

CENTER FOR
Gender Refugee
& Studies

ANNUAL REPORT
2004



**WHY IS THE U.S. TURNING AWAY
victims
of domestic violence?**

For Rodi Alvarado and other women who flee their countries to escape abuse, U.S. asylum may be the only hope. But there's a battle raging: Does domestic violence qualify a person for asylum?

BY KIMBERLEY SEVICK

"I had to leave Guatemala to save my life."

RODI'S STORY

For 10 years, Rodi Alvarado, 35, was brutally beaten by her husband, a former soldier, in Guatemala. He lashed her with electrical cords, raped her, and smashed her head against windows. She repeatedly attempted to get help, but the courts refused to believe her. "At any point Rodi could have applied for asylum, claiming her rights of personal safety," says Karen Musalo, Director of Development and Communications at U.C. Hastings College of the Law.

CGRS STAFF

Karen Musalo, Director

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On the cover: Fauziya Kassindja, whose case set a landmark for gender asylum, in her sixteenth month of detention at York County Prison in Pennsylvania.

what you can do

Australia, Britain, Canada, Ireland, New Zealand, Sweden, and South Africa have granted gender-based asylum. Join Amnesty International's campaign to grant asylum to Rodi Alvarado and all women seeking asylum. Log on to www.amnestyusa.org/women/, then click "Take Action."

WHO

The Center for Gender and Refugee Studies (CGRS), which is based at the University of California, Hastings College of the Law, works for the advancement of women's rights through its broad agenda focused on women seeking asylum from gender persecution. Gender asylum currently represents the cutting edge issue in the development of refugee law, with the potential to help broaden the refugee definition not only for women, but also for other traditionally marginalized groups such as children, gays and lesbians, and individuals with physical or mental disabilities.

CGRS is playing a central role in shaping the legal definition and ensuring that asylum protection is offered to women who flee serious violations of their fundamental human rights. Today, there continues to be resistance toward granting protection to women who flee their home countries because of gender-related violations. Women who flee violations of their human rights – such as being trafficked for prostitution or being threatened with “honor” killings – are being denied asylum and sent back into the hands of their persecutors.

CGRS's overarching objectives are to positively impact decisions in individual cases, while influencing the overall development of the law both nationally and internationally.

WHAT

CGRS's work is broken down into seven key areas, which build on each other and overlap for maximum impact and efficacy:

- **Providing training and technical support to attorneys**, with the goals of improving the quality of legal representation and expanding the resources available to advocates; in particular, CGRS's website www.uchastings.edu/cgrs provides extensive resources, such as unpublished decisions, that are otherwise not available from any other source
- **Formulating and implementing strategies to impact national policy**; these strategies include the potential intervention of Congress and the building of an expanded coalition to advocate on behalf of gender asylum
- **Engaging in leadership development** through outreach to students, and by providing a range of opportunities for their involvement in CGRS's work
- **Working with the media** to educate the public on the issue of gender asylum
- **Participating in international conferences and mechanisms** addressing issues germane to the protection of women asylum seekers

Woman's Plea for Asylum Puts Tribal Ritual on Trial

LIGHT INTO DETENTION
special report.

By CELIA W. DUGGER

YORK, Pa. — Fauziya Kassinga says she fled her homeland of Togo at age 17 to avoid the tribal rite of female genital mutilation and an arranged marriage as the fourth wife of a man nearly three times her age. When she arrived at Newark International Airport, she felt sure that she would find sanctuary in a country that "believed in justice."

Instead, she has passed her 18th and 19th birthdays behind bars. First, immigration officials took her to the Esmor detention center in Elizabeth, N.J., where she describes being shackled in chains at times, denied sanitary napkins and put in an isolation cell.

Last June, she says, she was tear-gassed and beaten during a melee at the Esmor detention center, where immigration officials were holding her and other women who had been sent to prison for female genital mutilation.

"When I first arrived here if I had met somebody who had already established a Center like what Karen [Musalo, CGRS Director] is doing right now, I wouldn't have spent that much time in jail.

