



The Gender Policy Report

Female Asylum Seekers' Options Continue to Shrink

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On June 25, 2020, the Supreme Court ruled in *Department of Homeland Security v. Thuraissigiam* that asylum seekers who fail to persuade immigration officials that they face a “credible fear” of persecution can be deported without access to federal review.

This ruling may particularly impact female asylum seekers due to a 2017 decision by the Trump administration to eliminate the reproductive rights section from the State Department’s annual Country Reports on Human Rights Practices. At several stages in the asylum process, applicants must prove their credibility. Asylum officers at the border and immigration judges either require or heavily weight corroboration with the State Department reports.

Without recourse to federal review, it becomes even more important that asylum seekers be able to establish their credibility from the outset. But how can women corroborate their claims with a report that deliberately erases them?

Reproductive Rights Are Human Rights

International law affirms that reproductive rights are an inalienable, integral, and indivisible part of universal human rights. But this was not always the case. Until the late twentieth century, issues such as sexual violence, maternal mortality, and access to reproductive health care were situated as private, nonstate acts outside of human rights protection. As Professor Catharine MacKinnon explained, they were understood as “not only unofficial but unconscious and unorganized and unsystematic and undirected and unplanned. They do not happen, it is thought, by state policy. They just happen.”

Starting around the 1980s, feminists began to fiercely fight back. How, they argued, could human rights be understood as universal when they deliberately excluded over half the population?

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Women’s abuses are not inevitable, natural, or independent of state action. Instead, the law sustains women’s oppression through actively regulating certain aspects of private life, such as social welfare, and strategically ignoring others, such as domestic enslavement. For example, states may refuse to provide adequate birth control, medical services, and supplies for pregnant women. Those states condone and perpetuate the high maternal mortality rates that follow.

At the 1993 United Nations World Conference on Human Rights in Vienna, activists exclaimed that “it is no longer enough that existing human rights mechanisms merely be extended to women: *women’s rights must be understood as human rights.*” This resulted in a landmark acknowledgement at the Vienna Conference stressing international commitment to protecting reproductive rights. Since then, many other international bodies have reaffirmed and built upon this commitment.

Erasing Reproductive Rights in the State Department Reports

Before 2017, the State Department’s annual human rights reports detailed “whether couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and have access to the information and means to do so, free from discrimination, coercion, or violence.” Barriers to accessing these reproductive capabilities were detailed within the reproductive rights section.

For example, the 2016 Cambodian report explained that income and geographic barriers limited women’s access to family planning services. The 2016 Rwanda report described that 25 percent of women in prison were imprisoned for having an abortion, adding that “women were often arrested after seeking emergency health care for the management of complications arising from abortion.” In addition, each country’s reproductive rights section listed its maternal mortality rate and contraceptive prevalence rate.

The Trump Administration replaced this critical section with a section titled “Coercion in Population Control,” which allegedly reports on whether there were “reports of coerced abortion, involuntary sterilization, or other coercive population control methods.” Beyond the significant change in focus, the new data appears to be unreliable; despite documented instances of coerced abortion and involuntary sterilization around the world, the 2018 reports erroneously claimed that there were “no reports of coerced abortion, involuntary sterilization, or other coercive population control methods” in about 95% of countries. Studies have also found that reporting on general women’s rights and issues decreased significantly. In Afghanistan, for example, reporting on women’s issues decreased by 56% during the Obama to Trump transition.

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Removing this critical data erases the context necessary to understand women’s lives. This undermines the remainder of the State Department’s human rights reporting. For example, consider the 2018 report on Nigeria, which states that “no laws limit participation of women or members of minorities in the political process.” While this may be technically true, 58,000 Nigerian women die from causes related to pregnancy and childbirth each year, and Nigeria’s birth rate stands at 5.5 children per woman.

Can women enjoy truly equal participation in the political process and public life if they do not have control over when they fall pregnant and what happens when they do? Without reporting on women’s ability to control their reproductive lives, the State Department articulates arbitrary “rights,” rather than women’s actualized capabilities on the ground.

What This Means for Female Asylum Seekers

In order to gain asylum, applicants must prove their credibility—often through corroborative evidence. At the border, this begins with a “credible fear interview” conducted by an asylum officer. Previously, asylum officers were instructed that they *may* consult the State Department human rights reports. The Trump administration instead *requires* them to consult the reports.

If an applicant is deemed credible initially, her case may be reviewed by an immigration judge, who must also assess her credibility. Immigration judges overwhelmingly prefer claims that correspond with the State Department reports, rather than, for example, a newspaper article or Amnesty International report. Judges repeatedly explain that the State Department reports are the best source of information on whether human rights violations are likely to have occurred. Cases such as *Justo v. Sessions* have been largely decided on the basis of corroboration with the State Department reports.

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The removal of reproductive rights information from the State Department reports makes it harder for female asylum seekers to make their case for protection. They may rely on oral testimony or alternative human rights reports, but those sources are not as useful as corroboration with a State Department report. Furthermore, most asylum seekers are not represented by an attorney. It is unlikely that unrepresented female asylum seekers will have the awareness and means to supply alternative country condition evidence in lieu of the State Department reports. Now, the *Thuraissigiam* decision further limits their options by removing an avenue of appeal.

These moves coincide with broader efforts by the Trump Administration to deny women at the border for the human rights violations committed against them, such as Attorney General Barr's directives to no longer accept claims based on domestic and sexual violence. When questioned about the changes, Secretary of State Mike Pompeo has assured reporters that “this Administration has demonstrated enormous commitment to the health of every woman.”

Policy speaks otherwise.

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