

San Francisco Chronicle

NORTHERN CALIFORNIA'S LARGEST NEWSPAPER

WEDNESDAY, JUNE 16, 2004

415-777-1111 46 CENTS P

U.S. court rules rape is grounds for asylum

Guatemalan granted a new hearing before immigration board

By Tyche Hendricks
CHRONICLE STAFF WRITER

In a ruling that could affect thousands of victims of wartime sexual assault around the globe, a federal court in San Francisco has found that a Guatemalan woman who was gang-raped by soldiers who believed that she and her family supported anti-government guerrillas is entitled to pursue asylum in the United States.

The decision Monday by the Ninth U.S. Circuit Court of Appeals grants Reina Izabel Garcia-Martinez, whose case was rejected by the federal Board of Immigration Appeals, another chance to win asylum.

Noting that Garcia-Martinez, now 30, had "survived atrocities that most of us experience only in our worst nightmares," the three-judge panel found that the immigration judge who rejected the woman's initial application for asylum on the ground that she had failed to demonstrate past persecution had overlooked evidence of persecution that was "stamped on every page" of her record.



Appellate Judge Johnnie B. Rawlinson

"The Ninth Circuit, in a precedent-setting decision, said . . . rape is not just about sex, it's about power and control," said Philip Hwang, a staff attorney for the Lawyers' Committee for Civil Rights, who is familiar with the case. "The opinion was able to see this rape as part of the larger social fabric of the country. In Guatemala, in terms of the context . . . it really was about the military punishing these villagers."

Stephen Knight, coordinating attorney at the Center for Gender and Refugee Studies at Hastings College of the Law in San Francisco, agreed.

"This is a dramatic victory," he said. "It sends a very strong message that these antiquated perspectives on gender violence that are rife throughout the (immigration) agency are unacceptable and need to be rejected."

Through her attorney, Garcia-Martinez, who now lives in San Leandro, declined to comment on the case.

In her original asylum petition, Garcia-Martinez testified to Immigration Judge Mimi S. Yam that in the early 1980s leftist guerrillas had come to her small rural village of San Andres Villa Seca and forcibly conscripted young men into their ranks. In 1983, they kidnapped her brother.

A few years later, Garcia-Martinez said, the Guatemalan military began coming to the village, but rather than protecting villagers, the soldiers began beating people and raping women on a regular basis, based on the mistaken belief that the villagers were aiding the guerrillas.

In 1993, when Garcia-Martinez was 19, soldiers forced their way into her house and beat her parents, and then three soldiers took turns beating and raping Garcia-Martinez, she said in her testimony.

Afraid the soldiers would return for her, Garcia-Martinez's parents sent her to an aunt's house. The aunt, in turn, recommended that

she flee the country. When Garcia-Martinez had recovered from her injuries, she made her way north through Mexico, eventually reaching San Francisco.

In 2001, Yam, the immigration judge, found Garcia-Martinez's testimony to be credible but ruled that she "has failed to show . . . that her attack had anything to do with . . . her political opinion, her race, religion, her political affiliation or membership in a particular social group," the five grounds for persecution that can form the basis for an asylum claim. When Garcia-Martinez appealed, the Board of Immigration Appeals upheld the judge's decision.

In a strongly worded opinion published Monday, federal appellate Judge Johnnie B. Rawlinson said Yam's "determination that Garcia's rape was a random criminal act, unconnected to the government, is not supported by substantial evidence."

Rawlinson cited a United Nations-sponsored truth commission's findings that rape was used systematically by the Guatemalan military during the country's decades-long civil war that ended in 1996 and claimed 200,000 lives.

Commenting Tuesday on the court's decision, Angelina Snodgrass-Godoy, a University of Washington professor who is an expert on human rights in Guatemala, concurred that rape was routinely used to intimidate not only individual women but whole villages.

"It's important to understand that these acts were not the excesses of individual soldiers — 'bad apples,' so to speak," said Snodgrass-Godoy, "but a systematic tactic that played a strategic part in the state's counterinsurgency war . . . in which real or suspected guerrilla sympathies were often the equivalent of a death sentence for not only individuals, but entire communities."

Jayne Fleming, an attorney with the San Francisco law firm of Reed

Smith Crosby Heafey, who argued the appeal for the Center for Gender and Refugee Studies, said the case was important for women "struggling to have their rights identified in the same way as men."

"If a man said, 'I was beaten by military soldiers,' we would assume it was persecution for some reason, say political or ethnic," said Fleming. "To close the door to protection for these women simply because it was rape is unfair to women."

The decision is part of a growing legal understanding of rape as a crime of violence and even an instrument of torture, not merely a sexual act. In 2001, a United Nations war crimes tribunal found three Bosnian Serb soldiers guilty of raping and torturing Muslim women and girls, and defined rape for the first time as a crime against humanity.

Knight said although rape had been considered a basis for asylum cases since 1996, immigration judges too often dismissed it as men satisfying their carnal desires.

"It is part of an evolving recognition that these women's cases are not different," he said, "but that women fleeing brutal gang rape in war, domestic violence and sexual trafficking are refugees and that the laws of asylum need to be applied to them in a fair and honest way."

Garcia-Martinez is elated by the decision, Fleming said, but she is still anxious as she awaits a new asylum hearing before the immigration appeals board, a process that could take months.

The case is *Garcia-Martinez v. Ashcroft*, 02-74068.

E-mail Tyche Hendricks at thendricks@sfnchronicle.com