I was beaten by the police, tear-gassed, strip-searched constantly, and from there was transferred between prisons, and in total I stayed about sixteen months and two weeks in detention in four different American prisons."

- FAUZIYA KASSINDJA

Left: Fauziya Kassindja, in her sixteenth month of detention, at York County Prison in Pennsylvania.
Below: Fauziya Kassindja in San Francisco in May 2003. Fauziya is now a U.S. citizen.



ing asylum seekers in prisons that are far from lawyers and families and inadequately supervised by the agency.

Immigration officials said the asylum seekers were detained in part because of a quirk in the law that treats people entering the country illegally at an airport more severely than those who are caught within the nation's borders. They said they released those who appeared to have credible claims and family ties in United States.

Ms. Kassinga said she believed that immigration authorities were just heartless. She said the prospect of being deported to Togo terrified her.

Merrick Polansky, an anthropology professor emeritus at the University of California, Los Angeles, who has testified on her behalf, says she is right to be afraid. The professor, who has done research in Togo since 1979, said women in Ms. Kassinga's tribe were sometimes forced into polygamous marriages and forced to undergo genital mutilation.

Her story is highly believable, he said. And if she is deported, the police, demoralized and underpaid, would almost certainly return her to her husband for a bribe, the professor said.

The rite is widespread in 26 African nations. Typically, a tribal elder cuts off the clitoris and sometimes other portions of a woman's genitals without anesthesia. It often leads to serious health problems.

Tribal Rite

GENDER ASYLUM IN THE UNITED STATES – THE CURRENT CHALLENGE

In 1996 the Board of Immigration Appeals (BIA), the administrative appellate body with nationwide jurisdiction over asylum claims, issued *Matter of Kasinga* (the case of Fauziya Kassindja), a watershed precedent decision in which CGRS director Karen Musalo was lead counsel. *Kasinga* held that a woman fleeing the gender-based harm of female genital cutting is entitled to refugee protection, and provided for the first time in U.S. law a clear basis of binding legal authority for grants in gender cases.

Three years later, in an effort to retreat from *Kasinga*, the BIA in its *Matter of R-A-* decision reversed a grant of asylum to a Guatemalan woman, Rodi Alvarado Peña, who had been brutalized by her husband for a ten year period, and whose repeated pleas for help from the police and courts had been ignored. *Matter of R-A-* was devastating to the evolving jurisprudence on gender asylum.

During 2003, there were no measures undertaken by the Bush Administration to move forward in a positive manner on the issue. To the contrary, in February 2003 CGRS learned from credible governmental sources that Attorney General John Ashcroft, who had taken personal jurisdiction over Rodi Alvarado's case, was poised to issue substantially revised final regulations, which would provide the legal basis for him to re-instate the BIA's original denial in *Matter of R-A-*.

CGRS quickly responded by mobilizing its partner organizations and successfully working together to generate a substantial congressional and grassroots response to the threat. This advocacy demonstrated the broad constituency support for women's rights and gender asylum, and appears to have caused the administration to put its plans on hold. However, the threat of a reversal of gender asylum remains very real, and a significant focus of CGRS's work is to prevent a reversal of this past progress.

Towards this end, CGRS has initiated a number of grassroots campaigns to prevent a rollback of gender asylum. In February of 2004 this well-coordinated grassroots advocacy bore sweet fruit, when the Department of Homeland Security (the successor agency to the Immigration and Naturalization Service), which had opposed a grant of asylum to Rodi Alvarado for eight long years – filed a brief with Attorney General Ashcroft urging that he grant her case. To this date, the Attorney General has still not made a decision, and the cases of many women – including Rodi Alvarado – continue to hang in the balance. However, the building and mobilization of a strong constituency, coupled with broader public education, a media campaign and legislative advocacy will help guarantee that protection will not be denied to Rodi Alvarado, and to the many other women fleeing violations of their fundamental human rights.

