

SELF-HELP TOOL 2: CLAIMING THE RIGHT TO STAY AS A VICTIM OF RAPE, OTHER SEXUAL VIOLENCE AND/OR DOMESTIC VIOLENCE

Victims of rape or domestic violence can make a claim to stay in the UK on a number of grounds. Black Women's Rape Action Project (BWRAP) and Women Against Rape (WAR) have helped women win on the grounds listed below.

YOU CAN SEEK ASYLUM

Using the **Refugee Convention** you need to show that you have a well-founded fear of persecution if you are sent back to your home country, and that you are unable to seek protection from the police and others in authority. Persecution is "serious harm" directed against you because of your race, religion, nationality, political opinion or membership of a Particular Social Group (PSG). As being a woman is not one of these categories you may instead need to show you were targeted as a member of a PSG.

What is a **Particular Social Group**? You need to show that you're a member of a group in the community who are targeted because you share a common characteristic or vulnerability.

EXAMPLE: Two women won their case because they showed that as victims of domestic violence in Pakistan, they were members of a "social group" facing persecution because they could not get any help or protection from the authorities there. (Shah & Islam (A.P.) v. Secretary of State 1999).

You can get legal aid to make an asylum claim but your lawyer has to agree that your appeal has a 50%+ chance of success to represent you at the tribunal ("merits test").

You don't have to pay to apply.

YOU CAN APPLY FOR HUMANITARIAN PROTECTION

The European Convention on Human Rights (ECHR) Article 3 is the right not to suffer torture and cruel or degrading treatment.

EXAMPLE: A rape survivor won her case because she showed that she would have no means of supporting herself back in Uganda, except through prostitution. (AA (Uganda) v. Secretary of State, 2008). This contravened her rights under Article 3.

You can get legal aid to make a Humanitarian Protection/Article 3 application but your lawyer has to agree that your appeal has a 50%+ chance of success to represent you at the tribunal ("merits test").

You don't have to pay to apply.

YOU CAN APPLY ON OTHER HUMAN RIGHTS GROUNDS

ECHR Article 8: Right to a family life

In these cases your right to family life is balanced against the government's "right" to impose immigration controls. You have to show that being sent back to your country of

origin would so severely undermine your right to family life that it outweighs the government's "right". Criminal convictions can be used to strengthen the government's "right" against you.

You need to contrast the family life you've established in the UK against what little, if any, family you have in your country of origin. It's also important to show if there are circumstances that make you particularly dependent on your family in the UK.

Close family members with status, e.g. your children, also have the right to be with you. If other members of your family are threatened with being sent back too, you need to document why you all can't return to your country of origin and what "unjustifiably harsh consequences" you would all suffer.

EXAMPLE: An older woman from Sierra Leone had been raped in the civil war and then fled. She had no family members that she knew of left in the country. The judge at her appeal accepted WAR's evidence that she was particularly dependent on her family in the UK because of the rape she had suffered and agreed that she could stay here because her needs outweighed the government's "right" to remove her.

ECHR Article 8: Right to a private life

Less well known than the right to family life, the right to private life can also very important in rape/domestic violence cases. The right to private life includes your ability to live a "full and fulfilling life", your sense of self-worth, dignity and general enthusiasm for life. You need to document how you depend on support in the UK to maintain your private life. This can include informal and/or professional help (e.g. counselling for rape survivors from a particular person or care from a particular relative). Psychiatric evidence about the impact that being denied this support would have on you can be crucial, along with statements from others about your life here, as is country evidence about how this support isn't available in your country of origin.

EXAMPLE: After attending the self-help meetings and getting other support from BWRAP, a woman from Cameroon felt able to speak about witnessing severe domestic violence over many years against her mother and suffering attempted rape herself. In 2013 she won her appeal because the Judge accepted that her mental health depended on BWRAP's ongoing support.

You can't get legal aid unless your need for representation is "exceptional" (e.g. you are too traumatised and/or your case is too legally complex or is about an important point of law) **and is judged to have a 50%+ chance of success.**

You have to pay fees unless you get a fee waiver.

DELAY IN REPORTING RAPE

If you haven't spoken about your experience of rape/domestic violence earlier, because of trauma or embarrassment or fear of stigma and discrimination, there is a useful legal precedent which you and/or your lawyer can use to explain the delay.

EXAMPLE: In 1998 the court overturned a Home Office refusal against a victim of multiple gang rapes by soldiers in Uganda, which used her delay in reporting, citing evidence from WAR and others that she had been "*unable not unwilling*" because of trauma. (R v. Secretary of State, Ex parte Ejon, 1998).

See also Legal Action for Women's [Self-help Guide for Asylum Seekers and their Supporters](#) which lists what can count as new information for a fresh claim such as: "*Torture or persecution which you could not speak about before*" including "*experiences like rape and domestic violence . . .*" (Section 4, p28).