

CENTER FOR Gender & Refugee STUDIES

University of California, Hastings College of the Law

Spring 2007 Newsletter

Pro Bono Spotlight:

Jenner & Block Attorneys Help African Woman Rebuild Her Life in the U.S.

Hazika (not her real name), a citizen of a country in central Africa, was sold in marriage to a man who subjected her to extreme physical and psychological abuse. In February 2007, after an agonizing wait, Hazika was granted asylum by the Immigration Court in Chicago. She had the good fortune to be represented by a *pro bono* team from Jenner & Block LLP, including Lawrence S. Schaner and Matthew R. DiPentima, who appealed an earlier denial of Hazika's asylum claim all the way to the United States Seventh Circuit Court of Appeals, and then succeeded in getting the government to agree to a new hearing.

Hazika's struggle to escape a world of violence and sexual humiliation has been long and difficult. Born into a family of seven children, Hazika encountered gender discrimination both in her family and in her community. She obtained a college degree, but upon graduating,

Hazika was relegated to household duties as most women in her country do not hold professional positions. When Hazika was 21 years old, she was introduced by her parents to Kwame (not his real name), a wealthy man three times her age, whom Hazika believed already had several wives and children. Hazika reports that upon seeing her, the man exclaimed that because she was so young, he would marry her.

Shortly after this meeting, Hazika was informed by her parents that they had



Lawrence S. Schaner



Matthew R. DiPentima

arranged for her to marry Kwame so that he would provide financial support for the family. Hazika was adamantly opposed to the marriage despite her fear of being disrespectful to her parents. When her parents became aware of Hazika's unwillingness to marry Kwame, they cursed at her and beat her with sticks. Hazika still bears the scars from those beatings.

Prior to the marriage, Hazika's parents allowed Kwame to visit their household nearly once a month. During those visits he sexually assaulted her by grabbing her breasts and fondling her genitals. On one occasion, Kwame kidnapped Hazika and took her to a neighboring country.

INSIDE

CGRS Hosts GAO Meeting at U.C. Hastings	2
CGRS—Active and Involved	3
CGRS Conducts Fact-Finding Trip to Guatemala	4
Technical Assistance Update	7

(Continued on page 6)

CGRS Hosts Government Accountability Office Meeting

Study of U.S. Asylum System Is Discussed

CGRS was pleased to host a February meeting with a team from the Government Accountability Office (GAO), the research arm of Congress. The GAO is conducting a national study of the U.S. asylum system, and the meeting gave Bay Area refugee experts, academics, and members of the private immigration bar an opportunity to comment on issues related to the study.

Congress has asked the GAO to investigate specific areas of concern regarding the U.S. asylum system, including factors that affect the wide variability in outcomes in immigration courts, such as the quality of legal representation, challenges posed by the one-year deadline for filing asylum applications, and the impact on refugees of streamlining measures adopted in 2002 by the Board of Immigration Appeals (BIA).

At the meeting, which was held at U.C. Hastings, the GAO team explored attendees' views on the widely differing approval rates among immigration judges. The analysts also sought the perspectives of the immigration experts on recommendations recently announced by the Attorney General for changes in immigration courts and the BIA.

During the meeting, advocates raised concerns about the prevalence of the Department of Homeland Security practice of pressuring refugees who may be subject to the one-year bar to asylum to abandon their claims in exchange for a grant of withholding of removal. Withholding of removal imposes a higher burden of proof

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than is required for asylum, but unlike asylum, it does not allow for family reunification or lead to legal permanent residence status. Applicants are given the Hobson's choice of accepting withholding or having the government vigorously oppose their asylum claims in a full hearing. In addition, in the event a judge does grant them asylum, applicants are warned that the government will appeal, which can result in several years delay or even in a reversal of the decision. As a result, many applicants who are found credible and whose claims are serious enough to meet the higher burden of proof for withholding end up with a form of relief that leaves them in permanent limbo. U.C. Hastings Professor Richard Boswell pointed out that immigration judges are often disposed to encourage this practice, adding to the pressure on refugees to accept the offer of withholding, because it saves the judges the time required to conduct a full merits hearing, or to issue an opinion, and because the possibility of appellate reversal is foreclosed.