WHY

In response, CGRS spearheaded a successful national campaign, including grassroots, congressional, media, and legal efforts aimed at overturning the BIA's decision. In January 2001, as the result of this campaign, then-Attorney General Janet Reno took the exceptional action of vacating *Matter of R-A-*, and her Department of Justice issued proposed regulations intended to provide guidance on gender claims and remove the barriers imposed by the *R-A-* decision. In her order vacating *R-A-*, Janet Reno instructed the BIA to readjudicate the case pursuant to the proposed regulations once they were issued as final rules. These two developments were hard-fought victories that opened once more a door slammed shut by the decision in *Matter of R-A-*.

VICTORIES ON BEHALF OF WOMEN REFUGEES

ESCAPE FROM TRAFFICKING

Represented by Cheryl Nance

"Paula" (none of the names used are the women's real names) is a young woman from a former Soviet Republic who was kidnapped and held captive by a notorious organized crime figure when she refused his amorous advances. After telling her that she was his "property," he forced her to submit to sexual relations with the many men who came to his home – including the town's mayor and chief of police. When he tired of her, Paula's captor "sold" her to another organized crime leader who planned to traffic Paula to Israel for purposes of prostitution. The person entrusted with transporting Paula took pity on her and helped her escape. Paula later learned that this man had been murdered for letting her go. Paula ultimately made her way to the United States where she requested protection. Her request was heard by an immigration judge who not only believed every aspect of her story, but who accepted the opinion of a country expert that Paula would be kidnapped or killed if returned to her home country. Nonetheless, this judge denied relief, and ordered Paula deported, ruling that she was not a refugee. Paula's attorney appealed, and CGRS brought the case to the attention of key immigration officials, while also enlisting the partnership of Amnesty International to mount an Urgent Action on her behalf. The case came to a successful conclusion when the immigration authorities themselves agreed not to oppose a grant of asylum, and the Board of Immigration Appeals issued a decision granting her that relief.

SEEKING HAVEN FROM DOMESTIC VIOLENCE

Represented by Vicky Dobrin

"Samira" is a young woman from the Indian Subcontinent who was abused by her spouse from the day she married at age 16. Her husband, who had political influence, taunted her regarding his relationships with other women, beat and choked her on numerous occasions, menaced her with a gun, and threatened to disfigure her face with acid. Finally she could stand no more and she fled to the United States. Apprehended by the immigration authorities at an airport in the Northwest, Samira was immediately placed in detention. The government refused to release her, and a government lawyer argued that her claim to asylum had to be rejected based on *Matter of R-A-*, despite the fact that the *R-A-* decision had been overturned by the Attorney General two years before. The judge denied Samira's request for asylum and her attorney Vicky Dobrin prepared to appeal that decision. However, Samira told Ms. Dobrin that conditions in detention were unbearable and she would prefer to return to her country of origin than to remain in prison indefinitely while her case was appealed.

After CGRS intervention, Samira was released from detention, and she is now pursuing her legal appeals.

FIGHTING TO SAVE HER CHILD

Represented by Phyllis Forman

"Sara," a Moroccan-born Catholic woman, lived in Pakistan with her husband, a member of an influential family there. When they married, her husband assured her that their marriage would be a partnership and that he would not adopt traditional Islamic customs, such as taking on multiple wives (polygamy). There were no problems in the family until their daughter began to menstruate at age 12, at which point Sara's husband insisted that the daughter immediately be wed to his 34-year old cousin. Sara told him this was unacceptable, and her husband insisted that he would only agree to postpone the marriage if the daughter would undergo female genital cutting. When the daughter learned of these plans, she attempted suicide. In a quick succession of events, Sara learned that her husband had been lying to her throughout their marriage – and that she was in fact but one of her husband's three wives – and that he had a mistress also. In the conflict that ensued over the fate of the daughter, as well as over the existence of the multiple wives, Sara's husband threatened to kill her. She fled to Morocco, but her husband pursued her there, burned down her family home, and used his connections to persuade the Moroccan authorities to issue a warrant for her arrest on fabricated charges. Sara – along with her son and daughter – ended up seeking asylum in the United States. Their case was scheduled to be heard by an immigration judge who has a reputation of being insensitive to these claims and of denying the majority of the cases that come before him. CGRS worked very closely on the case with Sara's attorney, Phyllis Forman. These efforts bore fruit, and in June 2003, Sara was granted asylum in the United States, along with her son and daughter.

