

Adequate and Effective Protection

- Rule of law
- Access to Justice when resolving disputes or ensuring abidance by norms addressing rights and duties or individuals and groups within society
- Enjoyment of basic rights by citizens/non-citizens
- Formal legal framework, Constitution, legislation
- Law in practice
- Effective remedy: Equality before courts, fair, public hearing by competent, independent and impartial tribunal
- Responsiveness of police, ombudsman, attorney general's office, courts, administrative agencies and legislature

Adequate and Effective Protection

- Discrimination in responsiveness, lack of access due to absence of legal aid, excessive fees, language barriers (translation)
- Lack of separation of powers- are judges dominated by executive branch and serve their interests
- Level of corruption, slowness and inefficiency of courts
- Physical location of courts and police
- Is judiciary or other branch dominated by minority ethnic group as opposed to majority ethnic group of victims?

Internal Flight Alternative

- IFA is not contained in 1951 Convention
- Hathaway states IFA should be antidote to persecution risk, guarantee protection from additional risk of harm, and grant protection in terms of access, non-discrimination, employment, public welfare and education.
- Canadian guidelines call for review whether it is reasonable in all circumstances: is there risk or persecution, would it be unduly harsh to move, is there a physical danger or undue hardship related to travel or stay, are there physical barriers.
- Consider whether agents of persecution will expand their activities within the foreseeable future
- Consider special circumstances of elderly, women, children, health, ethnic and cultural ties, political and social affiliation, educational and vocational characteristics
- Consider ongoing civil strife, internal displacement situation, will the person be placed in an illusory unpredictable situation?

NEXUS

- 1. Is the anticipated state-tolerated harm (human rights breach) sufficiently serious to constitute persecution?
- 2. Is there a connection between the risk faced and the claimant's race, religion, nationality, social group or political opinion.

NEXUS

- Reason for infliction or threat of harm
- Reason for withdrawal of protection by country of origin
- Reason contributing to applicant's exposure of risk of persecution (no intent to harm or withhold protection required)
- Intent-based test for establishing nexus is inadequate for those facing risk of serious violations of freedom of religion or belief. Rather, a test that takes into account the intent and/or effects of a particular act is in line with international standards.

Persecution for Reasons of Political Opinion

- Applicant holds or is imputed to hold opinions not tolerated by the authorities, which are critical of their policies or methods
- Such opinions have come to the notice of the authorities or are attributed by them to the applicant
- (Cross with Race/Nationality/Social Group/Religion)

Imputed Political Opinion

- The group with the power to persecute intends to do so because it dislikes neutrals
- The group intends to persecute him because he or she will not accept its political view
- One or more groups intend to persecute him because each incorrectly thinks he holds the political views of the other side

International Covenant on Civil and Political Rights, Art. 19

- 1. Everyone shall have the right to hold opinions without interference
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UCHR Art. 20

- 1. Everyone has the right to freedom of peaceful assembly and association
- 2. No one may be compelled to belong to an association

Race

- CERD Article 1
- The term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

UNHCR Handbook Race

- Discrimination on racial grounds will frequently amount to persecution in the sense of the 1951 Convention. This will be the case if, as a result of racial discrimination, a person's human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights, or where the disregard of racial barriers is subject to serious consequences.

Nationality

- ***ICCPR Article 27***
- In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

UNHCR Handbook Nationality

- 74. The term “nationality” in this context is not to be understood only as “citizenship”. It refers also to membership of an ethnic or linguistic group and may occasionally overlap with the term “race”. Persecution for reasons of nationality may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to well-founded fear of persecution.
- 75. The co-existence within the boundaries of a State of two or more national (ethnic, linguistic) groups may create situations of conflict and also situations of persecution or danger of persecution. It may not always be easy to distinguish between persecution for reasons of nationality and persecution for reasons of political opinion when a conflict between national groups is combined with political movements, particularly where a political movement is identified with a specific “nationality”.
- 76. Whereas in most cases persecution for reason of nationality is feared by persons belonging to a national minority, there have been many cases in various continents where a person belonging to a majority group may fear persecution by a dominant minority.

Nationalism-Lynn Hunt, *Inventing Human Rights* (Norton 2007)

- When a republic was declared in France in 1870, half of the citizens could not speak French, the others spoke dialects or regional languages such as Breton, Franco-Provencal, Basque, Alsatian, Catalan, Corsican, Occitan, or in the colonies, Creole.

