



Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Canada

Who is a refugee

IARMJ – Arusha
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Convention Refugee Definition – Elements of the Definition

- Country of reference
 - national / citizen
 - stateless
- Persecution
- **Grounds**
 - **race, religion, nationality, political opinion, MSPG**
- Well-founded fear (WFF)
 - subjective fear
 - objective basis
- State protection
- Internal flight alternative (IFA)
- Cessation
- Exclusion
- (*Change of circumstances*
 - *compelling reasons*
 - *sur place claims*



COUNTRY OF REFERENCE

NATIONALS / CITIZENS

➤ COUNTRY OF NATIONALITY

- The claim must be established against the country of nationality
- Nationality means citizenship (in this context)



COUNTRY OF REFERENCE

NATIONALS / CITIZENS

➤ MULTIPLE NATIONALITIES

- A claim must be established against **each** country of nationality
 - IRPA, s.96(a)
 - *Convention*, Article 1A(2)
 - OAU, Article 1(3)



COUNTRY OF REFERENCE REVIEW

NATIONAL

- country of citizenship
 - right to citizenship
 - multiple citizenship
- must show WFFP in each country of citizenship

STATELESS

- no country of citizenship
 - country of former habitual residence (i.e. significant period of *de facto* residence)
 - may have more than one country of FHR
- must show WFFP in any one country of FHR + inability to return to any other country of FHR where claimant is not at risk



PERSECUTION

➤ Criteria

- serious harm → key denial of a core human right (*Ward*, SCC)
- repetition or persistence (*Rajudeen*, FCA)



PERSECUTION

- **What right is violated?**

International Bill of Human Rights

- *Universal Declaration of Human Rights, 1948*
- *International Covenant on Civil and Political Rights, 1966*
- *International Covenant on Economic, Social and Cultural Rights, 1966*

- **What level of rights?**

- **To what degree?**



PERSECUTION

DISCRIMINATION vs. PERSECUTION

- What distinguishes persecution from discrimination is the **degree** of seriousness of the harm
- Discrimination in itself does not establish persecution



NEXUS TO GROUNDS IN THE REFUGEE DEFINITION

To constitute **persecution** under the Convention, the harm inflicted must be “for reasons of” one of the five grounds set out in the definition of Convention refugee.



GROUNDS OF PERSECUTION

- race
- nationality
- religion
- membership in a particular social group
- political opinion



NEXUS TO GROUNDS IN THE REFUGEE DEFINITION

- **The asylum seeker may not even be aware they are being persecuted.**
- **It is for the examiner, when examining the facts of the case, to ascertain the reason(s) for the persecution feared and if those reasons meet the definition in this respect.**
 - ❖ ***UNHCR Handbook, paragraphs 66-67***



GROUNDINGS OF PERSECUTION

- Key consideration → **perception of the agent of persecution**
 - How does the agent of persecution perceive the claimant?
 - May not conform to the real situation
 - **See, for example, *UNHCR Handbook* paragraph 80; *UNHCR Guidelines on International Protection No. 6 – Religion-Based Refugee Claims*, April 2004.**



GROUNDINGS OF PERSECUTION

RACE

- "Race ... has to be understood in its widest sense to include **all kinds of ethnic groups** that are referred to as 'races' in common usage."
 - **UNHCR Handbook, para. 68**



GROUNDINGS OF PERSECUTION

NATIONALITY

- Encompasses not only citizenship, but also membership in an **ethnic or linguistic group**
- May overlap with “race”
 - ***UNHCR Handbook, para. 74***



GROUNDINGS OF PERSECUTION

RELIGION

“In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual’s spiritual faith and integrally linked to his or her self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.”

Syndicat Northcrest, Supreme Court of Canada; Also see UNHCR Guidelines on International Protection No. 6 – Religion-Based Refugee Claims, April 2004.



GROUPS OF PERSECUTION

RELIGION

Freedom of religion includes the freedom of a person to **manifest** their religion in public or private, in **teaching**, practice, worship and observance, as well the freedom to **change their religion**.

- ***UNHCR Handbook, paragraph 71***



GROUNDS OF PERSECUTION

- Persecution on religious grounds may take many forms:
 - Prohibition on membership
 - Prohibition on worship in public or private
 - Prohibition on instruction
 - Serious measures of discrimination.
 - Forced Conversion

- Not all restrictions amount to persecution (e.g. restrictions on hate speech)
 - ***UNHCR Handbook, paragraph 72; UNHCR Guidelines on International Protection No. 6 – Religion-Based Refugee Claims, April 2004***



GROUNDINGS OF PERSECUTION

POLITICAL OPINION

- **Not defined in UNHCR Handbook**
- **Any opinion on any matter in which the machinery of state, government, and policy may be engaged**—not restricted to opinions regarding the state

Ward, Supreme Court of Canada



GROUNDS OF PERSECUTION

POLITICAL OPINION

- Political opinion need not be expressed
- Political opinion can be imputed
- It need not conform to the claimant's true beliefs



GROUNDS OF PERSECUTION

POLITICAL OPINION

- Asylum seekers need not belong to an organization or a political party
- Asylum seekers are not required to abandon their commitment to political activism in order to live safely



GROUNDS OF PERSECUTION

MEMBERSHIP IN A PARTICULAR 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 on International Protection No. 2 – Membership of a Particular Social Group, May 2002***



GROUPS OF PERSECUTION

MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

What matters is who the claimant is, not what the claimant does.

