



Toward Full Recognition of Domestic Violence as a Basis for Asylum

Guest Post 

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By [Karen Musalo](#), *clinical professor of law and director of the Center for Gender and Refugee Studies at the University of California, Hastings College of Law.*

On August 4, 2010, in a closely watched case, an immigration judge [granted asylum](#) to Ms. L.R., a [woman from Mexico](#). The grant in Ms. L.R.'s case came on the heels of a grant of asylum in another high-profile case, that of the Guatemalan asylum seeker, [Rody Alvarado](#). What both cases had in common is that the women asylum seekers had fled brutal violence and abuse at the hands of their male partners in a situation where neither the police nor the courts responded to repeated calls for protection. Taken together the cases send a message loud and clear that domestic violence can be the basis for a successful claim to asylum. They also stand for the broader principle that women who suffer a range of violations of their fundamental human rights - from female genital cutting (FGC), to honor killings, to forced marriage or sexual slavery - are also entitled to protection as refugees.

Although the protection of women whose human rights are violated should not be a controversial proposition, it has been - and continues to be - and women have had to struggle for the recognition that "women's rights are human rights." Their activism over the years has resulted in the promulgation of a number of international human rights instruments, including the [Declaration on the Elimination of Violence against Women](#) that specifically address the human rights of women.

In the United States, these advances began to bear fruit in the refugee protection area with the 1996 [grant of asylum](#) to [Fauziya Kassindja](#), a woman who fled female genital cutting [FGC]. The decision in Fauziya Kassindja's case (known as Matter of Kasinga) was issued by the Board of Immigration Appeals (BIA), the highest immigration tribunal in the U.S., and was the first precedent decision in U.S. law granting asylum to a woman who fled a gender-based form of persecution. Women's rights and refugee rights advocates celebrated the grant in Ms. Kassindja's case, seeing it as the opening of the door to protection for women fleeing gender-based violations.

However, the celebration was short-lived. Three years later the BIA denied asylum to Rody Alvarado, who [sought asylum](#) from more than a decade from what can only be characterized as torture at the hands of her husband, an ex-soldier in the Guatemalan military. Over the ten years of their marriage,

her husband pummeled her with his fists, broke windows and mirrors with her head, woke her in the middle of the night with a knife to her throat, and threw machetes across the room at her. The police never answered her desperate calls for help, and a judge told her he wouldn't get involved in a "private" matter.

The denial of asylum in Ms. Alvarado's case was the opening shot in a [14-year-long battle](#) to vindicate the principle that women's rights are human rights, and to hold the courts to the precedent exemplified by the grant of asylum in Matter of Kasinga. Ms. Alvarado was finally granted asylum in December 2009. To understand how this came about, it's necessary to return to where we began - the L.R. case, which the Obama Administration chose to be the vehicle by which it would articulate its position on the issue of asylum in cases such as these. Although one can only speculate, it is a good assumption that the Administration chose the L.R. case because its facts were not only compelling, but also representative of cases involving gender-based violence.

When Ms. L.R. was a 19-year-old student at a teacher training school in Mexico, the school's sports coach - who was 33 years old at the time - raped her at gunpoint. For the next two decades he kept her in virtual captivity, using physical force, beatings and threats of death to her and her family members, to prevent her from leaving him. On occasions she tried to escape him, and his retaliation was swift and brutal - in one instance he locked her in a room and set a fire, trying to burn her alive. Ms. L.R.'s pleas to the police to assist not only went unanswered, but they put her at greater risk because the police told her common-law husband that she had complained, which resulted in even more serious beatings. The response of the judiciary was - for the most part - equally atrocious. When her common law husband prevented L.R. from seeing their three children (all of whom were the result of being raped by him) and she sought assistance from a judge, he told her he would help only if she had sex with him, and when she refused, he told her she was a bad mother, because a good mother would do anything for her children.

Ms. L.R. had been denied asylum at the first two tiers of decision-making (asylum office and immigration court). During the Bush Administration, the Department of Homeland Security (DHS) had filed a brief to the BIA defending the denial of asylum to Ms. L.R. Once the Obama Administration came in, the DHS position changed, and they filed a [brief](#) in April 2009 stating that women such as Ms. L.R., who have suffered domestic violence, [could qualify for asylum](#). The brief laid out the elements for a successful claim, stating that a woman would have to show that in her country: 1) the society and legal norms tolerate and accept violence against women; 2) the home government is unable or unwilling to protect; and 3) there is no place within the home country that the woman could move to in order to escape her persecutor.

Both Rody Alvarado and Ms. L.R. submitted briefs and extensive evidence demonstrating that the conditions, respectively, in Guatemala and Mexico met these requirements. The DHS agreed, and the immigration judges handling the cases granted asylum to Rody Alvarado in December 2009, and to Ms. L.R. on August 4.

The victories in these cases are significant - for the two women who now have the protection they so desperately sought - as well as for the message they send. However, neither of these grants of asylum are legally binding on other adjudicators because decisions by immigration judges do not have precedential value. Therefore [advocates](#) on the issue continue to [argue for clear national guidance](#) - in the form of regulations or legislation, to prevent retrenching or backtracking on this issue.

Although it might seem like an easy next step to translate the progress exemplified by the grants of asylum to Ms. Alvarado and Ms. L.R., into regulations or legislation, continued hostility to the protection of women refugees continues from some quarters. For example, the grant to Rody Alvarado prompted the Center for Immigration Studies, which is generally perceived as being restrictionist in its position on immigration policies, to issue a harsh - and for the most part, distorted - [critique](#) of the policy of granting protection in cases such as these.

It would require a longer, and much more technical article than this to respond one by one to the distortions and inaccuracies in the CIS piece. However, in concluding, it is worth noting that the policy of granting asylum in gender-based claims - including claims of domestic violence - is nothing novel or revolutionary. To the contrary, it is well-accepted under international norms, as well as pursuant to the domestic law of many refugee-receiving countries. The United Nations High Commissioner for Refugees (UNHCR) has made recommendations for such acceptance beginning in the 1980s, and the high courts of the United Kingdom, Australia, and New Zealand - to name a few - have landmark decisions recognizing the validity of such claims. Many other [countries](#) have addressed the issue of protection in these cases through formal guidelines for their adjudicators, or through legislation or regulations. In that light, the move towards acceptance in U.S. law - although welcome - is a bit late in coming for a country that likes to see itself as a leader in championing the human rights of women.

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