

COMPENDIUM OF DECISIONS

***GUIDELINE 4
WOMEN REFUGEE CLAIMANTS
FEARING GENDER-RELATED PERSECUTION: UPDATE***

**Immigration and Refugee Board
February 2003**

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GUIDELINE 4
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A. DETERMINING THE NATURE AND THE GROUNDS OF THE PERSECUTION

I. GENERAL PROPOSITION

4 broad categories

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)**

II. GROUNDS OTHER THAN MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

1. Race

Farah, Zahra Moumin v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-493-01), Pinard, March 22, 2002; 2002 FCT 302. The applicants

claimed to have a well-founded fear of persecution due to their race or nationality as members of the Midgan tribe and because of their membership in a particular social group. The Court upheld the Refugee Division's finding that the applicants were not refugees due to a lack of credibility. The Refugee Division clearly and unequivocally determined the applicants not to be credible and offered detailed reasons for its decision which was supported by concrete documentary evidence. The Refugee Division is entitled to draw negative credibility inferences from the unsatisfactorily explained contradiction between the PIF and the applicant's testimony. The fact that some of the documentary evidence is not mentioned in the reasons is not fatal to the decision. The Refugee Division made reference to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and took into account the applicant's illiteracy and that men in Djibouti do not always share with their family the details of their outside activities. The finding that the applicants were not credible in this case amounted to a finding that there was no credible basis to the claim. Application denied. (CRDD decision A99-00376, January 17, 2001).

2. Religion

CRDD U95-04832, August 16, 1996. 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. The Refugee Division found the claimant's testimony to be consistent with the documentary evidence. It held that her freedom to practise her religion was limited, and that she faced serious religious discrimination. Moreover, as a single woman living alone without a family, she would attract public attention and suspicion in a Muslim society. She had no internal flight alternative. The Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The claimant had good grounds for fearing persecution by reason of her religion and perceived political opinion.

CRDD T99-09129, March 13, 2001. The claimant claimed to fear persecution by reason of her religion, Christianity. Her claim was also considered in light of the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. She alleged that her nephew was murdered because of his faith and the police took no action and that her children were confronted by a gang of motorcyclists who tore crosses from their necks and smashed them to the ground. She feared running afoul of Pakistan's blasphemy law. She became more fearful after she was widowed. The documentary evidence contained accounts of Muslim mobs destroying homes in Christian neighbourhoods, tear-gassing of Christians by police, and authorities turning a blind eye to attacks by Muslim extremists. In Punjab, where the majority of Pakistan's Christians live, many Christians are in jail, remanded on spurious charges. The claimant's

fear of persecution based on her Christian religion was objectively well-founded. The documentary evidence also indicated that women alone in Pakistan are at a considerable disadvantage. Rape is common and the police rarely respond to, and are sometimes involved in, the attacks. Documentary evidence indicated that the most discriminated against minority in Pakistan is Christian women. The claimant had a well-founded fear of persecution as a woman alone without male protection.

Arshad, Nasreen v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-3455-02), Campbell, 22 January 2003; 2003 FCT 64. The applicant is a 35-year-old citizen of Pakistan who, with her two infant children, fled the country alleging a well-founded fear of persecution based on her religion as a Shia Muslim. She alleges that persecution by her husband's uncle and other members of the SSP began after she converted to the Shia sect in April 2000. The Refugee Division accepted her evidence; however, the Refugee Division did not adequately address the reality that the police treated this as "a personal family problem" and were therefore unwilling to offer protection. Application allowed. (CRDD decision TA1-18831 et al., May 31, 2002).

3. Nationality

CRDD C93-00433, December 3, 1993. The claimant, a married woman, had experienced physical and psychological abuse at the hands of her husband. The panel found that the violent treatment and traditional rituals she would face on her return amounted to persecution. The panel found that her fear was linked to her nationality, that is, tribal affiliation, and her religion, Christian. On the documentary evidence, the state was either unwilling or unable to protect her.

CRDD T92-08429, May 10, 1994. The claimant was a Muslim citizen of Iran who had married an Iranian Jew. She resided in Israel from 1980 until departing for Canada in 1992, which raised the issue of exclusion under Article 1E. In Israel, the claimant was a victim of spousal abuse and she had separated from her husband. She therefore feared that if she were to return to Israel, she would lose her status and be deported to Iran. The claimant was questioned extensively regarding her rights and obligations during the 12-year period that she resided in Israel. In considering whether the claimant had the rights and obligations of a national, the panel found that the claimant would not be at risk of removal from Israel to Iran; she would be allowed to re-enter Israel, and her marriage was recognized by Israel. The panel also considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution in examining the claimant's fear of persecution at the hands of her husband. The panel found that effective state protection may be considered under Article 1E under the "rights of a national" and that in this case, effective protection would be available. The panel found that the claimant was excluded by Article 1E.

CRDD U93-06513 et al., April 1, 1996. The Refugee Division accepted that the claimant, a recently-widowed, 56-year-old Tamil woman, feared Tamil extremists in the north of Sri Lanka; however, it found that she had an internal flight alternative in

Colombo. Police arrests of Tamils in Colombo typically involved identity and background checks and release within, at most, two or three days. The prevention of terrorism was a valid social objective, and the detention and interrogation of Tamils was a valid security measure in order to prevent the terrorist threat from Tamil extremists. The arrests and short detentions of Tamils newly-arrived in Colombo could not be characterized as persecutory. The claimant was not detained or interrogated while in Colombo, a fact which confirmed that she was not viewed as a security risk by authorities. The Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. It noted that, regarding the situation of women, Sri Lanka was considered one of the most progressive of south Asian countries. While it might be frightening for a widowed Tamil woman in her 50s to return to a city where she had no family, there was a large Tamil community in Colombo which had provided support for many displaced Tamils, and support services were available for women. (Judicial review denied, *Ganeshan, Annam v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-1440-96), MacKay, February 21, 1997).