KIDNAPPED INTO PROSTITUTION

Represented by Mara Kimmel

"Adelia" is a young woman from Honduras whose family abandoned her shortly after birth. Adelia's adoptive family made her life a living hell, heaping constant physical and emotional abuse upon her. Adelia was determined to extricate herself from this situation and to build a better life for herself. She left the abusive family and went to another city where she was able to enroll in high school, with the dream of becoming a teacher. One evening, a group of armed men attacked her and her friends while they worked after school, beating and raping the young women. One of Adelia's friends was killed, and she was knocked unconscious; when she awoke, she found herself held captive in a brothel. She was forced to have sex with the countless men who frequented the house of prostitution. Finally, she was able to escape and made her way to the United States, where she sought asylum. A judge ruled that Adelia was lying, and that even if she was telling the truth, her tale of abduction and forcible prostitution would not entitle her to asylum. CGRS became involved as the case was appealed to the Board of Immigration Appeals, submitting an amicus brief on Adelia's behalf. In a great victory for Adelia, in June 2003 the BIA granted her asylum in the United States. The BIA's decision, though unpublished, is significant for its granting of asylum to a woman subjected to forced prostitution.



Ruling Allows Asylum for Foreign Victims of Abuse

Court: Panel blocks deportation of woman who said she would be beaten if she returned home to Mexico.

Service, which sought to deport Aguirre-Cervantes, had no immediate comment on the decision, said Sharon Gavin, an agency spokeswoman in Los Angeles. The agency in December pro-

"I am fighting really for all of the women so that we all can have protection. My case has been pending for eight years, and it's really been a long time for me to wait, but I have faith and I haven't lost the hope that my case will be resolved well."

- RODI ALVARADO

A WAY OUT Anna Vallabhanneni seeks asylum because of family violence in India.

By Jim Durant

The beatings were relentless, severe enough, she claims, to force her to have a hysterectomy, enough to cost her her sense of smell, enough to leave her homeland—and two children behind.

Anna Vallabhanneni's husband verbally abused her, and threatened her life. Eventually, she went to the police in her native city of Hyderabad, India, and had the husband arrested.

Then, she says, her own father, who had helped

the charges dropped. The husband returned home and beat Vallabhanneni savagely. And her father told her that he and her mother, mortified by her complaint to the police, would commit suicide if she did so again.

Vallabhanneni left India in 1997 on a temporary tourist visa to the United States. Once here, however, she refused to return and sought political asylum. She is part of a growing legion of women from the Third World who are seeking the United States' protection from abusive family members.

"Under that system, if what happened to her is

Asylum law heads into controversial new territory as women stake their claims on the need to escape family violence.

CGRS's work has a clear impact on the positive outcome in cases, and is valued by all those working for gender asylum.

Seeking Shelter

Lawyer's bid to win asylum rights for abused women awaits action by Ashcroft

ATTORNEYS

Thank you again for your support and invaluable help. I mean it when I say you must share in our victory.
 Lilia Velasquez
 San Diego, CA

It's terrific to have your support. The work of the Center for Gender & Refugee Studies is crucial to our clients. It's good to know that we are in this battle together.
 Bina Hanchinamani Ellefsen, Staff Attorney
 Northwest Immigrant Rights Project, Seattle, WA

The brief and case you sent me were fantastic - they really helped me clarify my thinking about all of this. . . Thanks again for all your help . . . your organization and website are a real treasure trove!

Thanks for all the work you have done during the past year. It has been a challenging one and I know you and your office have been a great source of support to our staff and pro bono attorneys.

