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A safe haven for women

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A Nigerian woman is sold into a polygamous marriage to pay her father's debts, and she faces being subjected to female genital mutilation before the wedding. A Roma Romanian woman is gang-raped at knife point, and the police decline to help. A Lebanese Muslim woman faces death at the hands of her own relatives because she is in love with a Christian man. A woman from El Salvador is sexually assaulted by police officers for her involvement in a labor dispute.

When it comes to recognizing these women as legitimate refugees, Canada blazed the trail. Recent decades have seen dramatic progress in recognizing women's rights as international human rights, but refugee law has struggled to keep pace. Judges often failed to understand how to analyze asylum cases involving gender persecution, which may take place at the hands of private actors rather than state officials, and be justified with reference to culture or religion.

Refugees must demonstrate that the persecution they face is linked to one of the five grounds for asylum: race, religion, nationality, membership in a particular social group, or political opinion. "Gender" is not among them. In 1985, the United Nations High Commissioner for Refugees (UNHCR) recommended that "women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group'." UNHCR urged governments to develop national guidelines on the issue.

In 1993, Canada was the first to respond. The United States and Australia followed suit, issuing gender guidelines in the mid-1990s. Positive decisions in such cases are becoming the rule, rather than the exception, with decisions in Canada building on the guidelines to recognize as refugees women in cases such as those described above. The British House of Lords and Australia's High Court have both recently approved asylum claims from women fleeing domestic violence, and today the list of countries with gender guidelines includes the Netherlands, New Zealand, Sweden, and South Africa.

In the United States, the influence of the Canadian guidelines was immediate. In 1995, Fauziya Kassindja, a teenager from Togo, was detained by the Immigration and Naturalization Service (INS). She insisted that she not be sent back, saying she would be subjected to female genital mutilation. INS scoffed at her claim, and an immigration judge ordered her deported.

Yet also in 1995, the U.S. had published its own gender guidelines. Directed to Asylum Officers - rather than judges - and less forthright on central issues than their Canadian model, these guidelines nonetheless put the U.S. on record as supporting asylum for harms such as rape, genital mutilation and domestic violence. And in 1996, after a national uproar over Ms. Kassindja's case, the immigration appeals court granted her asylum. Today, Fauziya Kassindja is finishing a degree in accounting; the case that bears her name has opened the door for other women fleeing persecution because they are women.

Unfortunately, progress slowed in the U.S. in the late 1990s, and opposition has stiffened sharply in

recent years. In 1999, the same court that granted asylum to Ms. Kassindja rejected the case of a Guatemalan woman - Rodi Alvarado - who had suffered ten years of gruesome violence at the hands of her husband (an ex-soldier), and whose pleas for help from the courts and the police went unanswered. This controversial decision was met with national outrage, and it was overturned in 2001 after the intervention of then-Attorney General Janet Reno.

Today, the U.S. stands on the brink of a major step in the wrong direction. Ms. Alvarado's case remains pending and is now before Attorney General John Ashcroft. The Attorney General is reportedly poised to reissue the denial in her case, undermining years of progress for women fleeing human rights abuses around the world. This step will have specific consequences for Canada. Now that Canada and the U.S. have signed a so-called "safe third country" agreement, Canadian authorities may have to decide whether the U.S. is a "safe" country for people such as Rodi Alvarado, who faces rejection and deportation into the hands of her persecutor. Canadian legislators have already flagged women asylum seekers as being of special concern under this agreement.

This Saturday, Canadian refugee advocates are marking International Women's Day by celebrating the tenth anniversary of the guidelines. Their impact and humanitarian approach continues to be felt around the world. Too often, Washington appears to pressure the Canadian government over vague threats supposedly posed by Canada's generous history of welcoming asylum seekers. The story of Canada's leading contribution in the area of gender persecution, and its impact in rescuing many women like Fauziya Kassindja from lives of cruel violence and death, suggests that this history should be celebrated, not viewed with suspicion.

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