CRDD A98-00732, March 16, 1999. The claimant, who was born in 1933, alleged a fear of persecution on the basis of her nationality as an ethnic Armenian. The Refugee Division found that ethnic Armenians are not subject to acts in Georgia that constitute persecution. The documentary evidence indicated that the government of Georgia generally respects the rights of members of ethnic minorities. While the claimant was the victim of some discrimination and hostility, the several incidents of insults and extortion to which she was subjected over a period of many years did not constitute serious harm or a sustained violation of her basic rights and did not amount to persecution. With respect to her being an elderly woman alone, the documentary evidence indicated that women are discriminated against in employment in Georgia and that spousal abuse is a problem, but the claimant was single and retired. Taking into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the Refugee Division found that elderly women alone in Georgia are not subject to serious harm that would amount to persecution.

CRDD T98-05792, November 29, 1999. The claimant, a citizen of Ethiopia, claimed to be an ethnic Eritrean through her mother's family and asserted a fear of persecution against both Ethiopia and Eritrea based on her nationality. The claim turned on the credibility of her evidence that she was of Eritrean ethnicity. She carried an Ethiopian passport and exit permit and had no documents to indicate that her mother was born in what is now Eritrea. She could not speak Tigrinya, the Eritrean language. Despite its misgivings, and because it placed great emphasis on the claimant's gender and youth, the Refugee Division accepted that she was of Eritrean ethnicity. She had a well-founded fear of persecution in Ethiopia by reason of her ethnicity. Because she did not have a birth certificate and because it was not clear whether her mother was born in Eritrea or Ethiopia, the Refugee Division could not make a finding that Eritrean citizenship would be automatic or a mere formality in the claimant's case. Even if she could obtain Eritrean citizenship, she would be in a precarious situation as a young woman alone and would face a serious possibility of persecution because she would be perceived as someone from

Ethiopia. In its reasons the Refugee Division considered both the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues and the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD T98-03163 et al., May 7, 2001. The adult claimant, an ethnic Russian, had a history of discrimination and persecution at the hands of ethnic Kyrgyz residents of Kryrgyzstan. She also had serious mental health problems. If they were returned to Kryrgyzstan, her two children would be affected by such conditions as a high level of female unemployment, lack of basic resources, trafficking in girls and women, child abuse, lawlessness and the growing number of street children. Violence against women is widespread in Kryrgyzstan, and is met with apathy by law enforcement officials. The Refugee Division did not conclude that there was a serious possibility that all ethnic Russians in Kryrgyz would be persecuted. However, if she returned to Kryrgyzstan, the adult claimant's emotional difficulties may make her ethnicity and that of her children, highly visible, thereby putting them all at risk. She was also unlikely to be able to access any state protection that might be available. Because of her serious mental health problems, she would probably be unable to work in the foreseeable future. The claimants faced more than a mere possibility of persecution on the grounds of ethnicity and membership in a particular social group: a family including two minor children led by a single parent female with serious mental health problems, in a country with serious social and economic problems with a documented negative effect on women and children. The Refugee Division considered the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues, and the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD VA1-00226, August 2, 2001. The claimant, a Tamil in her mid-twenties, alleged a fear of persecution by the LTTE because of her refusal to join them and by the Sri Lanka army due to her father's forced collaboration with the LTTE. She also alleged a fear of persecution by a Sri Lankan soldier who has threatened to force her to live with him or she would be killed. There were several inconsistencies and implausibilities in the claimant's evidence. The Refugee Division noted particularly, among other things, that the allegations relating to her last detention and promise made to the soldier to release her, were not credible. Despite these credibility problems, the parts of her evidence that were credible supported her claim. The documentary evidence indicates that the LTTE has committed serious human rights abuses. On the other side, abuse of detainees by security forces is not uncommon, and female Tamil detainees are at risk of rape. There was more than a mere possibility that the claimant would be persecuted on the basis of her gender and her ethnicity. The Refugee Division referred to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. She would not have an internal flight alternative (IFA) in Colombo as she had no friends and family there and would not be employable. In addition, Tamils are regularly rounded up for identification purposes, and there is considerable evidence of mistreatment of women in detention in Colombo.

CRDD MA1-00109, April 16, 2002. The claimant feared persecution because of her Gypsy nationality and her membership in the social group of women. She claimed that

she had lost her job after she had rejected her employer's sexual advances. In addition, she said she had been physically assaulted by skinheads, which led to an abortion. The panel found that, although there were judicial and police institutions in Hungary to protect its citizens and despite government efforts to improve the situation of human rights recognized by the international community, since the claimant belonged to a group targeted by a deeply rooted culture of discrimination, the incidents she had experienced, taken cumulatively, amounted to persecution. Furthermore, the claimant's perception of the police as a pro-Hungarian ethnic organization justified her fear of seeking protection from the police. The panel, having referred to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, determined that the claimant was a Convention refugee.

4. Political Opinion

CRDD T93-06593, May 9, 1994. The claimant was detained several times for refusing to participate in pro-Khomeini demonstrations, for her association with a pro-Monarchist group, and for infractions of the dress code. In addition, she received 50 lashes for being caught by the Revolutionary Guard, unaccompanied, in the presence of a male friend. The panel found that the claimant had a well-founded fear of persecution by reason of her political opinion and her membership in a particular social group (namely, women). In coming to its decision, the panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. While the panel initially had serious concerns regarding the manner in which the claimant presented her testimony, it found that her answers did not indicate that she was a witness trying to be evasive, but rather were a reflection of an inability to focus, and of a disturbed mental state resulting from the claimant's mistreatment in Iran. A psychiatric assessment, requested by the panel, confirmed the claimant's mental condition. Due to her inability to provide coherent oral testimony, the panel's evidentiary findings were based primarily on the information in the claimant's Personal Information Form and the medical and psychiatric reports.

CRDD A99-00401, October 10, 1999. The claimant was the daughter of a former official of the MDN, a right-wing party which allegedly had links with former military governments in Haiti. She was a close associate of her father in his work and worked in organization. The Refugee Division found that there was more than a mere possibility that the claimant would be persecuted in Haiti by agents of the government on the grounds of her political opinion and her membership in a particular social group, her family. The police and judiciary were unreliable. The claimant was a young woman and was susceptible to the particular problems that women face in detention. In concluding that the claimant was a Convention refugee, the Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD MA0-04502 et al., December 5, 2000. The principal claimant feared persecution by reason of her gender, her political opinion and her membership in a

particular social group. She said that she had tried to set up a union to provide assistance to women who had been victims of abuse of power by the managers and owners of the business where she worked. The claimant said that, among other things, she had subsequently been sexually assaulted by three unknown men who gave her to understand that this was just the beginning. She had also received threats against her daughter. The claimant complained to the police, telling them her story and the reasons why she had been threatened and assaulted. The police did not provide her with any news about her case. The documentary evidence indicated that although the Uruguayan government seemed to have made significant efforts to provide assistance to women who were victims of violence, violence against women continued to be a serious problem. The panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and concluded that the claimants were Convention refugees.

