

Refugee Law Class 3

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Refugee Law Quiz

- Claimant is a woman who is a member of the minority Brava clan in the south of Somalia. Both of her parents died. She then lived with a friend of her mother who advised her to sell her body in order to attain income. She arranged to migrate. Reports state that the situation in the South is unstable, there is internal displacement, and the Bravanese are subject to intimidation, forced labour and sexual slavery.
- Does she meet the definition of a refugee? Which protection ground is applicable?

Refugee Law Quiz

- Claimant was an advocate of women's rights from a prominent family while President Najibullah governed Afghanistan. She claimed to fear persecution by former Mujahadeen under which she had suffered. She vowed to continue advocating women's rights.
- Can she be considered a refugee? Which issues should you consider?

Refugee Law Quiz

- Claimant was a teenager from Ethiopia whose family sold her to traffickers. She was sent to Lebanon where she was locked up and forced to work 20 hours a day without pay. She escaped.
- Could she be considered a refugee? Which issues would you address?

Refugee Law Quiz

- Claimant is a woman from Uganda who married a member of the same clan, in violation of tribal custom. As punishment, clan members killed her husband and first born child. She fled with her daughter and gave birth to her second son. She fears that upon return, she and her son will be killed.
- What is the relevant protection ground?

UNHCR Gender Guidelines

- Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination.

UN Declaration on the Elimination of Violence against Women

■ Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

UN Declaration on the Elimination of Violence against Women Article 2

- Violence against women shall be understood to encompass, but not be limited to, the following:
 - (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
 - (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
 - (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

UN Declaration on the Elimination of Violence Against Women Article 4

- States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:
 - (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
 - (b) Refrain from engaging in violence against women;
 - (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

Other Instruments

- CEDAW
- Inter-American Convention on Violence against Women
- African Protocol on the Rights of Women

Gender Related Persecution

- Trafficking
- Sexual Violence/Sexual Slavery
- Dowry related violence, honor killings
- Forced marriage, under-age marriage
- Family/domestic violence/sexual harassment
- Coerced family planning
- Female genital mutilation/Female infanticide
- Punishment for transgression of social mores

UNHCR Gender Guidelines

- Is the punishment for violation of social mores, law or policy disproportionate?
- If the State prohibits female genital mutilation/forced marriage/honor killing/etc. via legislation, does it condone or tolerate it in practice?
- If the law has a justifiable objective, e.g. Reduction of overpopulation, see if effect is in violation of human rights- forced abortion/sterilization

Persecution

- Serious Harm + State failure to protect
- Persecution occurs in the private sphere
- Serious Harm is inflicted by a Non-State Actor (often family)
- Negative action by the state in situation of persecution creates state responsibility

Gender Specific Persecution

- Rape (Husband may be tortured and executed while she is raped. Error is assumption that motive of violation is different, i.e. sexual, rather than political)
- Genital Mutilation
- Serious harm specific to them as women, but motive of persecution may be different

Female Genital Mutilation

- **Circumcision:** Clitoral prepuce is cut away
- **Excision:** Clitoris and labia minoria are cut away
- **Infibulation:** Clitoris, prepuce, labia minoria and part of labia majoria are cut away. Edges of labia majoria are sewn or pinned together in order to form scar tissue
- **Effects:** Bleeding, shock, infection, tetanus, damage to organs, death, retention of blood in the abdomen, swelling of the stomach, chronic infections of the bladder and vagina, extremely painful menstruation, child-birth obstruction, risk of HIV infection, sexual dysfunction and psychological problems.

Gender Related Persecution

- The experiences of women who are persecuted because they are women
- May be the same as men, flogging, house arrest, etc. because they don't conform to social constructions of gender, e.g. Dress codes
- Honor Killing/Bride burning
- Domestic Abuse/Forced Marriage
- Violence Against Women is Seen as a Societal Norm

Economic Violence

- Women may be prevented from earning a living, gaining employment
- Costa Rica, Honduras, Uruguay and Brazil prohibit economic violence against women who are victims of domestic violence, e.g. Wiping out the victim's economic means of subsistence or property
- Women need protection in divorce, restoration of property and custody of children, ordering aggressor to leave the domicile

Canada Guideline 4- Nature and Grounds of Persecution

- 1. Women who fear persecution on the same Convention grounds, and in similar circumstances, as men. In such claims, the substantive analysis does not vary as a function of the person's gender, although the nature of the harm feared and procedural issues at the hearing may vary. *(i.e. racial, national or social identity, religion or political opinion)*
- 2. Women who fear persecution solely for reasons pertaining to kinship. *(i.e. because of the status, activities or views of their family members)*
- 3. Women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender or acts of violence either by public authorities or at the hands of private citizens from whose actions the state is unwilling or unable to adequately protect the concerned persons. *(i.e. domestic violence and situations of civil war)*
- 4. Women who fear persecution as the consequence of failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin. *(i.e. arranged marriage, wearing of make-up, visibility or length of hair, or type of clothing a woman chooses to wear)*

