A
Guyana	No	N/A
Haiti	Yes	N/A
St. Kitts & Nevis	Yes	N/A
Saint Lucia	No	N/A
Saint Vincent & the Grenadines	Yes	N/A
Suriname	Yes	<p>Suriname defines “refugees” and “non-refoulement” in its <i>WET van 16 januari 1992, houdende bepalingen betreffende de toelating en de uitzetting van vreemdelingen (Vreemdelingenwet 1991) (S.B. 1992 no. 3)</i> [Act of 16 January 1992, containing provisions regarding the admission and expulsion of aliens (Aliens Act 1991) (S.B. 1992 no. 3)]:</p> <ul style="list-style-type: none"> <li>• <i>Art. 16(1)</i>: Aliens coming from a country in which they have well-founded reasons to fear persecution on account of their religious or political persuasion, or their nationality, or their belonging to a certain race or a certain social group in their country of origin, may be admitted as refugees and granted a residence permit in conformity with article 10.</li> <li>• <i>Art. 16(2)</i>: Entry can only be refused for weighty considerations relating to the public interest if such refusal would force the alien to proceed forthwith to a country as referred to in subsection 1.</li> <li>• <i>Art. 17</i>: If an alien who is not a refugee in the sense of article 16 subsection 1, does not qualify for the issuance of a residence permit in application of the provisions of, or by virtue of this law, he may nonetheless be granted such permit provided he cannot in the light of the social and political situation in his country of origin and his personal circumstances reasonably be required to return to that country.</li> </ul>
Trinidad & Tobago	Yes	N/A

## APPENDIX C

### Using the Power and Control Wheel in IPV-based asylum claims

In 1984, with input from groups of women who had been battered, the Domestic Abuse Intervention Project (DAIP) in Minnesota, USA, developed a clear way to describe battering for victims, offenders, practitioners in the criminal justice system, and the public. They documented the most common abusive behaviors women described to them and depicted these behaviors on the Power and Control Wheel.

The wheel makes the pattern, intent, and impact of violence visible.

There are many ways to use the Power and Control Wheel in the context of refugee status determination.

For example, lawyers working with IPV survivors can ask them to point to any behaviors on the wheel they have experienced and explain how these behaviors were used against them. This can help illuminate physical and non-physical harm a client has suffered. It can also help the lawyer understand their client's support needs.

The wheel can be useful for asylum adjudicators, as well. They can use it with asylum applicants to help elicit testimony about past experiences of harm. The wheel can help explain why a victim might have returned to an abusive spouse, why she is nervous about reporting her abuse.

See <https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/> for information, Spanish version, and permissions to publish the Power and Control Wheel.

APPENDIX C  
The Power and Control Wheel of Domestic Violence



DOMESTIC ABUSE INTERVENTION PROGRAMS  
202 East Superior Street  
Duluth, Minnesota 55802  
218-722-2781  
[www.theduluthmodel.org](http://www.theduluthmodel.org)

## APPENDIX D

### Country of origin information for IPV-related asylum cases

It can be helpful for both advocates and adjudicators to have access to country of origin information relevant to IPV-related claims for refugee protection. Below are some types of resources that may shed light on key information, such as rates of IPV or relevant legal frameworks in a country of origin, or levels of impunity despite laws criminalizing the act.


For several of these resources or websites, it may help to search first by country, then for “domestic violence” or “intimate partner violence” or “gender-based violence.”

Sources and Examples	In Spanish?
<b>Materials from UN agencies</b>	
Committee on the Elimination of Discrimination Against Women for periodic country review reports, status of state parties’ signature of CEDAW, etc. Available at <a href="https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx">https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx</a>	Yes
UN Office of the High Commissioner for Human Rights website, with link to “human rights by country” for status of treaty ratifications, CEDAW periodic review reports, Special Rapporteur reports, etc. <a href="https://www.ohchr.org/EN/Countries/LACRegion/Pages/GTIndex.aspx">https://www.ohchr.org/EN/Countries/LACRegion/Pages/GTIndex.aspx</a>	Yes
UN Women digital library, search publications for “domestic violence” or “intimate partner violence” to discover recent country-specific reports. <a href="https://www.unwomen.org/en/digital-library/publications">https://www.unwomen.org/en/digital-library/publications</a>	Some
WHO fact sheet on violence against women (VAW), including global estimates of forms of VAW as well as reports on public health response at country level, available at <a href="https://www.who.int/news-room/fact-sheets/detail/violence-against-women">https://www.who.int/news-room/fact-sheets/detail/violence-against-women</a>	No
<b>Inter-American Commission on Human Rights</b>	
IACHR country-specific reports on women’s rights can be found at <a href="http://www.oas.org/en/iachr/women/reports/country.asp">http://www.oas.org/en/iachr/women/reports/country.asp</a> ; thematic reports can be found here: <a href="http://www.oas.org/en/iachr/women/reports/thematic.asp">http://www.oas.org/en/iachr/women/reports/thematic.asp</a>	Yes
<b>National human rights reports about other countries</b>	
Canadian Immigration and Refugee Board Country Reports, with specific thematic issues including “domestic violence.” Search at <a href="https://www.refworld.org/publisher_IRBC_COUNTRYREP_...0.html">https://www.refworld.org/publisher_IRBC_COUNTRYREP_...0.html</a>	No
United Kingdom Home Office – Country Policy and Information Notes, searchable by country and issue at <a href="https://www.gov.uk/government/collections/country-policy-and-information-notes">https://www.gov.uk/government/collections/country-policy-and-information-notes</a> (Note: countries from Latin America are not well-addressed, however there is ample information about several African countries that may be useful.)	No
United States Department of State Country Reports on Human Rights Practices, searchable by country at <a href="https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/">https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/</a>	No

