



**Inclusion in RSD – Persecution and Nexus to  
Convention Grounds**

**UNHCR Training -Belarus**

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# NEXT STEPS IN LEGAL ANALYSIS

- Is the risk of harm well-founded? Yes
- Proceed to persecution and nexus:
- Does the harm amount to persecution?
- Is there a nexus between the persecution and one or more of the five grounds?

# PERSECUTION

## Challenges:

- No definition in the Convention
- Deliberate omission to ensure that concept could be applied to new situations
- No precise measurement of the threshold that must be reached

# PERSECUTION – HUMAN RIGHTS

- Preamble of 1951 Convention refers to the Universal Declaration of Human Rights
- Suggests that the drafters wanted the refugee definition understood in the context of international human rights principles
- Therefore, persecution can be considered in light of human rights violations

# PERSECUTION

- Human rights violations or other serious harm
- Must be serious/ severe harm
- The severity of treatment required to reach the persecution threshold may vary depending on the importance of the violated right
- Historically – needed repetition
- Today – can also establish persecution if a single act is sufficiently serious

# RELEVANCE OF REPETITION

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

# 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?

# DISCRIMINATION AND PERSECUTION

Discrimination – the practice of treating a person or a group differently from other people or groups of people.

“In the context of a human rights instrument, discrimination means making distinctions which principles of fundamental human rights regard as inconsistent with the right of every human being to equal treatment and respect.”

- Lord Hoffman in Ex. Parte Shah, U.K., House of Lords, 25 March 1999



# DISCRIMINATION AND PERSECUTION

- Discrimination does not amount to persecution except in certain situations
- Must be determined in light of all the circumstances
- Random, isolated acts of discrimination do not amount to persecution
- A series of discriminatory measures may amount to persecution on a cumulative basis.

# WHEN IS THE THRESHOLD REACHED?

Mohammad and his family are Muslims living in a non-Muslim country. Muslims experience discriminatory treatment in this country.

- At work some of Mohammed's co-workers call him "Osama" and "the terrorist". When Mohammad asked them to stop they told him he did not have a sense of humour.
- His wife is sometimes taunted on the street for wearing the headscarf.

# WHEN IS THE THRESHOLD REACHED?

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- His wife is sometimes taunted on the street for wearing the headscarf.
- Sometimes local teenagers throw stones at Mohammad's house. When Mohammad complained to the police they told him they had more important things to do than deal with teenage pranks.

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- A gang of youths start to harass Mohammad on his way home from work. Once they pushed him down some stairs and his nose was broken. Mohammad identifies one of the youths but they police fail to question him.

# 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 Bah’ai religion.

➤ When the way the law is applied is persecutory

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

# 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**



# Convention Grounds

**Race** – UNHCR Handbook - race “has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as ‘races’ in the common usage”

**Religion** - A person has a right to hold or not to hold a theistic, non-theistic and atheistic belief. Religion in this sense refers to not only established institutionalized religions but any system of belief. The individual has the right to live in accordance with that chosen belief. This also includes the ability to change one’s beliefs.

# FREEDOM OF RELIGION

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

- Article 18 (3) - ICCPR

# Convention Grounds

**Nationality** – Means more than just citizenship. Can also refer to an ethnic or linguistic group

**Political opinion** - Holding an opinion different from those of the government and this opinion is not tolerated by the authorities.

# POLITICAL OPINION

- The ground speaks of “opinion” not of political acts. Therefore, there is no requirement that the opinion or belief is actually acted on.
- It is not necessary that the applicant holds the political opinion. What is key is how the persecutor views the applicant. Therefore, a claim may succeed on the basis of imputed political opinion.

# Convention grounds

**Membership in a particular social group** – Two approaches to define social group:

1. A group of persons who share a common characteristic, other than their risk of being persecuted, or
2. Persons who are perceived as a group by society.

# MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

What is the common characteristic?

- 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.

# SOCIAL GROUP AND THE TWO APPROACHES

Some people can be analyzed under both approaches:

Example - Homosexuals can be considered social group because they share a common characteristic (sexual orientation may be considered innate or unchangeable or so fundamental to human dignity that the person should not be required to forsake it) and because in some societies homosexuals are perceived as a group.

# SOCIAL GROUP AND OTHER GROUNDS

There can be overlap.

Example – The applicant is a human rights lawyer who speaks against the government's human rights violations. His well-founded fear of persecution may be based on both political opinion and membership in a particular social group (human rights activists).



# MPSG - NON-STATE ACTORS AND THE CAUSAL LINK

The nexus requirement can be satisfied in two ways:

1. There is a real risk of being persecuted by the non-state actor for one of the Convention grounds.
2. The risk of being persecuted by the non-state actor is un-related to a Convention ground, but the inability or unwillingness of the State to offer protection is for a Convention ground.

THE RISK OF BEING PERSECUTED BY THE NON-STATE ACTOR IS UN-RELATED TO A CONVENTION GROUND, BUT THE INABILITY OR UNWILLINGNESS OF THE STATE TO OFFER PROTECTION IS FOR A CONVENTION GROUND.

A woman fears honour killing by her male relatives in her homeland. They are not targeting her for a Convention reasons. They are targeting her because they believe she has dishonoured the family. If the State cannot or will not protect her because she is a woman who has transgressed the norms of her society, this can satisfy the link to the Convention. The lack of protection is because of her membership in a particular social group, women.