

Sex persecution: U.S. no haven for female victims

Women seldom get asylum for rape, genital mutilation

By Susan Sachs
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No one denies that their stories are horrific: beatings, rape, genital mutilation or the threat of it. But foreign women seeking asylum on these grounds have received a mixed welcome in the United States.

Three years ago, the door opened a bit for some women who claimed that their sex rendered them victims of persecution. In a landmark decision, the Board of Immigration Appeals granted asylum to Fauziya Kassindja, who said her clitoris would be cut off if she were forced to return home to Togo.

The board, the highest administrative court for asylum cases, agreed that female genital mutilation was equivalent to the more widely recognized rights violations of political and religious persecution. Kassindja's case also met other important criteria — a well-founded fear of persecution because she belonged to a social group, in her case women of her tribe who opposed genital mutilation.

But the Kassindja ruling has not — as many women's groups and human rights lawyers hoped — blazed an unambiguous trail for others seeking a safe haven from persecution based on sex. In late June, the board denied asylum to Rodi Alvarado Pena, a Guatemalan woman who had escaped a brutal husband and apathetic authorities.

Ten of the 15 members of the appeals board said Alvarado, who was working as a maid in San Francisco, had not proved she was persecuted because of her social class or opinion. Her husband raped and beat her regardless of her beliefs, the judges ruled, and while Alvarado may merit protection on humanitarian grounds, asylum is not meant to be an all-encompassing remedy for people fleeing oppressive societies.

A victim of torture?

Because of the attention to these cases, rights advocates are challenging the conventional wisdom. Alvarado's supporters have petitioned Attorney General Janet Reno and the 9th U.S. Circuit Court of Appeals in San Francisco to review the decision by the Board of Immigration Appeals. They also may try a novel tack: portraying

Alvarado as a victim of torture who should not be sent back to her torturer.

"This decision has really garnered the attention of people across the country on different levels — from Congress to the immigration advocates, to women's groups and people in the administration," said Karen Musalo, a professor at Hastings College of the Law in San Francisco. "But for the time being, it is a binding precedent that has devastating consequences."

Applicants for asylum must first prove they cannot return home because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." The law was a product of the Cold War, written with dissidents from totalitarian regimes in mind.

"The assumption was that there is a distinction between political and economic suffering and between what was political and personal," said Gary Rubin, the director of public policy of the New York Association for New Americans. "Now the line between personal and political is being renegotiated, and things that people thought were personal tended to have political meaning."

The next 'social group'

In the recent past, the meaning of "social group" has been extended to include those persecuted on the basis of sexual orientation, ethnicity and even, in the case of journalists, profession. Gender as social group seemed the natural next frontier.

In 1985, the executive committee of the U.N. High Commissioner for Refugees said women facing abuse because they transgress the customs of their society are a special "social group." It took another eight years before the United Nations recognized violence against women as a human rights violation. The same year, spurred in part by the reports of a systematic pattern of rape in Bosnia, Canada adopted pioneering guidelines granting refugee status to women facing persecution on account of their gender.

Two years later, the U.S. Immigration and Naturalization Service broadened its guidelines to give greater weight to women seeking asylum who feared genital mutilation and sexual violence. Female genital mutilation, called female circumcision by its advocates, was outlawed in this country in 1996, whether it is part of a woman's culture or not.

But inconsistent rulings in re-

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U.S. makes asylum for women difficult

cent cases in the United States and Canada show that each woman seeking asylum on grounds of gender-based persecution must fight the battle anew. Last year, the board denied asylum to Adelaide Abankwah, a Ghanaian who feared she would be forcibly circumcised if she returned home. The board said she had not proved that her fear was reasonable.

Fleeing without paperwork

Abankwah was released on July 20, after two years in a New York City detention center, when a federal appeals court ruled she could not be expected to provide the kind of proof the board had demanded. "A genuine refugee does not flee her native country armed with affidavits, expert witnesses and extensive documentation," the court said, sending the case back to the immigration board.

A different issue, central to Alvarado's case, is likely to affect asylum seekers fleeing countries where violence against women is consid-

ered within the rights of husbands and fathers. Alvarado's lawyers argued that she belonged to a persecuted social group they defined as "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination."

The judges said the group defined was not cohesive enough to qualify for asylum. They also said Alvarado had not shown that her husband beat her because she was, or he believed her to be, opposed to the patriarchal culture.

Only option is flight

Women's advocates say the only act of opposition that women in such cultures can take is to flee their country. And a society that fails to punish batterers or ignores women's basic human rights is enforcing a political policy, they say.

That is the disputed new frontier for women seeking asylum. As an immigration judge in Virginia ruled in 1994 in the case of a Jordanian woman who ran away from an abusive husband, a woman can challenge the system simply by seeking a new life in the United States. That judge, Paul Nejelski, wrote, "The respondent has espoused a belief that she is an individual."