Participants also discussed the growing impact of the one-year deadline in asylum cases, which precludes applicants from relief unless

they can demonstrate compelling reasons for the failure to file their asylum applications within one year of arrival to the U.S. Advocates pointed out that many applicants are denied asylum despite showing legitimate reasons for their inability to file within the deadline, such as psychological trauma resulting from the harms they suffered in their home countries. Since the one-year bar does not apply to withholding of removal, these denials further add to a population of refugees in the U.S. with this more tenuous status.

Advocates also emphasized the lack of government-funded legal representation in Immigration Court. Removal hearings can have very high stakes, and the correlation between success rates and representation is well-documented. Nevertheless, since immigration proceedings are civil rather than criminal in nature, there is no access to the equivalent of a public defender. This is in contrast to other refugee-receiving countries, such as Canada, Austria, Belgium, Germany and the U.K., where legal representation is provided to applicants. And CGRS Director Karen Musalo pointed out that the GAO

(Continued on page 7)

CGRS—ACTIVE AND INVOLVED



⇨ In February, CGRS hosted noted women's rights activist, academic and lawyer Rashida Manjoo (third from left) who spoke about the South African Truth and Reconciliation Commission as a Model for Gender Justice. Accompanying Ms. Manjoo (from left to right) are: U.C. Hastings Chancellor and Dean Nell Jessup Newton, CGRS Director Karen Musalo, and staff members Felecia Bartow, Ana Martinez and Stephen Knight.

⇒ In April, Leena Khandwala (right), CGRS Appellate Advocacy Fellow, was part of a panel discussion on sex trafficking at U.C. Hastings. Other panelists included Marianne Barrett (left), San Francisco Assistant District Attorney, and Norma Hotaling (center), Founder and Executive Director of the SAGE Project.



⇨ CGRS Deputy Director Stephen Knight (far right) participated in a panel discussion on immigration at Grace Cathedral in San Francisco in March. Moderated by Dean Alan Jones (far left), other panelists (shown) included Mark Silverman of the Immigrant Legal Resource Center and journalist Diana deRegnier.



⇩ In March, CGRS participated in an international conference held at Loyola Marymount University in Los Angeles to raise awareness about Guatemala's femicides. Pictured from left to right are: Diana Rodriguez, CGRS's Program Coordinator; human rights activist Jorge Velásquez, the father of Claudina Isabel Velásquez, a 19 year-old law student who was brutally murdered in 2005; and Kate Orlovsky and David Zisser, third-year law students in U.C. Hastings' Refugee and Human Rights Clinic.



⇧ CGRS welcomed Enrique Barrera (right), with Guatemala's Grupo de Apoyo Mutuo (GAM), during his April visit to San Francisco. GAM seeks justice for the disappeared and their families. He was joined by Michael Smith (left) of the East Bay Sanctuary Covenant in Berkeley.



CGRS Conducts Fact-Finding Trip to Guatemala: Results Guide Efforts to Address Violence Against Women

In January 2007, CGRS conducted a week-long fact-finding trip to Guatemala focused on the issue of violence against women, as well as the growing number of gender-motivated killings or “femicides” taking place in that country. “We need this support,” said Norma Cruz, Director of the Fundación Sobrevivientes (Survivors Foundation), one of the few shelters in the entire country serving women fleeing violence. This sentiment was echoed by activist Jorge Velásquez, the father of Claudina Isabel Velásquez, a 19 year-old law student who was brutally murdered in 2005. “International pressure is fundamental,” Velásquez told CGRS, “it is the only thing that will bring Guatemala’s femicides to an end.”