CRDD TA0-01062, March 1, 2001. The claimant was a member of the Civic United Front (CUF). As a result of her activities promoting CUF among Zanzibari women, she was interrogated and detained for two weeks and later for ten days, during which time she suffered humiliation amounting to sexual abuse. She also lost her job twice. The police searched her home various times. She sought safety in northern Zanzibar and mainland Tanzania. The Refugee Division took into consideration the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, as well as a psychological report indicating that the claimant was suffering from a major depressive episode. The documentary evidence corroborated her testimony of CUF members being harassed and subjected to arbitrary detention, and also supported her claim that the Zanzibari and Tanzanian police are one force and that Tanzanian police would be obliged to follow up on any legal instruments issued by the Zanzibari police. The claimant was a relatively high-profile CUF activist in her community. An internal flight alternative (IFA) was not available to her.

Kaur, Biba v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-305-96), Jerome, January 17, 1997. The claimant was a member of the Democratic Action Party (DAP), who claimed to be a Convention refugee based on a well-founded fear of persecution by reason of her political opinion. She was detained for short periods of time in August and December 1988. In April 1989, she was detained, raped and severely beaten by three or four policemen. The Refugee Division concluded that the rape was a "random act of violence with no nexus to the Convention refugee definition". The Court held that the panel erred in this conclusion, as the evidence showed that the claimant had been detained due to her participation in the DAP and had been actively sought by the police on a number of occasions. Had the rape occurred without reference to any demonstrations or political activities, the panel's conclusion would have been appropriate. But the claimant had been questioned about her political activities and raped while being detained. The rape "was a direct consequence of her detention for political reasons." Application allowed. (CRDD decision U93-02012, August 13, 1993).

III. MEMBERSHIP IN A PARTICULAR SOCIAL GROUP

1) groups defined by an innate or unchangeable characteristic (i.e. gender, linguistic background and sexual orientation) ;

Sexual orientation

CRDD T94-07129, August 14, 1995. The claimant, a citizen of Venezuela, was a transsexual. She was born a male, but claimed that her gender identity was that of a female. She had had breast implant surgery and hormone treatments and was receiving psychological counselling preparatory to having a sex change operation. Because she was a transsexual, she had been beaten by her family, and police officers had sexually assaulted her from the age of 13, incarcerated her, beaten her and forced to pay over half her income as protection money. When she told a police officer that she planned to leave Venezuela because of the way she was treated, her home was burned down. The Refugee Division found that the claimant's gender identity was that of a female, that her sexual orientation was towards men, and that both of these characteristics were innate and unchangeable. Accordingly, the Refugee Division found that transsexuals were a particular social group. The Refugee Division noted that the claimant would also be considered a homosexual in Venezuela. The documentary evidence considered by the Refugee Division portrayed a society hostile to homosexuals and even more hostile to transvestites and transsexuals. The Refugee Division found that the documentary evidence corroborated the claimant's testimony that police did not take complaints by transsexuals and homosexuals seriously and did not even attempt to make a genuine effort to provide protection to homosexuals. Indeed, the agents of persecution were often state authorities themselves. The claimant was found to have met the onus of rebutting the presumption of state protection. The Refugee Division found the claimant to have a well-founded fear of persecution on the basis of membership in a particular social group.

CRDD T97-03671, July 29, 1999. The claimant based her claim to a fear of persecution on the ground of membership in a particular social group: lesbians. She claimed that she and her girlfriend were harassed by neighbours, raped by male friends from work, and detained, beaten and raped by police officers, who also attempted to extort money from them. Her girlfriend disappeared, and the claimant later discovered that she had died in hospital. The Refugee Division found that, although there were some problems, she was overall a credible witness. In considering the claim, the Refugee Division referred to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. Although there are safeguards in place in Argentina to protect sexual minorities, police abuse, including torture, continues. The rape of the claimant by the police was an act of persecution. There was more than a mere possibility that the claimant would be harmed because of her sexual orientation if she were to return to Argentina.

CRDD VA0-01624 et al., March 8, 2001. The claimants alleged a fear of persecution by reason of their membership in a particular social group: lesbian partners who are victims of domestic violence. The principal claimant was divorced. When the principal claimant's ex-husband found out about her romantic relationship with the other claimant, the other claimant was attacked in her home by two men. She reported the incident to the police, who refused to take any action because she was a lesbian. Both claimants were later brutally attacked in their home by policemen who were hired by the principal claimant's husband. The Refugee Division found that the claimants suffered persecution in the past and would be likely to suffer persecution in the future, and that state protection was not available to them since the agents of persecution were the police. An internal flight alternative (IFA) was not available to the claimants, as the principal claimant's husband would not tolerate the mother of his child living openly in a lesbian relationship anywhere in Mexico. The principal claimant had testified that she would seek legal custody of her child if she returned to Mexico, an action which would attract the unwanted attention of the agents of persecution. The Refugee Division also noted that the claimants had attempted to relocate elsewhere in Mexico, but were sought out by the agents of persecution. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD AA0-01226 et al., March 19, 2001. The principal claimant and her female friend feared violence at the hands of the principal claimant's abusive ex-husband. On one occasion, when the ex-husband threatened them, they went to the police. When the ex-husband informed the police that they were lesbians, the police beat them. They complained to the state prosecutor's office, but were told that, as a domestic dispute, it was unworthy of investigation. The principal claimant was hospitalized on another occasion as a result of a beating by her ex-husband. The Refugee Division found the claimants to be credible and noted that domestic violence remains a major problem in Russia and state protection is rarely available to victims. The ex-husband had contacts on the police force, and could find the claimants anywhere in Russia. The documentary evidence also indicates that homosexuals are attacked or killed because of their sexual orientation and are reluctant to report crimes. The dissenting member found the claimants not to be credible on the basis of unexplained implausibilities in their evidence, and also found that an internal flight alternative (IFA) was available to them in Russia.