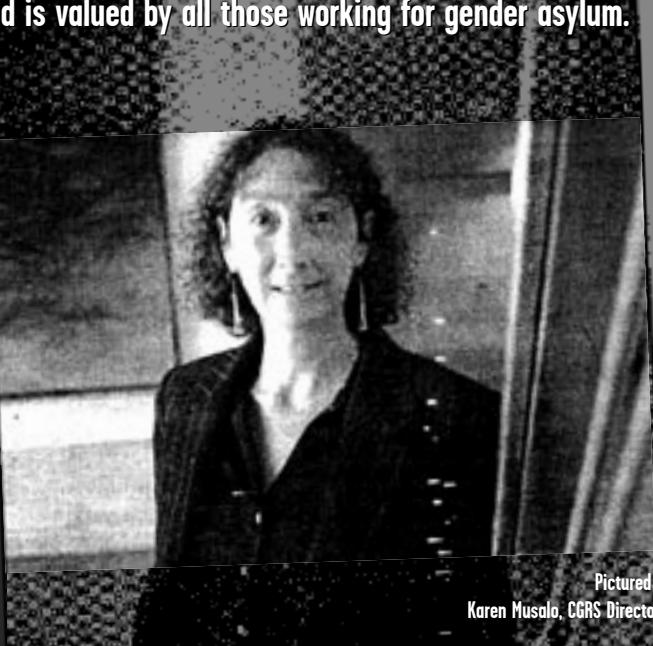
Mary Meg McCarthy, Director
 Midwest Immigrant and Human Rights Center, Chicago, IL

You don't know how much time and worry you save us "solo" practitioners. This is a tough business with people's lives on the line. Keep up the good work.

Rogelio Quesada
 San Diego, CA

I am very grateful for your assistance. This is a very complicated area, and, even with my immigration background, it's good to have the help of some real experts on FGM/DV asylum claims.

Brad Glassman
 Baach Robinson, Washington, DC



Pictured:
 Karen Musalo, CGRS Director

THANKS A MILLION for your amazing assistance.
 Daliah Setareh, Staff Attorney
 Legal Aid Foundation of Los Angeles, Los Angeles, CA

Thank you for the comprehensive information you sent to me. I had no idea that there was such an extensive network of resources on DV asylum and related issues. I really appreciate it.
 Riddhi Jani
 Blackwell Igbanugo P.A., Minneapolis, MN

We have an asylum approval for a client from Egypt. The assistance of the CGRS was crucial to our case.

Cina M. Godfrey, Esq.
 Pittsburgh Regional Immigrant Assistance Center, Pittsburgh, PA

We could never do any of it without you guys.

Saralyn M. Cohen, Pro Bono Attorney
 Shearman & Sterling, New York, NY

STUDENTS

CGRS is probably the most interesting and worthwhile activity that I participated in while at law school.

Luciana Svidler
 UC Hastings College of the Law

CGRS has transformed my experience of law school into something I can feel positive about and proud of, a tangible reinforcement of my reason for getting a J.D. - to change the world.

Kusia Hreshchyshyn
 UC Hastings College of the Law

After founding CGRS in 1999 and installing it in an office at Hastings, Musalo has built through grants and individual donations. Backers include several foundation tilted toward social justice, including the Ford Foundation.

THE NEXT BIG THING

After founding CGRS in 1999 and installing it in an office at Hastings, Musalo has built through grants and individual donations. Backers include several foundation tilted toward social justice, including the Ford Foundation.

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WHAT'S NEW

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WEDNESDAY, MARCH 19, 2003
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FINANCIAL REPORT

Calendar Year (January 1 to December 31, 2003)

REVENUES

Foundations	\$208,167
Law Firms/Corporations	\$15,000
Individuals	\$4,275
Events	\$5,518
TOTAL	\$232,960

EXPENSES

Salaries & Benefits	\$181,444
Travel/Memberships	\$15,153
Printing and Publications	\$5,738
Other Administrative	\$24,155
TOTAL	\$226,490

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CGRS would like to specially thank the Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farrise Foundation for its invaluable support in the past two years.

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Why did we abuse foreign women back to their tormentors?

