

## EXAM

### JUR1530/JUS5530 Spring 2018

Date: 9 May 2018

Time: 09:00 – 13:00

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## Refugee Law Exam Spring 2018

**Please read the facts and answer the questions with reference to cases, literature, the annex, and relevant instruments. Good Luck!**

You work for UNHCR in the field office in Niger. Niger has been hosting Malian refugees since the outbreak of the crisis in Northern Mali in 2012 in 3 refugee camps in Tillabery region, in a refugee hosting area for nomadic refugees in Tahoua region, and in urban areas such as Niamey and Ayorou. A second refugee hosting area Tazalite, was closed by the Government in December 2016, following an attack against the security forces. UNHCR facilitated the relocation of the population. You have been asked to decide whether UNHCR should recommend the application of cessation clauses to refugees from Mali. In order to write a memo you have been asked to review the case of a 45 year old man named Tounkara from Mali who has lived in the refugee camp in Niger for the past six years.

Here is Tounkara's narrative testimony:

*It is by divine grace which I had the opportunity to leave my country. Sadly I am victim of a shamed practice of old which is slavery, which causes insecurity on my daily basis these days. Indeed, I belong to a group which very discriminated, the Bellah ethnical making object of slave system in these modern times. We are a people of more than 7000 individuals accounting to the international labour office (ILO) and the anti-slavery association "Timidria" of Niger, we continue to exist as a tangible property (inheritance) of the Touareg ethnic group (powerful and armed) under the indifferent of the national authorities. For me, the return to the country is synonymous which voluntary suicide to the night of the heaviness of the climate which reign between my masters and me on the one hand and which the authorities on the other. Indeed moreover inhuman work forces and treatments which constitute my daily life, I was victim of pressures and sanctions as many as varies in particular: I have denounced practices of slavery which I am victim after I joined the Timidria association and talked to my family and friends about our rights and participated in anti-slavery demonstrations. Along with other members of Timidria, I was tied and beaten by my masters over many days. As for meals as my masters offered to my family were reduced by half meaning everybody was to get one meagre meal a day. I find myself amongst more than one slave, leaders of the civil company, traditional chief and masters favourable to release of the slaves [detained] instead of the promise of the organisation of an official ceremony of stamping and socio economic insertion of 7000 slaves in the locality.*

*After a number weeks of being locked up, I was released and since then my life was full of harassments, my work was increased, physical tortures and regular death*



*threats from my masters. Following my request to profit from part of harvest resulting from my work or from a statue from owner realising the payment from an annual fixed price, I was beaten and seriously wounded, with [number] other slave of whom some lost their lives. Also my [relative] was forced to join an armed group and they transferred several slaves, to so far unknown destinations, my [relatives] were among those transferred*

*I escaped several attempts to be conscripted in the armed groups that my masters have started in the region of the country. And information, which I regularly receive from my close relations is very sad for me. I cannot return to my country due to the inhuman treatment I have undergone, and in addition my masters would want to punish or even kill me on my return. I am of a group lower than the others and I owe respect traditionally and unconditional obedience to my masters. I do not right of ownership but I must be used as a well as very other members of my community quite like their material if inheritance. Whereas I seek a normal life, that of being a free man, and being entitled to safety, justice equity and have rights. This is why I am their enemy since I try to speak up my life has been insecure.*

*I do not hope any protection from authorities of my country, because they tend to deny this sad phenomenon of which I am victims of, they try to cover this to protect those practicing it. These are men in power and collaborate with authorities, in addition some of the people practicing these work hand in hand with the army, the governor himself is among the masters. I was arrested with about [number] other slaves, leaders of organisation in defence of human rights, traditional chief and masters favourable to our community by orders of the authorities in.*

Toukara went on “go-and-see” visits to Mali, where he found his house destroyed, with doors, windows and other items stolen and the rest damaged by the harsh climate. Should the security conditions in return areas deteriorate, he would also consider returning to the camp in Niger as an option.

You consult with you colleague in the UNHCR office in Mauritania. He sends you the following UNHCR news report:

*Malian refugees are recognized on a prima facie basis and enjoy a favorable protection environment with the right to settle where they wish and to access basic social services and the formal and informal job market.*

*UNHCR has 1 Sub-Office (Tillabery) and 3 Field Offices (in Ouallam, Abala and Tahoua) assisting Malian refugees.*

*In 2015 the UN-brokered Algiers Peace and Reconciliation Agreement in Mali was reached. However, the parties consider that the conditions in parts is currently not promoted. Persons that wish nevertheless to return to Mali are counseled on the prevailing situation and sign a Voluntary Repatriation Form. They receive one-time cash assistance to pay for their transport.*

