



Baltimore Expert Roundtable
30 and 31 October 2002

*organised by the United Nations High Commissioner for Refugees
(Washington D.C. Regional Office for the United States and the Caribbean)
and Church World Service*

Summary Conclusions on Religion-Based Refugee Claims

The Baltimore Expert Roundtable addressed questions regarding religion-based refugee claims in the context of the 1951 Convention relating to the Status of Refugees and other international documents as well as established practice. Participants included about 44 experts from a broad range of backgrounds and affiliations. They included refugees, refugee law experts, theologians, academics, immigration advocates, adjudicators, government personnel from the US and Canada, and UNHCR staff. Larry Katzman of UNHCR, Washington, and Dot Ivey of Church World Service served as moderators of the overall roundtable, in addition to other moderators for specific portions of it.

Roundtable participants were provided with two background papers for review prior to the event. Jeremy Gunn of Emory University wrote a paper entitled The Complexity of Religion in Determining Refugee Status. This paper explored the cultural, historical, and religious aspects of religion-based persecution and proposed conclusions. Karen Musalo of the University of California Hastings College of the Law wrote a paper entitled Claims for Protection Based on Religion or Belief: Analysis and Proposed Conclusions. It surveyed relevant case law in four Western countries and also proposed conclusions. Both authors were present at the roundtable and presented their respective papers to the assembled group.

The following summary conclusions do not necessarily represent the views of each individual participant, entity represented, UNHCR, or Church World Service. Rather they broadly reflect the understandings emerging from the discussion. These conclusions do not purport to be a comprehensive analysis of religion-based claims, yet may clarify some of the issues relevant to such claims.

1. In determining religion-based refugee claims, relevant international authority includes, but is not limited to, Article 18 of the Universal Declaration of Human Rights, 1948; Article 18 of the International Covenant on Civil and Political Rights, 1966; relevant general comments issued by the Human Rights Committee; the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, 1981; Declaration on the Rights of Persons belonging to National or Ethnic, Religion and Linguistic Minorities, 1992; and the body of reports of the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief.
2. Claims to refugee status based on the religion ground can be particularly complex. These claims often overlap with one or more of the other four Convention grounds. For example, the persecutor and/or the victim may not differentiate between religion, race, or ethnicity.

A. Religion

3. Although no universally accepted definition of “religion” exists, relevant international authority¹ provides guidance as to the meaning of the term.
4. For the purposes of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, the following three facets may be useful in order to establish whether the religion ground has been established. This ground may be identified by one or more of the following characteristics, and there may exist overlap among them:
 - a) Belief (including non-belief);
 - b) Identity;
 - c) Way of life.
5. “Belief” should be interpreted so as to include theistic, non-theistic and atheistic beliefs. This characteristic may see religion as a set of convictions [values] about the divine or ultimate reality, or the spiritual destiny of humankind. Persecutors will often consider the claimants to be heretics, apostates, schismatic, or superstitious.
6. “Identity” is less a matter of theological beliefs than membership in a community that observes common beliefs, rituals, traditions, ethnicity, nationality, or ancestry. A claimant may identify with, or have a sense of belonging to, or be identified as belonging to a particular group or community. In many cases, persecutors are likely to target religious groups different from their own because they see the religion of the other as part of a threat to their own competing identity or legitimacy.
7. For some individuals, religion is a vital aspect of how they relate to the world as a “way of life”, either partial or complete. Their religion is likely to manifest itself in such activities as wearing of distinctive clothing, conscientious objection to military service and oaths, and observance of particular religious practices including the observance of religious holidays, or different dietary requirements. Such practices may seem trivial to non-adherents, but may be at the core of the religion for the believer.

Imputation

8. For the purposes of the refugee definition, it is not necessary that an individual or a group declare that it belongs to a “religion”, is of a particular religious faith, or adheres to “religious” practices, where the persecutor imputes or attributes this religion to him or her. It is also not necessary that the claimant know or understand anything about the religion, only that he or she has been identified as belonging to that group and fears persecution as a result. In many cases, the claimant may not be able to state why he or she has been persecuted.

Gender

9. Particular attention should be paid to the impact of gender on religion-based refugee claims, as women may fear or suffer persecution for reasons of religion in different ways to those of men (see UNHCR’s Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/01, 7 May 2002).).

¹ See, for example, General Comment adopted by the Human Rights Committee under Article 40, paragraph 4, of the ICCPR; UN doc. CCPR/C/21/Rev.1/ADD.4, 27 Sept. 1993, para. 2 (adopted 20 July 1993).