The delegates included CGRS’s Director Karen Musalo, Advocacy Coordinator/Director of Development & Communications Felecia Bartow, and Program Coordinator Diana Rodriguez-Wong. The main objectives of the trip were to deepen CGRS’s understanding of the femicides, and to strengthen the Center’s partnerships with Guatemalan groups working on this issue in order to inform ongoing efforts to address the murders of women with virtual impunity.

Human rights groups have documented a sharp increase in the rate of femicide in Guatemala since the beginning of 2000. As of August 2006, 2,300 Guatemalan women had been murdered, and only 17 cases had been resolved, including both convictions and acquittals. In fact, so few cases have been brought to trial that there is almost complete impunity for those who murder women in Guatemala. Investigators mishandle crime scenes and officials blame the victims themselves, often deciding that their murders are not worth investigating.

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For several years, CGRS has sought to increase public awareness about Guatemala’s femicides, and to pressure policy makers to take action that will protect Guatemalan women and girls. In 2005, CGRS launched the *U.S.-Guatemala Partnership to End Violence Against Women* to examine and address the roots of the violence that are forcing Guatemalan women to flee for their lives.

CGRS has also led a sustained advocacy campaign around the case of Rodi Alvarado, a Guatemalan woman who suffered ten years of brutal domestic battering and who eventually sought asylum in the U.S. after the police and the courts refused to protect her. Rodi’s case has been pending for over a decade, the result of a stalemate between government officials who favor granting relief in cases such as Rodi’s, and those who fear that accepting such women as refugees will open the so-called “floodgates” to others. CGRS has taken a position that the solution is not to deny asylum to these women, but rather to address the root causes of the violence they are fleeing.

While in Guatemala, CGRS met with a wide range of groups and individuals working on issues related to women’s human rights, violence against women, and the femicides. They included representatives from non-governmental organizations (NGOs), academic

institutions and government offices, as well as grassroots activists, human rights lawyers, and congressmembers. With few exceptions, interviewees agreed about the causes and conditions that have given rise to—and are perpetuating—Guatemala’s epidemic of brutal violence against women.

There are many possible explanations for the growing rate of femicide in Guatemala, but there is no one, clear answer to the question: Who is killing Guatemala’s women and girls? Guatemala is a deeply patriarchal society in which gender-related violence is widely tolerated, including in the justice system itself. Guatemalan lawmakers have consistently failed to criminalize domestic and sexual violence, perpetuating a judicial system that devalues women.

Without a doubt, the legacy of Guatemala’s brutal 36-year civil conflict provides historical context to the current situation. Rape, torture, and killing of women were common military strategies used during the conflict, and most of the perpetrators were never brought to justice. The same state of impunity now exists for those who murder women and girls in Guatemala, as revealed by abysmally low prosecution rates for the femicides. Those interviewed by CGRS repeatedly cited Guatemala’s

(Continued next page)

Guatemala...

(Continued from page 4)

inept, corrupt, and under-resourced institutions—including the National Civil Police and the Public Prosecutor’s Office—as serious obstacles that lie in the way of addressing the impunity that exists for those who murder women and girls.

Other factors—including gang violence, drug trafficking, organized crime, and the presence of “maquilas” or foreign-owned factories—were also cited as contributing to the increased vulnerability of Guatemalan women. It is within this context that the police and other officials often attempt to justify their failure to investigate the femicides by characterizing the victims as gang members or sex workers, whose deaths do not merit further investigation.

While there are any number of overlapping causes contributing to the high rate of femicide in Guatemala, interviewees identified a key role that U.S. activists can play in helping to solve the problem of deadly



violence against Guatemalan women and girls.

U.S. activists must voice concern about individual cases of women who have been murdered, as well as growing instances

of Guatemalan human rights advocates being threatened and intimidated. They must demand accountability for the millions of dollars the U.S. government has invested to strengthen the rule of law and to promote judicial reform in Guatemala, including bringing pressure to bear on the Guatemalan government for its failure to investigate and prosecute those who are responsible for the femicides. And they must also urge the Guatemalan government to fully fund and staff the office of the National Institute of Forensic Science (INACIF). INACIF was established in 2006 to improve criminal investigations and prosecute those who commit crimes, including the murders of women. The Guatemalan Congress has yet to appoint any personnel to INACIF or to provide it with a budget, despite the fact that the U.S. State Department



has allocated half a million dollars to this institution.