Family

CRDD U92-08151 et al, September 2, 1993. 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. While the panel rejected the claimant's allegations that she had a well-founded fear because she herself was a suspected Mujahadin supporter, it concluded that the claimant, as a member of a particular social group, namely "women in Iran who are married to men suspected to be Mujahadin supporters", faced a serious possibility of persecution. The documentary evidence confirmed that relatives of Iranians fleeing persecution have been detained and

threatened. In analyzing the phrase "particular social group", the panel adopted the proposition set out in the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, which recognized cases involving "persecution of kin" where women feared persecution for reasons solely because of the activities of their spouses. The claimants were determined to be Convention refugees.

CRDD M96-09149 et al., June 16, 1998. A mother and her son claimed refugee status. The panel deemed that the son was not credible and that he was therefore not a refugee. The mother alleged that she had been savagely beaten and robbed by armed men searching for her daughter, following her daughter's one-week visit to the country after one year in exile in Canada. Aged 76, the mother feared for her life and decided to leave the country to avail herself of Canada's protection. The panel, referring to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, found that the intention of the Guidelines was to allow persons to be considered members of a social group where their basic rights are under threat because of an innate or an immutable characteristic which makes them vulnerable and where the state is unable to offer them protection. According to the panel, given her age and her vulnerability, among other things, the mother had reason to fear serious attacks on her rights by individuals who might be her daughter's political enemies, with no recourse to effective protection by the Haitian authorities.

2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association (*human rights activists*) ; and

CRDD M93-08606, May 22, 1996. The claimant was physically and emotionally abused by her husband. Educated and emancipated, she had strong beliefs about the dignity and human rights of women - beliefs which were at odds with the traditions and religious laws of Tanzania. She was opposed to polygamy and female circumcision. The documentary evidence indicated that violence against women was reported to be widespread in Tanzania, and that cultural, social and family pressures often prevented women from reporting abuses to authorities. Laws which might have protected women were not being implemented. The claimant had been unable to go to the authorities when her husband abused her, because her husband was the district commissioner and head of the local police force. The Refugee Division found that the claimant belonged to the particular social group of battered women. Given her history of abuse, her views, her extensive studies about women's rights, her lengthy stay in the West and her refusal to return to Tanzania in order to continue working for the government, she would be at risk were she to return.

3) groups associated by a former voluntary status, unalterable due to its historical permanence (*historical intentions and anti-discrimination influences*).

GENDER-DEFINED PARTICULAR SOCIAL GROUP

There is increasing international support for the application of the particular social group ground to the claims of women who allege a fear of persecution solely by reason of their gender, within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention.

Application of the statutory ground

In evaluating the "membership in a particular social group" ground for a fear of gender-related persecution, two considerations are necessary:

- 1. Most of the gender-specific claims involving fear of persecution for transgressing religious or social norms may be determined on grounds of religion or political opinion.**

For transgressing religious or social norms

CRDD T93-11934, July 5, 1994. 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. The panel found that the claimant had provided clear and convincing confirmation that the state would not protect her if she returned to Syria. In assessing the claimant's credibility, the panel accepted her explanation for omitting certain important details from her Personal Information Form. Applying the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the panel noted that it was necessary to be mindful of the special problems that women face when called upon to state their claims at refugee hearings, particularly when they have had experiences that are difficult for them to speak about.

CRDD T93-11857 et al., October 18, 1994. 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. With reference to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the panel concluded that the

female claimant could be described "under the category of women who fear persecution for failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws or practices in their country of nationality." The panel held that, given the accepted cultural norms which dictate life for women in Syria, she would not receive protection from the state. Her fear of persecution would be by reason of her membership in the gender-based group, Syrian women. As the influence of her father extended to Lebanon, the male claimant faced a well-founded fear of persecution if returned to Lebanon.

CRDD T94-04946 et al., April 11, 1995. 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. The Refugee Division found that the claimant had a well-founded fear of persecution on the basis of her membership in a particular social group, women who have transgressed the social mores of the society in which they live. The Refugee Division referred to documentary evidence indicating: 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. The Refugee Division also referred to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and to international human rights instruments - in particular the *United Nations Declaration on Women*. The Refugee Division concluded that the claimant's actions in transgressing the social mores of Somaliland would subject her to harsh punishment were she returned to that country, including a continuation of the unwanted relationship with her brother-in-law.

CRDD T97-06758 et al., February 23, 1999. 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. The forced betrothal of the principal claimant at the age of 10 was contrary to the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*. State protection was not available to her. The principal claimant had a well-founded fear of persecution as a member of a particular social group. The Refugee Division referred to a category set out in the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: 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.

CRDD V96-02102 et al., May 28, 1999. The claimant was sentenced to 74 lashes for not observing the Iranian dress code. She avoided the lashes by buying her sentence because she was still breast-feeding her child (the minor claimant). Her failure to comply with the dress code also led to her being fired from her job at the request of the Morality Branch of the Komiteh. After the death of her husband, her in-laws obtained custody of her son under the Iranian Civil Code. She left Iran with him rather than relinquish custody. Under the Civil Code, a male child's paternal grandfather may claim custody when the child reaches the age of seven. The Refugee Division found that the Civil Code infringes the human rights of widows. Separating a widow from her child is cruel and inhuman treatment and renders a law of general application Draconian and persecutory. The claimant had a well-founded fear of persecution as a member of two groups: women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender at the hands of public authorities; and women who fear persecution as a consequence of failing to conform to gender-discriminatory religious or customary laws and practices. The Refugee Division referred to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD U97-03682, September 18, 1999. The claimant was an active member of the National Conscience Party. She took part in an anti-government rally and was arrested and beaten by the police. During her detention, she was tortured and repeatedly sexually assaulted by guards. Because of the democratization process in Nigeria, there was not a serious possibility that the claimant would face persecution on the basis of her political opinion. However, she did have a well-founded fear of persecution as a member of a particular social group: women who are perceived to have transgressed societal norms [or cultural norms]. Female rape victims in Nigeria are regarded as disgraced and are ostracized and left without social support. The claimant had been ostracized by her family and by her husband, who forbade her any contact with her children. She would not be able to depend on the government for protection. The documentary evidence indicates that the government tolerates religious and cultural practices that adversely affect Nigerian women. Alternatively, s. 2(3) of the *Immigration Act*, concerning compelling reasons, applied. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were taken into account in the consideration of the claim.