B. Well-founded fear of being persecuted

10. Applying the same standard as to the other Convention grounds, claimants should never be required to hide their religion or to practice in secret in order to avoid persecution.
11. Religion-based claims may include persecution from the State itself, different religious groups, or within the one religion. The claimant may belong to a religious minority or majority. As with all bases for asylum, persecution must be inflicted either by the government or by non-State actors that the government is unable or unwilling to control.
12. In cases of forced compliance, it is not necessary that an individual be required to renounce the entire religion in order to establish religious persecution, but that a practice to which they object may be sufficient (e.g. refusal to wear the veil and its correlative punishment would be sufficient – it is not required that the woman reject the entire religion to make her claim credible.)
13. Establishing the sincerity of beliefs may be more relevant to particular cases (e.g. conscientious objectors). Where a religion or belief is imputed or attributed to a particular claimant, there is no need to establish his or her sincerity of belief.

Discrimination

14. Religion-based claims often involve discrimination. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his or her right to earn a livelihood, his or her right to practice his or her religion, or access to normally available educational facilities. A claim to fear of persecution may also be sufficiently established where a person has been the victim of a number of discriminatory measures and where there is thus a constancy, cumulative or systematic nature.
15. In religion-based persecution cases, as in all refugee claims, the existence of discriminatory laws will not normally in themselves constitute persecution. The important issue is whether such laws are being implemented (see UNHCR's Gender-Related Persecution Guidelines, paragraphs 14-15).

Restrictions or limitations on religious practice

16. Discrimination may also take the form of restrictions or limitations on religious belief or practice itself. In determining whether such restrictions or limitations rise to the level of persecution, one must evaluate the degree to which it interferes with the ability of the claimant to practice his or her religion. This will involve assessing the importance or centrality of the practice within the religion and to the individual. A single restriction or limitation may be sufficiently serious in itself to constitute persecution.
17. In making the assessment, a State's defence of a restriction or limitation on a religious practice on the basis of Article 18(3) of the ICCPR should be viewed very cautiously and interpreted in line with international standards.

Forced conversion or forced compliance

18. Forced conversion is a violation of the fundamental human right of freedom of religion or belief and therefore generally constitutes persecution.
19. In determining whether forced compliance constitutes persecution, there should be an examination of the acts with which the person is required to comply and the punishment for non-compliance. Either of these could rise to the level of persecution and be grounds for refugee status in an individual case.

20. Compliance may, for instance, take the form of mandatory public education in which children are required to study the teachings of the dominant State religion that is different or incompatible with their own. In determining whether this is persecution, one should refer to Article 18(4) of the ICCPR, which mandates "respect for the liberty of parents (and/or) legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

C. Causal Link or Nexus

21. An exclusively intent-based test for establishing nexus has proved to be inadequate in extending protection to claimants who risk 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.

22. Thus, the nexus is established if the persecutor intended to harm the claimant for his or her religion (or the persecutor's religion). In cases where the intent of the persecutor is either absent or unknown, the nexus may be established by the effects of the persecutor's acts.

23. In cases where there is a risk of being persecuted at the hands of a non-State actor for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention-related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.

D. Internal flight alternative

24. Some participants felt that the concept of internal flight or relocation alternative was not an issue particular to religion-based claims requiring separate conclusions, whereas others felt that it can prove particularly problematic for religion-based claims and should not be applied due to concerns about the forcible segregation of religious groups to particular areas.

E. Procedures

25. In order to better determine claims to refugee status on the ground of religion, there is a need for reliable, accurate, and up-to-date information. Refugee status determinations could benefit from the assistance of objective experts with particularized knowledge of the country, region, and context of the particular claim.

26. As with all types of asylum claims, interviewers, interpreters and adjudicators should be properly and regularly trained with particular sensitivity to the types of claims they will be involved in.

27. In the selection of interviewers and interpreters, there should be sensitivity regarding any cultural, religious or gender aspects that could hinder open communication. Reference should be made to UNHCR's Gender Guidelines (citation above).

28. As with all asylum claims, it can be critical that interpreters are well-versed in the relevant terminology. Interpreters should also avoid summarizing responses as in all claims. In addition, adjudicators should be aware of the impact that poor interpreting can have on an individual's case.

Post-departure conversions

29. Post-departure converts should not be subject to higher standards in proving their claim or to higher standards of credibility than other claimants.

Credibility

30. Adjudicators are encouraged to use a narrative form of questioning, including open-ended questions allowing the claimant to explain the personal significance of their religion to them, the practices they have engaged in, and other relevant facts to the reasons for their persecution. While adjudicators may find it helpful during research and preparation to list certain issues to cover during an interview, adjudicators should avoid examining or testing the tenets or knowledge of the claimant's religion by using minimum knowledge tests in order to establish credibility. Detailed knowledge of the claimant's religion does not necessarily correlate to the sincerity of belief and knowledge of a religion may vary considerably depending on their social, economic, or educational background, or their age and sex, and individuals may be persecuted on the basis of their religion even though they have little substantive knowledge of its tenets or practices. The level of repression against a religious group in a society may also severely restrict the ability of an individual to study or practice their religion.

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