The U.S. Congress has recently focused attention on this issue. House Resolution 100 (H.Res. 100), introduced by Rep. Hilda Solis (D-CA), condemns Guatemala’s femicides and expresses sympathy to the families of the victims. H.Res. 100 was passed by the House of Representatives on May 1, 2007 with a total of 100 cosponsors. A similar resolution (S.Res. 178) was introduced in the Senate by Senator Jeff Bingaman (D-NM) on the same day, and cosponsors are currently being sought. CGRS continues to work closely with NGO allies and grassroots partners to encourage broad support not only for congressional action, but also for other measures that will help bring an end to the femicides and to violence against women in Guatemala. ■

Photos taken by CGRS staff during the January 2007 fact-finding trip: (upper left) Office of the Public Prosecutor, Department of Forensic Medicine, Guatemala City; (middle right) woman on the street in Guatemala City; (lower left) CGRS Director Karen Musalo speaks with Giovanna Lemus, the Director of Grupo Guatemalteco de Mujeres, a nonprofit organization that seeks to eliminate all forms of discrimination and violence against women.



Pro Bono Spotlight...

(Continued from page 1)

During the journey, Hazika was drugged and raped by Kwame while unconscious. She was then taken to a hotel where he held her for three days and repeatedly raped her. Hazika's parents forced her to undergo genital cutting in preparation for the marriage. Hazika still suffers from the deep psychological impact of these painful and horrific experiences.

Hazika was desperate to escape, but knew that it would be futile to seek help from authorities in her home country because they already had refused to help her older sister, who had also been sold into an arranged marriage. She applied for and received a scholarship which involved international travel. Hazika promised her parents and Kwame that she would return shortly to marry him. She then made her way to the U.S., where she applied for asylum.

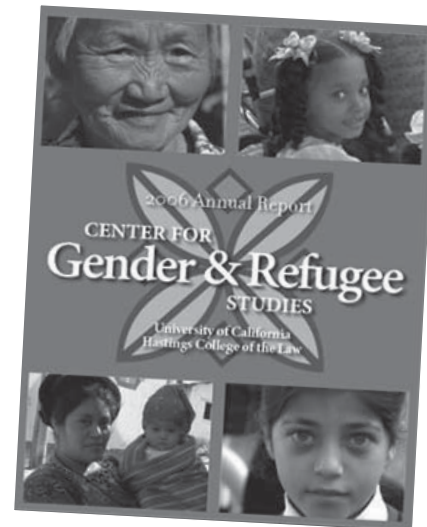
Hazika was denied relief by a judge who believed her story, but held that she that she had failed to establish how she fit within legal definition of a "refugee." The BIA affirmed this

Hazika's case demonstrates that with high-quality legal representation, refugee women can find a safe haven in this country.

denial. Schaner and DiPentima then came in to handle the appeal to Seventh Circuit Court of Appeals, and in January 2005, DiPentima contacted

CGRS Releases 2006 Annual Report

CGRS is pleased to announce the release of our 2006 Annual Report. We encourage you to download an electronic copy of the report by going to CGRS's website—<http://cgrs.uchastings.edu>—or we can also send you a hard copy by mail if you send a request to Ana Martinez at martinea@uchastings.edu. Many thanks to everyone who supported CGRS in 2006—we look forward to keeping you updated on our work!



CGRS Deputy Director Stephen Knight for his input and advice.

CGRS advised the Jenner & Block attorneys and shared copies of briefing and other materials from recent domestic violence, forced marriage, and genital cutting asylum cases in preparation for the Seventh Circuit appeal. After briefs were filed, the Department of Justice's Office of Immigration Litigation—which represents the government in immigration cases in federal court—offered to agree to a remand of the case to the BIA, and stipulated that the decisions of the immigration judge and BIA were flawed.