UNHCR Social Group

- *a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.*

UNHCR Guidelines

- Protected Characteristics: Is group united by immutable characteristic/ or so fundamental to human dignity should not be compelled to forsake it.
- Innate, Unchangeable
- Past temporary or voluntary status that is unchangeable because of historical permanence
- Characteristic or association so fundamental to human dignity should not be compelled to forsake it.

UNHCR Guidelines

- Social Perception Approach: Common characteristic that makes them a cognizable group or sets them apart from society at large
- Women
- Family
- Homosexuals

UNHCR Guidelines

- The social group cannot be defined exclusively by the persecution, but it may be a factor in determining the visibility of the group within the society.
- Members of a social group need not know each other or associate with each other. The group does not need to be cohesive, as long as there is a common element.

UNHCR Guidelines

- Not all members of the group must be at risk of being persecuted.
- The size of the group is not relevant.
- There is no requirement that the persecutor be a state actor.
- Nexus:
 - A) Where the risk of persecution by non-state actor is related to convention ground
 - B) Where the state is unable or unwilling to protect the person for a convention ground

Social Group

- Shared Interests, Aspirations, Values, Background, Ethnic Group, Caste, Clan Culture, Language, Education, Economic Activity, Occupational Groups, "Transgressors of Social Mores", Voluntary Associations, Trade Unions, Human Rights Groups, Teachers/Professors, Internet/Blog

Social Group Involuntary Links

- Family
- Tribal/Clan Membership
- Innate, unalterable characteristics:
Sex/Gender, Color, Language, Sexual
Orientation, Perception of Others, Civil
Servants, the Poor

Social Group

- Mark R. von Sternberg, The Grounds of Refugee Protection in the Context of International Human Rights and Humanitarian Law (Martinus Nijhoff 2002)

Quiz

- Claimant is of Chinese origin but holds Panamanian citizenship. He claims that his store was robbed 8 times between 2003-2008 by criminals from Panamanian gangs and by the Chinese mafia. Many merchants in the neighborhood are also subject to robbery. He filed complaints with the police in 2008 but the police did not follow up, the claimant says this is because they were racist toward the Chinese. In 2009, the claimant and his daughter were victims of breaking and entering of their home by the Chinese Mafia. He claims this is because it is known that people of Chinese origin keep their money at home. He was tied up and ordered to pay a large sum of money which he did not have. They forced him to sign an acknowledgement of debt for USD 50,000. The claimant and his daughter left for Canada and claimed refugee protection as he fears that he will be killed by the Chinese mafia and Panamanian criminals.
- He also fears that his daughter will be kidnapped and potentially murdered by criminal gangs because the children of Asian merchants are targeted. This practice is confirmed by documentary evidence on the record, which also confirms that Chinese merchants have less legal protection than other citizens of Panama and that the population discriminates against Chinese.
-
- Does the claimant have a risk of persecution?
- Is there a nexus to a protection category?
- What information do you need regarding the state?
- Does his daughter have a risk of persecution? Nexus? Adequate State Protection?

Quiz

- Claimant is a citizen of Nepal who fears return because he alleges that the Maoists may torture, abduct, or kill him because he did not support their cause or comply with their demands for financial support. He states that the government of Nepal cannot protect him. In 2002, his father received a letter from the Maoists demanding money to support their cause. His uncle was kidnapped and killed by the Maoists. His paperents left Nepal, leaving the claimant and his sister with an aunt in Kathmandu. The claimant became interested in political affairs through work with the National Democratic Party (centre-right, conservative), on behalf of which he would give speeches, and began to receive threatening calls in 2002 telling him to stop working for the NDP. He claims that in 2007 he was accosted by Maoists who told him to stop advocating for the kind or they would kill him but was rescued by the police. His aunt received a call demanding that the claimaint make a public apology and donate 1,000, 000 rupees to the Maoists or he would meet with «dire consequences». The police did not take further action because the perpetrators were difficult to find and they told him that even the police are not safe. His parents told him to leave Nepal. He entered Canada and requested asylum. The documentary evidence confirms that Maosts commit abuses, extort money, and engage in retaliatory violence or threaten violence.
- Does he have a risk of persecution?
- Is there a nexus to a protection category?

ICCPR Art. 18

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

UNHCR Handbook Religion

- Persecution for “reasons of religion” may assume various forms, e.g. prohibition of membership of a religious community, of worship in private or in public, of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community.
- Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be special circumstances where mere membership can be a sufficient ground.