CRDD T99-10229 et al., May 24, 2000. The adult claimant divorced her abusive first husband. She sent their daughter out of the country, because of fear. When her ex-husband, now a member of the Taliban, discovered that their daughter was not available to enter into an arranged marriage, he beat the claimant, threatened her and arrested her current husband. He also reported her to the Taliban for another matter. Believing that it was only a matter of time before she was arrested by the Taliban or killed by her ex-husband, she fled the country with her minor son. According to the documentary evidence, women are subjected to severe discrimination under the Taliban regime. As an educated woman who taught girls and who exercised her independence by preventing her ex-husband from choosing a spouse for his daughter, the claimant had a well-founded

fear of persecution at the hands of the Taliban and/or her ex-husband by reason of her membership in a particular social group and her political opinion. The minor claimant faced a serious possibility of persecution by reason of his relationship to the claimant. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

Pepa, Arben v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-3957-01), Rothstein, July 31, 2002; 2002 FCT 834. The Kanun of Lek is a traditional custom in Albania that governs a number of things including marriage. The Applicants married without the approval of the wife's parents and without the payment of a dowry. As a result, the wife's family threatened to kill the Applicants. The Refugee Division found that the Applicants were the targets of a private vendetta -- vengeance by the wife's family. (1) The Refugee Division did not explain why, even if a person is only the target of a private vendetta, if the basis of the vendetta is the victim's race or any other Convention ground, the victim might not still come within the Convention refugee definition. There is no principle of law that provides that being the victim of a private vendetta and being a Convention refugee are necessarily mutually exclusive. (2) The Refugee Division found that the Applicants were not members of a group possessing an innate or unchangeable characteristic. In reaching that conclusion, the Refugee Division only focussed on the wife's family which, it notes, could accede to the marriage. The Refugee Division has focussed, incorrectly, on the perpetrators and not on the victims. (3) Further, the Refugee Division should still have assessed whether, in this case, association with a group, although voluntary, is unalterable due to historical permanence, i.e. the marriage without consent had taken place and was, thus, an unalterable fact. (4) The Court noted that at the rehearing, the Refugee Division will still need to address a number of other issues of law and of mixed fact and law, and of credibility. Application allowed. (CRDD decision CA0-00540, August 1, 2001).

- 2. For a woman to establish a well-founded fear of persecution by reason of her membership in a gender-defined particular social group under the first category in *Ward* (i.e. groups defined by an innate or unchangeable characteristic):**
 - **The fact that the particular social group consists of large numbers of the female population in the country concerned is irrelevant -- race, religion, nationality and political opinion are also characteristics that are shared by large numbers of people.**
 - **Gender is an innate characteristic and, therefore, women may form a particular social group within the Convention refugee definition. The relevant assessment is whether the claimant, as a woman, has a well-founded fear of persecution in her country of nationality by reason of her membership in this group.**

Narvaez v. Canada (Minister of Citizenship and Immigration), [1995] 2 F.C. 55 (T.D.). The claimant feared violence by her ex-husband if she returned to Ecuador. On the one occasion when she sought police protection during seven years of abuse, the police arrived at her home some time after she called, and her complaint was struck from the police record. The Court overturned the Refugee Division on the basis that the Refugee Division had not dealt properly with "membership in a particular social group". The Court considered *Canada (A.G.) v. Ward*, [1993] 2 S.C.R. 689 and the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The Court concluded that "women in Ecuador subject to domestic violence belong to a particular social group". Further, the Refugee Division failed to consider the police treatment of women in Ecuador subject to domestic violence. The past experience of the claimant and the experiences of similarly-situated women were evidence of the lack of protection available. In the Court's opinion, the fact that the claimant was now divorced did not affect the level of state protection. Application allowed. (CRDD decision U93-10881, July 19, 1994).

- **Particular social groups comprised of sub-groups of women may also be an appropriate finding in a case involving gender-related persecution. (i.e. age, race, marital status and economic status)**

Marital status

CRDD T92-09592, September 14, 1993. The claimant was a 36-year-old woman whom the panel found "has suffered, for years, cruel, inhuman, degrading treatment inflicted upon her by her former husband." He had worked with the Ministry of the Interior and at the time of the hearing worked for the police. Although they separated in 1975, he abused her until she fled to Canada in 1992. When the claimant approached Bulgarian authorities, she was not provided with protection as she was advised that it was a domestic matter. The claimant believed that help was not forthcoming because of her former husband's close connection to state security. In considering the claim, the panel made numerous references to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. It found that the claimant had suffered serious harm of a nature predominately experienced by women in an environment that did not provide them with protection. The claimant's situation was found to be "much more difficult and different to the situation of an ordinary Bulgarian woman abused by her husband"; the claimant had an increased vulnerability due to her former husband's relationship with the government. Moreover, the panel concluded that given his behaviour in the past, there was more than a mere possibility he would pursue her if she returned; this foreclosed an internal flight alternative. The claimant was found to belong to the particular social group of "Bulgarian women vulnerable to wife abuse by men with government influence." The claimant was determined to be a Convention refugee.

CRDD T93-04176 et al., December 7, 1993. In considering the Convention refugee claim by a widow and her three minor children, the Refugee Division was persuaded by the Chairperson's Guidelines on Women Refugee Claimants Fearing

Gender-Related Persecution that a "Tajik woman, a non docile Muslim, influenced by western ideas, which could be perceived as contrary to state's objective, and with minor children; and without any source of male protection, in a society which requires it, will have good grounds of fearing persecution if returned to an environment where protection is at best, uncertain, due to the political instability and dismal human rights violations of the country." The Refugee Division found that the adult claimant belonged to a particular social group namely, "Westernized Tajik women in a society moving towards Islamic orthodoxy, with no male protection." In coming to its decision, the Refugee Division considered the reasoning in CRDD U92-03400 (August 13, 1992). The dissenting member held that the documentary evidence did not support a well-founded fear of persecution for any of the Convention grounds.