Nexus

- State fails to provide protection to women because they are women
- Persecutor targets woman because he knows that the crime will go unpunished
- Islam and Shah (1999) UK House of Lords
- Jewish shopkeeper attacked but State did not respond- Impunity based on racial discrimination

Women as Social Group

- Error to consider women too large or broad social group
- There is no requirement that every member of the group be targeted, voluntarily associate with each other, or be cohesive
- It is the individual's fear of persecution that is relevant
- Persecution may help identify the group

Gender and Social Group

- Women are a social subset defined by innate and immutable characteristics and who are frequently treated differently than men
- Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries

Gender and Social Group

- There is no requirement that the group be cohesive or that they voluntarily associate with each other, or that every member of the group is at risk of persecution
- Discrimination or persecution may be a relevant factor in determining the visibility of the group

Gender and Social Group

- Homosexuals, Transsexuals and Transvestites
- Ireland, Panama, South Africa and Venezuela identify sex, gender and/or sexual orientation as grounds for refugee status
- Women have various identities- ethnicity, race, class, religion, etc. Different Hierarchies, Double discrimination- Multiple systems of Oppression

Race/Nationality and Gender

- Women's bodies become one of the primary sites for contested national identity
- Women are viewed as the means by which to propagate a racial/ethnic/national identity
- Sexual violence, forced abortion, sterilization
- See ICTR and ICTY

Political Opinion and Gender

- Opposition to Gender Roles in Society
- Low profile political activity- nursing and feeding soldiers, recruitment of sympathisers, dissemination of information
- Imputed political opinion held by relatives
- Cross with social group-family
- Cross with religion when violation of behavior codes of women
- Risk upon return

Evidentiary Problems in Gender Cases

- Statistical Data on Incidence of Sexual Violence may not be available- Under-reporting, Lack of prosecution
- Look at testimonies of other women similarly situated in written or oral reports (NGO or international reports)
- Effect of trauma or fear of reprisal
- Use circumstantial evidence, prima facie evidence
- Expect inconsistencies, vagueness, etc. in cases involving rape or violence against women

Evidentiary Problems in Gender Cases

- Look at position of women before the law:
- Political Rights
- Social and Economic Rights
- Cultural and Social Mores of the Society
- Reprisal for non-adherence to mores
- Incidence and forms of violence against women
- Protection available
- Penalties against perpetrators of violence

Canada Guideline 4 Evidence

- A gender-related claim cannot be rejected simply because the claimant comes from a country where women face generalized oppression and violence and the claimant's fear of persecution is not identifiable to her on the basis of an individualized set of facts. This so-called "particularized evidence rule" was rejected by the Federal Court of Appeal in *Salibian v. M.E.I.*, and other decisions.
- Decision-makers should consider evidence indicating a failure of state protection if the state or its agents in the claimant's country of origin are unwilling or unable to provide adequate protection from gender-related persecution. When considering whether it is objectively unreasonable for the claimant not to have sought the protection of the state, the decision-maker should consider, among other relevant factors, the social, cultural, religious, and economic context in which the claimant finds herself.

Discrimination Against Women

- Position of women before the law
- Standing in Court
- Right to file a complaint and provide evidence
- Right to divorce and gain custody of children
- Right to own property
- Right to education and career
- Status as divorced woman or single woman
- Right to control reproductive organs
- Right to Travel, dress, express herself
- Incidence of reported violence and protection available
- Sanctions imposed on violators

The Context

- A country's laws, customs, religious practices and social norms create an environment in which women's rights, health and safety are not protected
- Abusers use law, economic institutions and government institutions to overcome a woman's right to live free from threats to life or freedom

Canada Guideline 4 Credibility

- Women refugee claimants face special problems in demonstrating that their claims are credible and trustworthy.
- 1. Women from societies where the preservation of one's virginity or marital dignity is the cultural norm may be reluctant to disclose their experiences of sexual violence in order to keep their "shame" to themselves and not dishonour their family or community.

Canada Guideline 4 Credibility

- 2. Women from certain cultures where men do not share the details of their political, military or even social activities with their spouses, daughters or mothers may find themselves in a difficult situation when questioned about the experiences of their male relatives.
- 3. Women refugee claimants who have suffered sexual violence may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome; women who have been subjected to domestic violence may exhibit a pattern of symptoms referred to as Battered Woman Syndrome

Best Interests of the Child Assessment- A Primary Consideration

- Use when identifying durable solutions for unaccompanied and separated refugee children (voluntary repatriation, resettlement, local integration)
- Temporary care arrangements (situations of abuse or neglect by accompanying adult)
- Possible separation of child from parents (abusive parent, abandonment of child)
- Family reunification is generally regarded as being in best interests
- Child has right to express views (but they may have different sense of timing, importance or recollection of detail, and limited knowledge of conditions in the country of origin) (May be reluctant to speak in front of parent or other adult) They may not have emotional reaction. Take into account age, maturity, and psychological situation of the child.
- Consider risk of sexual abuse and exploitation, forced labour, abduction, forced recruitment, discrimination patterns against girls, health services, educational services, support for integration of children

Refugee Law Quiz

- Claimant feared that she would be raped if she returned to Haiti, because murders and rapes were being perpetrated there with complete impunity. The claimant testified that since the catastrophe in January 2010 her family had been sleeping in a tent and that escaped prisoners from the prisons that had fallen down had been attacking people sleeping in the streets and had been raping women. The documentary evidence showed, among other things, that between February 2004 and December 2005 tens of thousands of rapes had been perpetrated against women in Port-au-Prince and that there had recently been an upsurge in rapes involving armed gangs.
- What is the issue?
- Which protection category is relevant?