Give them Shelter, Now!

m *i vida, mis hijos,"* is what Rodi Alvarado Peña told *Glassess* when she was asked what she gave up to come to America: "My life, my children." The nightmare had lasted more than 10 years by the time a terrified Alvarado Peña fled her home in Guatemala City, Guatemala. When she arrived in America, she testified that her husband, whom she had married at the age of 16, had brutalized her nearly every day. He raped her, vaginally and anally, she said, adding that he'd kicked her in the spine when she was pregnant and had once broken a window with her head. "I will cripple you," she said he warned after she'd tried to run away. "I will mark your face so it will be scarred forever."

because of race, religion, nationality, political opinion or social group. The BIA ruled Alvarado Peña was not harmed for any of those reasons. Its decision asserts that a female in a patriarchal society isn't a member of a "persecuted social group." Unless a higher court intervenes, she will be returned to Guatemala, where she says her husband, a soldier, has vowed to hunt her down and maim or even kill her no matter where she's hiding.

Her husband vowed her down maimed

Pauline," 50, a mother of four from Democratic Republic of Congo who will be released Saturday.

Her husband has vowed to hunt her down and maim or kill her.

Meanwhile, Alvarado Peña works as

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CGRS would like to thank Brad Seligman and Sara Campos for their generous support and for hosting an event at their home where the community was able to meet Fauziya Kassindja.

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We are grateful for a bequest given to CGRS by Judith Stronach. As a beloved friend to CGRS, we appreciate the long-lasting commitment she made through her estate plan. In her memory, we are proud to establish a summer law student fellowship called the *Judith Stronach Women's Rights Fellowship* for a student whose background, idealism and commitment to women's rights would exemplify Judith's dedication to protecting the human rights of women, and especially women refugees.

THE LAST WORD

TORTURE BASED ON SEX ALONE

Do women have special asylum claims?
They do, and they ought to be recognized

By ANNA QUINNIE

RODA ALVARADO PENA CLEANS HER SES FOR A living, thinks about her two children in Guatemala and waits. For six years she has been in the United States seeking asylum, fearing she

some progress. Karen Mukaini, the director of the Center for Gender and Refugee Studies at the University of California's Hastings College of Law, who is representing Rudi Alvarado, was responsible for a major victory in 1996 in the successful legal claim of an African woman who would have faced traditional genital mutilation had she returned home. But results in cases involving domestic violence have been more equivocal, perhaps because the United States has no law of female genital mutilation but, until recently, a somewhat spotty record of prosecuting women beaten until even killed in their own homes.

Musalo is also keeping tabs on the case of Rosalba Aguirre-Cavalcante, who claimed asylum based on a lifetime of beatings by her father. A federal appeals court ordered immigration authorities

Seeking Shelter

Lawyer's bid to win asylum rights for abused women awaits action by Ashcroft

By Jason Hoppin
RECORDER STAFF WRITER

When Karen Musalo began teaching refugee law and policy in 1989, she didn't have much to go on. There wasn't even a case book for her specialty, so years later she had to write her own.

After cobbling that tome together, Musalo began to build the Center for Gender and Refugee Studies at Hastings College of the Law, a first-of-its-kind project focusing on an area of law that has troubled immigration judges: the nexus of asylum law and women's rights. Now all the work on behalf of those persecuted for their gender — specifically, victims of domestic violence — may be coming to a head.

Musalo was chosen by Rodi Alvarado to be one of the first to come into visibility as a victim of domestic violence. Immigrants that were first to be granted asylum under ex-Immigration General Janet Reno's administration included a woman who suffered domestic violence and turned a blind eye.

After years of delay, many who follow this area of the law expect the decisions to be issued shortly. They are hoping that Asylum General Janet Reno will provide her support. Musalo fears the worst.

For anyone who follows her case, it would be any that Musalo deserves a stay of execution. She has testified to the following: Her husband pushed her head through a metal kickstand in Spain. See continued from page 1

If Alvarado left, her husband Alvarado would be condemned to death. The consequences could be devastating. The seeking shelter from abuse and persecution women who

"It's important because it will impact gender



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It's important for Rodi Alvarado to stay," Musalo continued. "The fact that she is still here is important to me."

JASON DODD
Center for Gender and
Refugee Studies of domestic violence



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CENTER FOR
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