CRDD U94-03497 et al., April 20, 1995. The principal claimant, after suffering from years of spousal abuse in Bangladesh, Saudi Arabia, and the United States, divorced her first husband and remarried. The first husband was a member of a wealthy, influential, fundamentalist Muslim family in Bangladesh. Through his family contacts he was able successfully to prosecute the principal claimant and her second husband on false charges concerning child abduction, in the criminal courts of Bangladesh, and through political and religious contacts he was able to pressure the Saudi authorities into seeking to arrest them. The panel determined that, since the principal claimant was a "female from Bangladesh in a former spousal relationship with a man of influence", her claim was based on gender. Thus, she was a member of a particular social group according to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution; furthermore, the case fit within the "innate or unchangeable characteristic" category identified in *Canada (A.G.) v. Ward*, [1993] 2 S.C.R. 689. Her second husband, and her daughter by her first husband, were found to be members of the particular social group consisting of her family.

CRDD U97-03981, December 2, 1998. The claimant was a young widow with no relatives with whom she could live in India. She claimed that, without protection, she could be a target for kidnapping and sexual and human rights abuses. The documentary evidence supported that assertion, indicating that registered cases of violence against women are on the rise in India and that female bondage and forced prostitution are widespread in parts of society. The tradition of Sati does not permit a widow to eat well, wear good clothes or sleep on a bed. Widows are expected to tolerate advances from all male members of the family. Finding housing is difficult for single women. The claimant, as a young widow, would be targeted for sexual and human rights abuses without male protection and would be deprived of her right to make a living and to live alone. She would also be a victim of social boycott and of deep-rooted traditions which consider a widow to be bad luck. She had good grounds for fearing persecution as a member of a particular social group: a young widow without male protection. The Refugee Division referred to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

- **Because refugee status is an individual remedy, the fact that a claim is based on social group membership may not be sufficient in and of itself to give rise to refugee status. The woman will need to show:**
 - a. **that she has a genuine fear of harm,**

CRDD T93-12736 et al., April 26, 1994. The female claimant separated from her husband, a member of the state security service (SIDE), who used his position to overturn a custody order regarding their older children. Due to her efforts to regain custody of these children, the female claimant's husband subjected the female claimant and her younger children, the minor claimants, to serious threats including death threats. In addition, the female claimant was sexually attacked by armed agents of her husband in 1989. The female claimant was unable to obtain protection from the police or non-governmental groups because of her husband's membership in SIDE. In assessing the claims, the panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. In addition, it considered the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment* as well as the *Convention on the Elimination of All Forms of Discrimination against Women*. Given the pattern of past persecution and the failure of state protection, the panel found the female claimant to have a well-founded fear of persecution based on her gender, as the wife of an influential man in the powerful state security apparatus. The minor claimants' claims were based on their relationship to their mother.

CRDD V95-00374, November 21, 1996. The claimant's father arranged for her to marry an older Muslim man, and to convert from Christianity to Islam and undergo circumcision before the wedding. When the claimant expressed her opposition to the marriage, her father beat her. The Refugee Division found that the claimant was a member of a particular social group: namely, Ghanaian women subject to forced marriage. She faced persecution in the form of genital mutilation and forcible religious conversion. While the government of Ghana discouraged the practice of female circumcision, it had not made it illegal. Moreover, the police did not normally intervene in domestic disputes. State protection for the claimant would not have been adequate. The fact that the claimant had married in Canada after making her refugee claim did not remove the objective basis for her fear of persecution, as it was not unlikely that her father would force her to go through with the arranged marriage anyway, or would injure or kill her if the intended groom called off the wedding.

CRDD V98-02797, January 10, 2000. The claimant alleged that she was abused by her former common law husband, a Canadian citizen, who controlled her by threatening to take away her children if she disobeyed him, and that she feared persecution as a member of a particular social group: women in Hungary who are subject to domestic violence. According to the documentary evidence, one quarter of the Hungarian population grew up in a family where the threat of physical violence was an everyday reality. The Refugee Division referred to the Chairperson's Guidelines on Women

Refugee Claimants Fearing Gender-Related Persecution. According to a Hungarian criminal lawyer, about 50 women die every year as a result of domestic violence. There was a strong objective basis for the claim. There was convincing evidence of Hungary's inability to protect victims of spousal abuse. There are no specific laws pertaining to domestic violence. Police and child protection authorities often consider it an intrusion into a family's privacy to investigate cases of domestic abuse. The number of shelters is extremely limited. Because the couple would always be linked through their children, the claimant's ex-husband would have a continuing interest in the claimant's whereabouts and would be able to find her. She did not have an internal flight alternative (IFA) in Hungary.

CRDD VA0-02616, February 8, 2001. The claimant alleged a fear of persecution by reason of her membership in a particular social group and gender: women who are obese. She was denied promotions and lost employment opportunities because of her obesity. However, her evidence revealed that she had had no difficulty in obtaining employment in Mexico, although she had been unable to find permanent employment in a position with the public which she found satisfying. The Refugee Division concluded that the claimant had experienced many instances of discrimination, but the discrimination did not, even cumulatively, amount to persecution. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, in particular with respect to persecution related to discrimination. The Refugee Division also noted that there was no evidence that obese men in Mexico would not face similar discrimination in applying for employment in positions dealing directly with the public.

CRDD A99-01089, March 22, 2001. The claimant claimed that she organized activities for youths in Bogotá, that some youths were approached by recruiters who tried to persuade them to join a paramilitary organization and that she tried to convince a young boy not to join. The boy was found killed the following day, and the claimant was threatened and raped by the recruiters. The Refugee Division took into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and determined that the claimant had a well-founded fear of persecution.

CRDD VA0-00225, April 20, 2001. The claimant alleged a well-founded fear of persecution in India as a member of a particular social group: divorced women. She claimed that she would be subject to discrimination in employment and housing accommodation and would receive unwanted advances from men. The documentary evidence indicated that divorce remains unacceptable for women in India and that divorced women are often ostracized by their communities and even their families. However, the hardship which the claimant had experienced in the past and feared constituted discrimination, not persecution. Being a divorced woman would not deprive her of her right to work as a nurse, to practice her religion and to access normally available educational facilities. While she experienced difficulties in renting a room and unwanted advances from two men who thought she would be easy to get, these instances of discrimination did not, cumulatively, amount to persecution. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-

Related Persecution but determined that they did not apply in this case. Moreover, the claimant did not rebut the presumption of state protection.

