

Инициатива качества
систем убежища

в Восточной Европе и на Южном Кавказе



Asylum Systems
Quality Initiative

in Eastern Europe and the Southern Caucasus

**Inclusion in RSD – Well-founded fear, Persecution,
IFA, Extended definition**

UNHCR Training

Baku, Azerbaijan

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OBJECTIVES

- To consider aspects of the inclusion criteria, specifically:
 - Well-founded fear
 - Persecution
 - Internal Flight Alternative
- To understand application of the extended definition

...the term “refugee” shall apply to any person who:

...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable, or owing to such fear, is unwilling to return to it.

INCLUSION CRITERIA

1. Outside country of nationality or habitual residence
2. Well-founded fear
3. Persecution
4. Grounds – race, religion, nationality, membership in a particular social group or political opinion

WELL-FOUNDED FEAR: IS THERE A REASONABLE POSSIBILITY THAT THE APPLICANT WOULD EXPERIENCE HARM IF RETURNED TO THE COUNTRY OF NATIONALITY OR COUNTRY OF FORMER HABITUAL RESIDENCE?

- Key phrase in the definition
 - Will consider under this heading – who it is he fears; what he fears; the existence of state protection; application of forward looking test for risk of harm if he returns
- Two elements:
 - Subjective
 - Objective

SUBJECTIVE ELEMENT

- Refers to “fear” aspect of the definition.
- Fear is subjective and individual to each person
- Therefore, consider applicant’s state of mind/
motivations/ personality/ experiences
- Always a consideration but most relevant where
there is no objective basis for future harm but there
are compelling reasons not to return arising from
past persecution

OBJECTIVE ELEMENT

Is there an objective basis to the applicant's fear? Is the applicant's fear "well-founded"?

Consider:

- Applicant's experiences
- Experience of similarly situated individuals
- State protection

WELL-FOUNDED FEAR

1. Does the applicant have to experience past harm?
2. Does state protection have to be perfect?
3. How does COI help you assess the well-foundedness of the fear?
4. Why is the test of risk a “reasonable possibility”?

PAST HARM

Evidence of past harm is not required

Example – Applicant is member of a persecuted ethnic group. He has not been targeted personally. Consider situation of similarly situated members of the ethnic group.

But if the applicant has been harmed in the past, that is an indication of future harm.

Example - Applicant is member of persecuted ethnic group and has experienced racially motivated beatings.

STATE PROTECTION

- Important consideration – is most relevant where the agent of persecution is an non-state actor
- If state authorizes the harm or tolerates it, state protection is not available.
- If state not involved in the harm, must ask what the state is doing to protect the applicant

ADEQUACY OF STATE PROTECTION

Assess COI to decide if the state is doing enough to protect the applicant –

Is there an effective legal system and can the applicant access it?

Consider what the applicant has done to get protection.

IMPORTANCE OF GOOD COUNTRY OF ORIGIN INFORMATION

- COI is essential to assessing well-founded fear

- Factors in assessing quality of COI
 - Relevant
 - Up-to- date
 - Reliable
 - Accurate
 - Impartial and objective

ANALYSIS FRAMEWORK FOR WELL-FOUNDED FEAR

- Consider why the applicant has left his country of origin
- Identify what he fears will happen to him if he returns
- Determine whether adequate state protection is available
- Is there a serious possibility that the applicant would experience harm if he returned? If “yes”, his fear is well-founded.

PERSECUTION

- Human rights abuses or other serious harm
- Historically – needed repetition
- Today – repetition may be a relevant factor
BUT can also establish persecution if a single act is sufficiently serious
- Must be serious/ severe harm

RELEVANCE OF REPETITION

- To help determine the effects of the violation
- To assist in deciding whether those effects are serious enough to be persecutory

DISCRIMINATION V. PERSECUTION

- Not always easy to draw the line
- Consider overall impact or cumulative effect of a number of occurrences
- Are these various acts sufficiently severe so as to amount to persecution on a cumulative basis?

PROSECUTION V. PERSECUTION

Prosecution can be persecution when:

➤ The law is persecutory

Example – The law bans the practice of the Muslim religion.

➤ When the way the law is applied is persecutory

Example - The law bans theft. Persons of applicant's ethnic group are always given 10 year jail sentences; everyone else is fined.

PERSECUTION ANALYSIS FRAMEWORK

- Describe the harm feared (past harm, if experienced, and future harm)
- Identify human right/s at risk (international human rights framework)
- Determine to what extent the right is compromised
- Consider the effect on the individual applicant.
- Make a finding:
Does the harm feared = persecution either singularly or cumulatively?

INTERNAL FLIGHT ALTERNATIVE

The applicant is found to have a well-founded fear of persecution for a Convention reason in one part of the country.

Is there another part of the country where the person could go?

IFA

Procedure:

- The EO has to identify a place where the applicant might be able to relocate and give applicant opportunity to explain why he could or could not relocate there.
- Reliable up-to-date COI is essential.

FRAMEWORK OF ANALYSIS FOR IFA

Relevance Analysis

- Is the IFA practically, safely and legally accessible for the applicant?
- Who is the agent of persecution?
 - If the state, IFA probably not available.
 - If an non-state actor, is the persecutor likely to pursue the applicant to the IFA?
- Would the applicant be exposed to a risk of being persecuted or other serious harm upon relocation?

Reasonable Analysis

- Can the applicant lead a relatively normal life there without undue hardship?

EXTENDED DEFINITION

UNHCR extended definition or Mandate Protection – Applicants do not meet the refugee definition but have fled to avoid indiscriminate harm or threats of harm resulting from situations of generalized violence or events seriously disturbing public order.

EXTENDED DEFINITION

Indiscriminate harm – not inflicted on a selective basis

Generalized violence – includes armed conflict and other “man-made” disasters such as foreign domination, intervention, occupation

State protection – broken down

CASE STUDIES

Any questions before we start the case studies?