Following an additional briefing before the BIA, the case was remanded to the Immigration Court for a new hearing. With ongoing assistance and advice from CGRS, DiPentima and Schaner filed an extensive trial brief on Hazika's behalf, replete with significant country conditions research provided by CGRS. In January 2007, the Jenner & Block team arrived in court prepared to have both Hazika and a country conditions expert testify. However, much to their surprise, the judge

immediately called lawyers from both sides into a pretrial conference. The judge said that he had read the brief prepared by DiPentima and Schaner and believed that Hazika should be granted asylum. In addition, the judge was able to convince the government to agree to a grant and to waive appeal; he issued a favorable decision without requiring any further testimony.

Hazika currently works as a nurse's assistant and is slowly rebuilding her life in the U.S. She is also receiving critical medical and psychological treatment for the harms she suffered in her home country. Hazika is extremely relieved that her decade-long struggle to be safe and free from violence and persecution has finally come to an end.

Even though there continues to be strong resistance on the part of the U.S. government to recognizing many forms of gender persecution as legitimate bases for asylum, Hazika's case demonstrates that with high-quality legal representation, refugee women can find a safe haven in this country. ■

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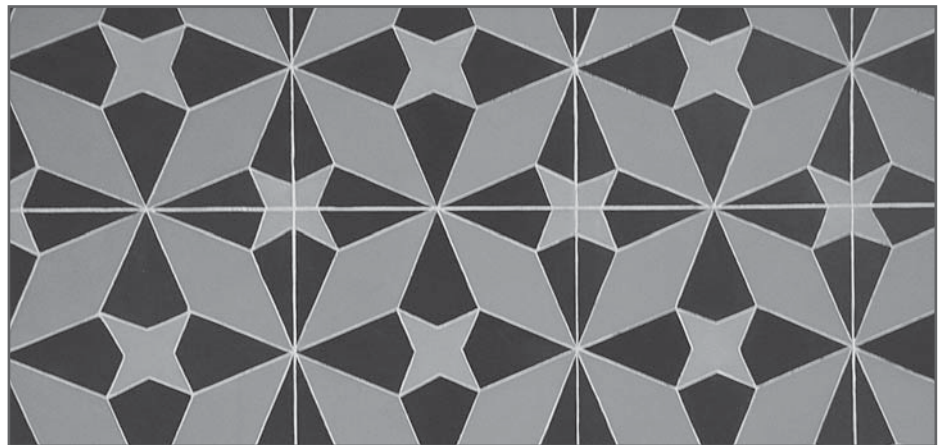
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Technical Assistance Update:
January–April 2007

Between January and April 2007, CGRS received a total of 277 new requests for assistance in individual cases. A significant number of those cases were from the Central American countries of El Salvador, Guatemala, and Honduras, followed by Mexico, Guinea, and Kenya. In the past four months, we have also seen cases from countries such as Afghanistan, Ethiopia, Haiti, Mauritania, and Yemen. Many of these asylum seekers are fleeing gender-related harms such as domestic violence, female genital cutting, rape, repressive social mores or cultural practices, forced marriage, “honor” killings, and trafficking or sexual slavery.



GAO Meeting...

(Continued from page 2)

study is focused on large urban areas—including San Francisco, Los Angeles, New York and Miami—where there is greater access to *pro bono* legal services. She noted that this approach might not provide a complete picture of the impact that the lack of guaranteed counsel is having nationwide.

CGRS, which has a wealth of materials in its unique case database, has offered to provide additional information to the GAO about the

barriers and difficulties faced by asylum seekers as a result of the one-year bar.

In addition to members of the private bar, the GAO has also been meeting with representatives from the government, the immigration courts and the BIA, as well as the federal courts. Results of the GAO study are expected to be released in the fall of 2007. ■

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Human Rights of Women and
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