*30,000 Malians who had run from the conflict in their country continue live in exile, mainly in Burkina Faso, Mauritania and Niger. Despite the signature of a peace agreement in 2015, recurrent confrontations between armed groups and government forces and between various ethnic groups in Northern Mali cause a constant influx of refugees into the Tillabery and Tahoua regions, with 5,449 new arrivals between January and end of July.*

*In the far south-east of Mauritania, a few kilometres from the border with Mali, Mbera camp hosts 42,000 Malian refugees. Many are from the northern cities of Timbuktu and Léré, where the situation remains volatile, marked by frequent clashes between armed groups, banditry and militant attacks.*

*Despite the 2015 peace agreement, which ended decades of uprisings in Mali's desert north, tensions in the area continue to trigger new influxes of refugees to Mauritania.*

*The Governments of Mali and Mauritania signed a Tripartite Agreement together with UNHCR. It provides a legal framework to protect refugees deciding to return to Mali as well as those willing to stay in Mauritania.*

*While many are cautious about going back, a growing number have decided it is time to go home. Between December and June 2016, UNHCR helped some 2,000 refugees return to Mali, compared to fewer than five returns in the same time period the year before. Banditry and the lack of basic infrastructure in small villages present difficulties. There are roadblocks and people with weapons who come to rob. There is no education in small villages, as teachers are scared of travelling there every morning. Refugees in Mauritania are concerned that it could take several years for northern Mali to stabilize, and for basic infrastructure like wells and hospitals to be rebuilt.*

**Question 1 (BA students only): Does Tounkara meet the definition of a refugee according to the 1951 Convention on the Status of Refugees? Can the cessation clause apply to him? Is he entitled to alternative protection under human rights law?**

**Question 2 (MA students only): Does Tounka meet the definition of a refugee according to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (see annex). Can the cessation clause in this Convention apply to him? Please recommend whether or not UNHCR should advocate the application of the cessation clause to all Malian refugees- identify particular categories of concern.**

## **Annex:**

### **Human Rights Watch report for Mali: Attached**

**Article from The Independent:** Slavery is a taboo subject here (Niger) and the anti-slavery activists face violence and intimidation from the slave owners, who have political power and are embedded in the traditional chieftan system. They maintain that slavery is a cultural hangover that provides a way of life to people who, they say, have no other way to survive. The anti-slavery organization, Timidria assisted a local chief to organize a ceremony for the release of slaves. The ceremony was cancelled after government forces allegedly warned slave owners that they would be liable for up to 30 years imprisonment under the new anti-slavery laws if the slaves were released. Timidria leaders were arrested and put in prison on false claims.

### **Excerpts from the US State Department Country Human Rights Report for Mali:**

Societal discrimination continued against black Tuaregs, often referred to as “Bellah.” Some Tuareg groups deprived black Tuaregs of basic civil liberties due to traditional slavery-like practices and hereditary servitude relationships.

There were continued reports of slave masters kidnapping the children of their Bellah slaves, who had no legal recourse. Slave masters considered slaves and their children as property and reportedly took slave children to raise them elsewhere without permission from their parents. The antislavery organization Temedt organized workshops throughout the country to convince communities to abandon the practice of keeping slaves. The government has taken no action to establish punishment for practicing slavery. Intercommunal violence led to frequent clashes between members of the Fulani ethnic group and, separately, members of the Bambara and Dogon communities. Self-defense groups representing these communities were reportedly involved in attacks.

The law prohibits all forms of forced or compulsory labor, but forced labor occurred. The law prohibits the contractual use of persons without their consent, and penalties include a fine and 10 years' imprisonment with compulsory hard labor. Penalties increase to 20 years' imprisonment if a person under age 15 is involved. Penalties were seldom enforced and therefore were not sufficient to deter violations. According to NGOs, the judiciary was reluctant to act in forced labor cases. The government made little effort during the year to prevent or eliminate forced labor, although it did allocate initial funding to its antitrafficking action plan. Following a 2014 national conference on the artisanal mining sector, the government established a commission that met twice monthly to develop measures to more effectively combat violations in the sector, including forced labor. Most adult forced labor occurred in the agricultural sector, especially rice production, and in gold mining, domestic services, and in other sectors of the informal economy. Forced child labor occurred in the same sectors. Corrupt religious teachers forced boys into begging and other types of forced labor or service. The salt mines of Taoudeni in the north subjected men and boys, primarily of Songhai ethnicity, to a longstanding practice of debt bondage. Employers subjected many black Tuaregs to

forced labor and hereditary servitude, particularly in the eastern and northern regions of Gao, Timbuktu, and Kidal.

**OAU Convention Governing the Specific Aspects of Refugee Problems in Africa: Attached (Only relevant for MA-students).**