Refugee Law Quiz

- The claimant, a 26-year-old single woman, was a devout Ahmadi Muslim, active in the Ahmadi community. In the 1970s and in 1984, she witnessed attacks upon her family by orthodox Muslims. Her parents and three brothers fled to Canada in 1990. Subsequently, while living with a married sister, she received telephone threats relating to her religion. She fled to another town and obtained work there as a teacher, but discovery of her religious affiliation led to immediate dismissal, and an order from a local mullah that she be killed. Siblings in Karachi and Rawalpindi were experiencing constant problems with non-Ahmadis.
- Which factors will you take into account?

Refugee Law Quiz

- The claimants were a mother and her four minor children, all citizens of Iran. Because the father had been suspected of supporting the Mujahadin, the adult claimant was briefly detained, kept in solitary confinement and interrogated regarding her husband's whereabouts. For the same reasons, her father and brother experienced brief detentions. The documentary evidence confirmed that relatives of Iranians fleeing persecution have been detained and threatened.
- Which protection category is applicable?

Refugee Law Quiz

- The claimant was gang-raped by police officers when she went to a police station to inquire about her husband's release. She did not tell anyone about the attacks because of the shame attached to being a rape victim. One of her attackers, her husband's stepbrother, disclosed the rapes, so that the claimant's perceived social transgression was aggravated by her flouting of another deeply ingrained taboo against incest. Her husband instituted divorce proceedings because of the rape. Her family wanted her and her sons to undergo a Yoruba cleansing ritual to purge the shame brought upon the family. This ritual involved the fatal drinking of poison. The documentary evidence indicated that sexual violence against women continues to be widespread in Nigeria. While rape is officially a criminal offence, it is rarely divulged or prosecuted. Cultural inhibitions and taboos dissuade victims from reporting incidents.

Canada IRB Social Group

- The panel found that the claimant, a 33-year-old Christian female, had a well-founded fear of persecution due to her membership in a particular social group, "Syrian women who are members of traditional Arab families". The male members of the claimant's family had vowed to kill her as, in their opinion, she had brought shame and dishonour to the family; she had transgressed the cultural norms of Syrian society. She had done this in various ways, including marrying someone of whom her family disapproved and meeting privately with a man who was not a family member.

Canada IRB

- The claimants feared the female claimant's father; he was an influential and high-ranking officer in Syrian intelligence. The female claimant, a Syrian citizen, had experienced years of physical and sexual abuse by him. She had defied her father by marrying the male claimant, a Lebanese citizen, who was a Shiite Muslim (her family was Sunni and her father hated Shiites). She feared that her father would kill her, and her husband, for her dishonouring of the family through her acts of defiance.

Canada IRB

- The claimant, a citizen of Somalia, was separated from her husband by the war in that country. Her mother-in-law, believing the claimant's husband to be dead, forced the claimant to become the third wife of the claimant's brother-in-law. A Sharia court in northern Somalia conducted a "hearing" at which the claimant was not allowed to speak. The court issued a declaration that the marriage between the claimant and her husband was dissolved, and that she was to marry her brother-in-law. The claimant was then taken to a hotel and raped several times over the next two days. Documentary evidence indicated: that women are harshly treated in Somali society; that marriage to a husband's brother is a cultural tradition in Somalia; and that the leadership of the self-proclaimed Republic of Somaliland has adopted Sharia, with the result that women have been whipped for contravening Islamic rules and stoned to death for prostitution and adultery.

Canada IRB

- The principal claimant was betrothed at the age of 10. Attempts by her family to break off the engagement were not accepted by the person to whom she was betrothed. He made several violent attempts to abduct the principal claimant. Her father was brutally beaten by him, assisted by two members of the secret police, with whom his financial support for the ruling Socialist Party gave him leverage. The documentary evidence indicated that kidnapping of young girls and women is not uncommon in Albania and that the police are implicated in these kidnappings. The Kanun of Lek requires that a woman marry the man to whom she is engaged. If the engagement is broken, the groom's party can take revenge on the family of the intended bride.
- Which factors will you take into account?

Canada IRB FGM

- The claimant's father and his family wanted her to be circumcised, in conformity with tribal practice. Her mother and her aunt were opposed to the practice, and she went to live with her aunt. Both her mother and her aunt were killed. She feared that, if she returned to Uganda, her father would force her to undergo female genital mutilation (FGM) or would kill her if she continued to resist. According to the documentary evidence, FGM is not widely practised in Uganda but is still practised by the Kapichorwa and the Pokot tribes. The claimant's father's tribe, Bayobo, was not directly mentioned in the documentary evidence. While FGM is being discouraged by the government, it is not outlawed and can still be practised legally in Uganda.