

Ashcroft Weighs Granting of Political Asylum to Abused Women

By RACHEL L. SWARNS

WASHINGTON, March 10 — The first hint of change came without much fanfare or publicity last month as the Department of Homeland Security quietly proposed sweeping changes in the handling of political asylum cases. But as word trickled across the country, dozens of battered women seeking refuge in the United States felt the first stirrings of hope.

In their home countries, the women say, the authorities repeatedly ignored them when they tried to report and escape their abusive partners. The Department of Homeland Security, which took on the function of the former Immigration and Naturalization Service, is proposing rules that would allow for political asylum in such extreme cases, opening the door to women fleeing countries that condone severe domestic abuse, genital mutilation and other forms of acute violence against women.

If approved, the rules would for the first time recognize severe cases of domestic violence as equivalent in certain instances to more familiar asylum cases involving political and religious persecution.

Department officials have passed along their recommendations in a 43-page legal brief to Attorney General John Ashcroft, who will make the final decision. The officials have urged Mr. Ashcroft to allow the department to put in place rules governing such cases and have called for Rodi Alvarado Peña of Guatemala, whose case gave rise to the recommendations, to be granted asylum.



Richard Boswell

Rodi Alvarado Peña, above, of Guatemala, and Zaide Cinto, right, of Mexico, are seeking political asylum. "I don't know who makes these decisions," Mrs. Cinto said, "but I think they must have hearts."



Ruby Washington/The New York Times

Justice Department officials say Mr. Ashcroft is still considering the issue, which has been roiling the immigration courts since a small but growing number of such cases began appearing in the 1990's. Some Justice Department officials indicated that Mr. Ashcroft had initially opposed such rules, but a former senior administration official familiar with the issue said he believed that Mr. Ashcroft would approve the proposal, given the considerable pressure from conservative groups and the Homeland Security Department.

More than 36 Democrats in Congress, as well as leaders of conservative-minded groups like Concerned Women for America, and World Relief, an arm of the National Association of Evangelicals, have urged government officials to rule in favor of Mrs. Alvarado and women like her.

Many battered women are anxiously awaiting the government's final determination. In California, Mrs. Alvarado, who said she fled an abusive husband who had dislocated her jawbone and used her head to break windows and mirrors, said her eyes filled with tears when she learned that domestic security officials had recommended granting asylum to women like her. In New York, Zaide Cinto of Mexico, her vision blurred and her hearing dulled after years of beatings by her husband, said she shouted, "Yes!"

"I don't know who makes these decisions, but I think they must have hearts," said Mrs. Cinto, who is living in a shelter for the homeless as she awaits a decision on her petition for political asylum. "Perhaps they can understand our suffering."

"Things are changing," she said hopefully, "not only for me, but for many people."

The shift in policy would bring the United States in line with countries like Britain and Australia, which have been granting asylum in such cases for several years. Officials say the rules would also give much-needed guidance to immigration judges who have been issuing contradictory opinions in dozens of cases.

In 1996, the Board of Immigration Appeals granted asylum to Fauziya Kassindja, who said her clitoris would be cut off if she were forced to return to Togo. The board, the highest administrative court for asylum

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cases, agreed that female circumcision was equivalent to more widely recognized forms of persecution.

But three years later, the board denied asylum to Mrs. Alvarado. She said she had gone to the police in Guatemala on five occasions, reporting that her husband routinely raped and sodomized her, nearly pushed out one of her eyes and beat her into unconsciousness. The police declined to investigate, saying it was a domestic matter.

The immigration board found Mrs. Alvarado's testimony credible and agreed that the abuse would most likely continue if she returned to Guatemala. But it concluded that she failed to meet the statutory requirement for asylum.

Government lawyers criticized the board's analysis in the Alvarado case, and Janet Reno, who was attorney general, vacated the decision in January 2001, ordering the board to decide the case after the government completed regulations allowing victims of domestic violence to be granted asylum in limited cases.

The rules were never finished. Bo Cooper, who served as general counsel for the Immigration and Naturalization Service until it was subsumed by the Department of Homeland Security last year, called the new recommendations "very important" and said they would provide a critical road map for judges and government lawyers.

"Under established principles of

asylum law, these kinds of cases should be granted," Mr. Cooper said. "What they're trying to do is to help bring some clarity to what has for years been a very unsettled doctrine in U.S. immigration law."

It is unclear how Mr. Ashcroft, who decided last year to take up the case, will rule on the issue. But a former senior administration official who has been involved in recent discussions of the issue with lawyers

Redefining persecution to include cultures of violence against women.

and lobbying groups said he believed Mr. Ashcroft would rule favorably.

"With conservative women's groups weighing in on this and now homeland security, the politics of it would be awful for the administration, whether it's good policy or not," the former administration official said. "That's going to mean enormous pressure put on Ashcroft to stay with the proposed regulation. I think he will ultimately go with it."

The need for clarity on the issue has become increasingly evident as a small but steady stream of women

press their claims here. Some women, like Mrs. Alvarado, left their abusive husbands in their home countries and entered the United States illegally. Other women followed their husbands to the United States, entering the country illegally or on visas. They petitioned for asylum when the violence they had endured at home continued on American soil.

Immigration officials do not know how many of the roughly 250,000 asylum cases awaiting disposition have been filed by such women, but they believe the numbers are small. Karen Musalo, director of the Center for Gender and Refugee Studies at the University of California Hastings College of the Law, represents Mrs. Alvarado and has tracked about 500 pending gender-asylum cases.

But critics of the Department of Homeland Security's proposal fear that the new rules will encourage a flood of frivolous asylum claims from poor women around the world.

"How can we provide permanent residency to everyone who is fleeing an unfortunate domestic or social situation where the government is alleged to be nonresponsive?" asked Dan Stein of the Federation for American Immigration Reform, which seeks to limit immigration. "This is stretching the bounds of common sense."

In its brief, the Department of Homeland Security counters that the policy will affect only a "limited number of victims of domestic vio-

lence" who can prove that they meet the strict criteria for asylum seekers. Asylum seekers must demonstrate a well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group. For years, advocates for immigrants have argued that women in certain circumstances can constitute a particular social group.

Joe D. Whitley, general counsel for the Homeland Security Department, explained in the brief that victims of domestic violence seeking asylum should show that the abuse was "supported by the legal system or social norms in the country in question."

Mrs. Cinto, who left Mexico in 2002, said the police there repeatedly ignored the abuse she suffered. She moved to the United States, and when her husband continued to beat her here, friends at a local church directed her to a domestic shelter in New York. Sanctuary for Families, a nonprofit group that supports victims of domestic violence, helped her file a petition for asylum last year.

Across the country, Mrs. Alvarado has been waiting almost a decade for her case to be decided. She has been separated during that time from her parents and two children, who still live in Guatemala. "It hasn't been easy," she said. "But I know that if I win my case, other women like myself, are going to be helped."