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International Women's Day 2007

Recognizing Gendered Violence as a Violation of Human Rights

By Karen Musalo

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Today on International Women's Day, we recognize the courageous women around the world who have successfully struggled for the recognition that "women's rights are human rights." They fought against the long-accepted principle that human rights involved acts committed against citizens by their governments in the so-called "public sphere," and that the violation of women's rights in the "private sphere" of their homes and communities did not constitute a violation of internationally-protected human rights. And they fought against "cultural relativism," the idea that universal human rights norms must give way to harmful cultural practices.

As a result of these women's remarkable efforts, many international human rights documents specifically address their concerns. The U.N. General Assembly adopted the **Declaration on the Elimination of Violence Against Women** in 1993, which recognizes gender-based violence as a human rights violation—whether it's committed by the government or by private actors—and asserts that it cannot be justified by "custom, tradition, or religious consideration." The 1995 **Beijing Declaration and Platform for Action** reiterates this position even more forcefully, providing that "Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated."

Yet the United States has not matched this progress with protections for refugees. Every year the United States denies protection to women who are the victims of serious human rights violations. For instance, Rodi Alvarado, a Guatemalan woman who fled ten years of brutal domestic violence in a situation where neither the police nor the courts would take any action to protect her, has been trying to get asylum in the United States for over a decade. Her claim has been considered by the Board of Immigration Appeals, the highest immigration court in the country, and two successive attorneys general—Janet Reno and John Ashcroft—yet it still has not been resolved.

The question of whether women who suffer gendered forms of violence such as domestic violence, female genital cutting, trafficking for sexual exploitation, and "honor" killings should qualify for protection as refugees is still a matter of debate in this country. The United States became a world leader on gender asylum in 1995 when it developed **guidelines** for refugee adjudicators at the request of the U.N. High Commissioner for Refugees. The following year the BIA issued the landmark decision **Matter of Kasinga** (PDF), which granted protection to Fauziya Kassindja, a young woman from Togo who escaped FGC and a polygamous marriage.

Matter of Kasinga was the very first time a U.S. court clearly ruled that women who suffer fundamental violations of their human rights could be recognized as refugees. The decision reverberated around the world, influencing judges in many other countries and even causing the male leaders of Kassindja's community in Togo to question whether the practice of FGC should be reconsidered. It also had a profound influence within the United States, as the court's ruling and reasoning appeared to open the door to the protection of women fleeing other types of "gendered" harms.

Rodi Alvarado's claim for protection came before an immigration judge in San Francisco in the wake of the *Kasinga* decision. Based on the positive decision in Kassindja's case, the judge granted Alvarado asylum. But the Immigration and Naturalization Service appealed, and in 1999 a majority of the BIA—the same body that had granted Kassindja asylum three years earlier—reversed the immigration judge's decision in Alvarado's case.

The reversal of protection to Alvarado set off a groundswell of grassroots advocacy. Activists in the United States and around the world denounced the decision, which could send Alvarado back to a husband who had bragged that he could kill her with impunity—and had come close to doing so on many occasions. Attorney General Janet Reno responded to the sustained activism by taking the unusual step of exercising her authority to "vacate" the denial of asylum to Rodi Alvarado in 2001. She sent the case back to the BIA, ordering the judges to reconsider it when regulations that her Justice Department had proposed in 2000 were issued as final. Yet more than seven years have passed, and the administration still has not issued final regulations or made a decision in Alvarado's case. This lack of action has left Alvarado and many other women seeking protection in limbo.

It is time for the United States to make a clear commitment to protect the human rights of women through its refugee policies. Women who suffer gendered persecution are entitled to refugee protection under broadly accepted international human rights principles. The Office of the UNHCR has clearly said so, as have the courts of many countries, including Canada, the **United Kingdom**, Germany, **Australia**, and **New Zealand**.

There is simply no excuse for the failure of the United States to embrace the fundamental principle that women who suffer severe human rights violations—and whose governments fail to protect them—should be given protection as refugees. Today, on

International Women's Day, we must send a message to the U.S. government that we will settle for nothing less.

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