Sources and Examples	In Spanish?
<b>Databases about national laws related to gender-based violence</b>	
UN Global Database on Violence Against Women includes country pages listing national legislation and policies, submissions to UN human rights bodies, reported rates of gender-based violence, etc: <a href="http://evaw-global-database.unwomen.org/en/countries">http://evaw-global-database.unwomen.org/en/countries</a>	Some
OECD database on violence against women indexes countries on various scales for measures including lifetime prevalence, existence of domestic laws on rape, domestic violence, sexual harassment: <a href="https://data.oecd.org/inequality/violence-against-women.htm">https://data.oecd.org/inequality/violence-against-women.htm</a>	No
<b>Civil society / NGOs</b>	
WOLA searchable database on human rights violations in Latin America, available at <a href="https://www.wola.org/?s=domestic+violence">https://www.wola.org/?s=domestic+violence</a>	Yes
Center for Gender and Refugee Studies' (CGRS) list of publications, many of which are country-specific: <a href="https://cgrs.uchastings.edu/publications">https://cgrs.uchastings.edu/publications</a>	No
Center for Gender and Refugee Studies' technical assistance request page, through which advocates may request specific country of origin information packets: <a href="https://cgrs.uchastings.edu/request-assistance/requesting-assistance-cgrs">https://cgrs.uchastings.edu/request-assistance/requesting-assistance-cgrs</a>	No
Human Rights Watch's country-specific publications can be searched for reports focused on "domestic violence" and "gender-based violence" here: <a href="https://www.hrw.org/publications?keyword=domestic+violence&amp;date%5Bvalue%5D%5Byear%5D=">https://www.hrw.org/publications?keyword=domestic+violence&amp;date%5Bvalue%5D%5Byear%5D=</a>	No
Women's Link Worldwide's reports on gender-based violence and women's rights in many countries are available here: <a href="https://www.womenslinkworldwide.org/en/news-and-publications/publications">https://www.womenslinkworldwide.org/en/news-and-publications/publications</a>	Yes
<b>Academic and scientific material</b>	
PubMed contains a massive collection of public health literature, including academic articles addressing types and prevalence rates of gender-based violence in different countries. One strategy is to search for " <b>intimate partner violence</b> " & <b>Guatemala</b> (for example; insert actual country of interest). Search at <a href="https://www.ncbi.nlm.nih.gov/pubmed/">https://www.ncbi.nlm.nih.gov/pubmed/</a>	No
The Demographic Health Survey (DHS) collects information about a wide range of health indicators in most countries of the world, including statistics about experience of domestic violence. See <a href="https://dhsprogram.com/data/">https://dhsprogram.com/data/</a> generally and <a href="https://dhsprogram.com/Where-We-Work/Country-List.cfm">https://dhsprogram.com/Where-We-Work/Country-List.cfm</a> for country-specific statistics and reports.	No
<b>Expert affidavits</b>	
The Center for Gender and Refugee Studies has launched an expert database through which advocates may request technical assistance and access to country conditions experts who may assist by developing a country- or case-specific affidavit for submission in a specific case. Contact CGRS at <a href="https://cgrs.uchastings.edu/request-assistance/requesting-assistance-cgrs">https://cgrs.uchastings.edu/request-assistance/requesting-assistance-cgrs</a> for more information.	Some
Refugee Legal Aid Information for Lawyers Representing Refugees Globally has a collection of resources aimed at development of country-specific expert affidavits. See <a href="http://www.refugeelegalaidinformation.org/country-origin-information-experts">http://www.refugeelegalaidinformation.org/country-origin-information-experts</a>	No



A collaboration between the Human Rights Center at the University of California, Berkeley,  
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