- A particular social group cannot be defined solely by victimization.



GROUNDS OF PERSECUTION

GENDER-BASED CLAIMS

- Chairperson's Guideline 4 Gender Considerations in Proceedings Before the IRB:
 - broadens the focus to include all genders and gender identities, while recognizing that women, girls and SOGIESC individuals are disproportionately impacted by gender-based violence, gender inequality and discrimination
 - "... rape, and other forms of sexual assault, are crimes grounded in the status of women in society." (*Dezameau*, Federal Court of Canada)



GROUNDS OF PERSECUTION

Claims based on Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC)

- IRB Chairperson's Guideline 9 Proceedings Before the IRB Involving SOGIESC:
 - promote greater understanding of cases involving SOGIESC individuals and harm faced
 - address the particular challenges SOGIESC individuals may face in presenting their cases before IRB
 - establish guiding principles for members in adjudicating cases involving SOGIESC.



WELL-FOUNDED FEAR

Two Components – Both required (*Ward, SCC*)

- **Subjective fear (UNHCR Handbook par. 37)**
 - fear in the claimant's mind
 - assessed by examining the claimant's behaviour

- **Objective basis (UNHCR Handbook par. 42)**
 - valid reason to be fearful
 - assessed in light of country conditions
 - definition is forward-looking



STATE PROTECTION

- **Presumption of state protection**
 - States are presumed to be capable of protecting their citizens (*Ward*, SCC)
 - except in situations where the state is in a complete breakdown
 - Presumption also applies where the state is the persecutor (*Hinzman*, FCA)



STATE PROTECTION

- **Rebutting the presumption**
 - In determining whether the presumption of state protection has been rebutted, a **contextual approach** is required

Consider factors such as:

- specific risk alleged
- identity of the persecutor
- claimant's efforts to seek protection
- response of the authorities
- country conditions



INTERNAL FLIGHT ALTERNATIVE (IFA)

When the issue arises

- The claimant has a WFFP in their home area, but can live safely elsewhere in their country
- Integral part of the Convention Refugee definition, though not explicit under IRPA s.96 or Article 1 of the *Convention*
- ***Guidelines on International Protection: “Internal Flight or Relocation Alternative” (23 July 2003)***



IFA TEST

- **Two-pronged test**
 1. No serious possibility of persecution in the part of the country where there is an IFA
 2. Reasonable in all the circumstances
 - Conditions in the IFA are such that it would not be objectively unreasonable (or unduly harsh), in all the circumstances, for the claimant to relocate

(Rasaratnam, FCA)



IFA TEST – FACTORS TO CONSIDER

FIRST PRONG – Risk of Persecution

- Agent of persecution
 - interest and motivation to pursue the claimant in the IFA area
 - ability to locate the claimant

- Consider:
 - claimant's personal circumstances
 - circumstances of people in the IFA area whose situation is similar to that of the claimant, including the claimant's family members



IFA TEST

SECOND PRONG – Reasonableness

- Objective test – very high threshold
- IFA is unreasonable if conditions in the proposed IFA would jeopardize the life or safety of claimant
- Claimant's personal situation (family, age, gender, medical reasons, etc.)
- Conditions in the IFA area
- Ability to access the IFA area



CESSATION

- **Article 1C** – cessation of refugee protection
 - Loss by own *voluntary* actions including:
 - Re-availed of protection of country of origin
 - Re-acquired national of country of origin
 - Acquired new nationality, has protection of new nationality
 - Re-established in country of origin where feared persecution
 - Loss due to change of circumstances
 - Circumstances upon which the refugee claim is based have ceased to exist



EXCLUSION

The *Convention* provides for 3 situations:

- **Article 1**
 - D – support by other UN organs/agencies (not UNHCR)
 - E – residence in a country with status similar to that of nationals
 - F – « criminality »



CESSATION AND EXCLUSION

The *Convention* provides for 4 situations: (cont..)

- **Article 1**
 - F(a) – *committed* crime against peace, war crime, crime against humanity
 - F(b) – *committed* a serious non-political crime
 - F(c) – *guilty* of acts contrary to the purposes and principles of the United Nations



Any questions?