CRDD MA1-03752 et al., January 4, 2002. The principal claimant alleged a well-founded fear of persecution by reason of her membership in a particular social group, namely women. Her minor son based his claim on that of his mother as a family member. The claimant was assaulted by her partner, who was a high-ranking police officer. Several times he had beaten her and threatened to shoot her, in front of her son, whom he also threatened to kill. She fled several times, but her friend found her. The claimant did not lay a complaint regarding her partner's actions because of his rank and influence in the police. The panel found the claimant to be credible. According to the documentary evidence, there was a law to protect victims of domestic violence, but it was ineffective because the police refused to take complaints from the women who were victims and most judges either were unaware of the content of this law or chose to ignore it. The panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and determined that the claimants were Convention refugees.

***Dhaliwal, Jaswinder Kaur v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-4787-01), Kelen, September 11, 2002; 2002 FCT 965.** The Refugee Division found that the applicant was a victim of horrible physical and mental abuse by her husband. However, the Refugee Division denied natural justice when it rejected as not credible the applicant's testimony about the abuse continuing after the divorce in 2000, in that the Refugee Division had stopped the applicant's testimony about the continuation of the abuse because the Refugee Division had found that testimony unnecessary. Moreover, the Court held that the Refugee Division decision that the applicant was a credible witness with respect to her fear of persecution up to end of 1998, but not a credible witness with respect to her fear of persecution in 1999 and 2000, is irrational. Application allowed. (CRDD decision TA0-17763, August 20, 2001).

b. that one of the grounds of the definition is the reason for the feared harm,

CRDD T93-00104 et al., October 29, 1993. The claimants were from Ukraine. The adult claimant, because she had left before the implementation of the citizenship laws, was found to be stateless, Ukraine being her country of former habitual residence. The minor claimant, arriving in Canada after the implementation of the laws, was found to be a citizen of Ukraine. The adult claimant testified to harassment from Communists because of her political activism on behalf of the Democratic Bloc. She also had suffered abhorrent treatment, including brutal rape, from her husband. The panel held that the Communists might still control Ukraine, but that there was no reasonable chance that the adult claimant would be persecuted because of her political opinion. With respect to her fear of her abusive husband, the panel held that while the beatings, assaults and rapes undeniably constituted persecution, the issue was whether there was a nexus to one of the grounds (consult with author) in the definition. Counsel defined the particular social group that the adult claimant might belong to as, "Ukrainian women subject to wife abuse or domestic violence generally, who do not have effective protection available in

Ukraine." Quoting *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, the panel held that the social group could not be identified using "victimization by persecution". Using the criteria in *Ward*, the panel found that, (a) there was nothing innate or unchangeable about being a victim of domestic abuse, (b) the claimant was not voluntarily associated with any other such victims, and, (c) this was not a case involving an unalterable past voluntary status. With respect to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the panel reiterated that the social group could not be identified by the persecution suffered. The panel did not explicitly rule on whether "women" or "Ukrainian women" were particular social groups but assumed for the sake of argument that they could be. The panel ruled that notwithstanding that there might be a nexus to one of the grounds, (consult with author) there was no clear and convincing proof of the state's inability to protect. As the minor's claim was dependent upon that of the adult, they were both found not to be Convention refugees.

CRDD T93-08839, March 3, 1994. The claimant, an Issaq from Northern Somalia, feared returning to Somalia because of the political in-fighting between the Issaqs, because she did not want to adhere to the Sharia and because she was a single woman. The panel held that her fear was not well founded: (1) her fear of political in-fighting had no nexus to any of the grounds and was a generalized fear of the conditions in the country; (2) documentary evidence showed that Islamic fundamentalism was not so prevalent so as to threaten the freedom of other Muslims; and (3) applying the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the panel considered the country conditions and found that women in general or women who reject the prevalent social and religious traditions did not have good grounds to fear persecution on the basis of their gender or their lifestyles.

CRDD M93-02943 et al., September 9, 1994. The claim made by a mother and her four children was considered under the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The uncontested evidence showed that the main claimant had been the victim of spousal violence since her marriage in 1967. She had been brutalized, raped and humiliated many times. The claimant left Italy definitively in 1992 to seek refuge in Canada after catching her husband sexually fondling their five-year-old daughter. The Refugee Division heard the testimony of two expert witnesses who explained that the incidence of domestic violence in Italy gets masked because of engrained social taboos and cultural, family and religious pressures. This social context heightens the feeling of self-reproach in Italian women, causes them to remain silent and prevents them from taking action. However, despite such a difficult social context, and despite the fact that the panel agreed that the claimant had been a victim of persecution on one of the grounds set out in the definition, the Refugee Division found that the Italian government was capable of protecting the claimants. In place were both a legal system and organizations dedicated to fighting domestic violence.

CRDD M94-01200, December 1, 1994. The claimant came to Canada in 1988, leaving behind her children and an abusive partner. The latter arrived in Canada a year later and the relationship and beatings resumed. The claimant did not go to the police

because she was residing illegally in the country. Nor did she attempt to regularize her status until she and her partner were asked to report to Immigration in 1992. Her partner returned to Saint Vincent. The claimant sought refugee status, claiming that if she were deported, she would have no choice but to live with the man who beat her, and that she knew from the experiences of two friends that no protection was forthcoming to battered women. The panel concluded that while "women" constituted a particular social group, as defined by *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, the Refugee Division had previously held that "battered women without protection" did not because a social group cannot be defined in terms of persecution. Thus, the claimant's fear was not linked to one of the five Convention grounds. Moreover, even if a ground had been established, the documentary evidence showed adequate protection was available. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were held not to be applicable as protection was available to all women in Saint Vincent.