Gunn-Religion

- **Metaphysical or Theological Sense- Truth of the existence of God**
- **Psychological experience- Feelings about divinity or ultimate concerns**
- **Cultural or social force- Binds the community together or separates it from other communities**

Gunn- Religion- Problems:

- Use own experience with religion ,
ignorance of others skews judgments
- Ranking of religions- “good” religion v.
“bad” religion- sects or cults- Falun Gong/
Church of Scientology
- Failure to consider religion from the
perspective of its adversaries

Gunn Religion

- **Belief:**
- Conversion of beliefs considered as heresy, blasphemy, etc. within ethnic community- Ahmadis in Pakistan, Baha'is in Iran
- Belief held within hostile community- Russian Orthodox or Catholics in China

Gunn, Religion

- **Identity:**
- Association of ethnicity with religion- Bosnia Herzegovina resulted in intolerance, festered by war, in Sri Lanka ethnicity, language, cultural habits and race result in identity. Sinhalese Buddhists engage in "ethnocentric policies", Hindu Tamils
- Islam is cluster of cultures
- Jews religious group, race, nation, culture, a people

Gunn Religion

- **Way of Life:**
- Prayers
- Dietary practices
- Specific Clothing, hairstyle
- Non-participation in military service
- Expression of loyalty to God over State
- Obligation to proclaim beliefs (or not)
- Participation in ceremonies

Gunn Religion

- **1) Coercion that attacks or interferes with religion-** disrupt religious service, harm religious buildings or shrines or symbols, threaten lives of others. Destroy religious community or force it to flee.
- **2) Coercion that enforces religious conformity** Compel members to comply with religious or cultural rules- The religious police in Saudi Arabia. The Mutawwa's strike males who are not in prayer or arrest women not completely veiled. Caste system in India

Gunn Religion

- **State as persecutor-** Nazi Germany against the Jews, Burmese government against Christian and Muslim groups, Pakistani law against blasphemy used against Ahmadis, Muslims and Christians. Economic restraints- Saudi Arabia against Shi'a- Media propaganda- Prohibition of religious activity, censorship
- **Inter-religious and societal persecution-** one religious community against another- ethnic identity issues- class, nation, outlooks, etc. Hindus v. Muslims in Gujarat, India, Muslims v. Christians in Indonesia, Bosnia-Herzegovina

Gunn religion

- State may fail to take effective measures to quell conflicts, or may tacitly encourage violence. Burma- Buddhists v. Christians and Muslims
- Mixed Motives- Race, Ethnicity and Religion
- Effects of neutral law may be discriminatory to a conscientious objector.
- Clothing restrictions may have religious or gender related motives
- Motives not necessary to determine whether there has been religious persecution

Gunn Religion

- **Some societies have different rules for men and women- prohibition on holding position of authority, restriction on ownership of property, discriminatory rules on divorce and custody of children, female genital mutilation-**
- **Negation of equality of the sexes by groups or the State in the name of religion**
- **If a women rejects the standards, she may be subject to coercion and have legitimate case as victim of religious persecution. Regardless of fact that most women comply without complaint, these norms are imposed.**

Gunn religion

- **Fire in girls dormitory in Mecca. Saudi Religious police refused to allow girls to escape unless covered by the hijab. Uncovered girls beaten by police and forced back into the building- 14 died**

Quiz

- Claimant was born in 1971 in El Salvador, the war began when he was six and he was forced to help his mother as an agricultural worker. He never attended school. His mother hid him to avoid forced conscription by the army and the guerillas. He fled to the US in 1993. His sister and uncle in El Salvador were subject to extortion by gangs (formed by disbanded guerilla and soldiers) and killed. A cousin was subject to extortion. Claimant left the US and requested asylum in Canada because he hoped that he could apply for family reunification and save his teenage son who remained in El Salvador. The son was killed by gang members in El Salvador because he refused to join the gang. The claimant fears that he will be extorted or killed by gangs because he will be perceived as being wealthy on account of having lived abroad. He also states that the gangs will fear that he will want to avenge his son's death and will want to pre-empt this by killing him. The documentary evidence confirms that El Salvador is one of the most violent countries in the world owing to gang violence. The murder rate is 12-15 murders by gangs per day, 600 disappearances last year.
- Is he at risk of persecution?
- Is there a nexus to a protection category?