***Diluna, Roselene Edyr Soares v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-3201-94), Gibson, March 14, 1995.** The claimant's relationship with her husband was marked by violence, committed by the husband against the claimant. On four occasions, the claimant complained to the police, but no alleviation of the attacks resulted. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were considered by the Refugee Division. The panel held that what the claimant feared was private violence and criminality perpetrated against her as an individual; it was not persecution, and was not related to a Convention ground. The panel also found that the claimant had not given a satisfactory explanation for her post-arrival delay in making a claim. The Court ruled that "women subject to domestic violence in Brazil" constituted a particular social group. On this point, the Court adopted the reasoning in *Narvaez v. Canada (Minister of Citizenship and Immigration)*, [1995] 2 F.C. 55 (T.D.). The Court indicated that it was defining a particular social group on the basis of common victimization. The panel erred in failing to find that the claimant had good grounds for fearing persecution on a Convention ground, given (inter alia) the inability or unwillingness to protect which state authorities had demonstrated in the past. It was unfortunate that the panel had not mentioned a psychiatric assessment which might have been read as supporting the claimant's explanation for the delay. Application allowed. (CRDD decision U93-07504, March 24, 1994).

**c. that the harm is sufficiently serious to amount to persecution,
that there is a reasonable possibility,**

CRDD C97-00534, January 13, 1999. During her six year marriage, the claimant was subjected to violence, sexual assault, and intimidation because she had daughters rather than sons. She was forced to participate in sorcery and various rituals. She was confined to her room as punishment for contradicting the sorcerer's predictions and becoming pregnant with female children. Her husband tried to coerce her into having an abortion during her third pregnancy. Her father-in-law complained about the size of her dowry and spoke of bride-burning. She was isolated by her husband and his family and

was unable to tell anyone of the abuse. The Refugee Division took into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. It was found that this treatment of the claimant constituted gender-related persecution. The claimant's husband's family was powerful and had connections. The documentary evidence indicated that violence against women is a significant problem in India. Enforcement of laws protecting women remains a problem and assistance to abused women from private organizations exists only on a modest scale. The claimant had been unable to contact the police because of being confined and she referred to the influence of her husband and his family. The Refugee Division found that state protection was not available to the claimant. Given that the claimant's husband's family was well-connected throughout India and that the claimant did not have family protection and had two young daughters to care for, there was nowhere in India where she could live in safety without coming to the attention of her husband and in-laws. An internal flight alternative (IFA) was not available.

CRDD T98-02359, March 31, 1999. The claimant was subjected to chronic physical abuse by her husband. When his attempt to pursue her to Canada was forestalled, he threatened her by telephone. The Refugee Division found that the claimant's history of physical and emotional abuse amounted to persecution. The documentary evidence on domestic violence in Portugal was limited and recent. The Refugee Division concluded that there are serious gaps and inadequacies in the protection currently available to abused women in Portugal. The onus of filing a report is on the victim, and the police try to discourage women from making a complaint. In the claimant's case, police indifference may have been exacerbated by racism, since she was black. Given the claimant's visible minority status, in combination with her status as an abused woman, state protection was not available. The claimant did not have an internal flight alternative (IFA), since her husband was dangerously violent and could pursue her anywhere in Portugal. Even if an IFA existed, it would be unreasonable to expect the claimant to seek refuge there given her age, poor health, economic dependence, limited education and lack of marketable skills. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were referred to.

CRDD U98-01230 et al., July 29, 1999. The claimant alleged that she and her family were harassed by Hindus because they were Ahmadis. The Refugee Division found that the totality of the claimants' experiences did not amount to persecution. India has not adopted a state religion and the Constitution guarantees freedom of worship. While there was evidence of one mob attack on proselytizing Ahmadi missionaries in a Muslim-dominated township, the claimants were not similarly situated with those missionaries. The adult claimant also alleged that her husband (a paraplegic who was confined to a wheelchair) physically assaulted her and her children when he was drunk and that he wanted to involve her and her daughters in the international sex trade. The claimant's Port of Entry notes contained no mention of physical abuse. At the time when the claimant's husband was allegedly beating her daily, one of her daughters wrote to a trusted spiritual adviser asking for prayers for her father, who was in great pain. The daughter did not

mention abuse to the adviser. The claimant could access the Indian justice system to prevent her daughters from being forced into prostitution.

CRDD V99-02940 et al., May 8, 2000. The claimants were two young women, one being a minor. The Refugee Division considered the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues. One of the claimants claimed to fear discrimination, as a female, from her grandparents, who viewed her family as a failure for having produced only girls. She came to North America to earn money to remit to China in an attempt to improve her immediate family's reputation. She feared the stigma that would attach to her as a "failure" if she were forced to return to China. The Refugee Division found that this stigma did not amount to persecution in the circumstances. It was noteworthy that the claimant failed to mention the problem in her interview at the port of entry or in her Personal Information Form (PIF). This claimant was not a Convention refugee. The other claimant alleged that her abusive father, who was deeply in debt, had arranged for her to marry in exchange for a sizeable dowry. She stated that she would rather commit suicide than marry the man. The Refugee Division found that the feared harm amounted to persecution. The claimant's father maintained the household registration in which the claimant was still registered, and state protection would not be available to her in a rural village. This claimant was a Convention refugee.

CRDD M99-07094 et al., May 31, 2001. The principal claimant, who is of French nationality, divorced her husband, who is of Syrian nationality but naturalized as French, because she had suffered physical, psychological and sexual violence from him, as well as threats to abduct their children and take them to Syria. (...) The claimant fled to Canada with the children, fearing that their father would carry out his threats, abduct the minor claimants and take them to Syria, in spite of the order not to remove the children from French territory. In the meantime, the ex-husband obtained legal custody of the minor claimants in France. (...) According to the presiding member of the panel, the claimants were members of the social group "mixed family where the father has the nationality of a country that is not a signatory of the *Hague Convention on the Civil Aspects of International Child Abduction* and does not abide by the principles of the Convention regarding children's rights." The claimant was credible, and her fear that her children would be abducted was reasonable. (...) International child abduction to a country that had not signed the *Hague Convention on the Civil Aspects of International Child Abduction* constituted a severe and sustained violation of the fundamental rights of both the mother and the children, and thus amounted to persecution. (...) The right to security of the person, as guaranteed in section 7 of the *Canadian Charter of Rights and Freedoms*, extended to protection of the psychological integrity of the person (*New Brunswick v. G. (J.)*, (1999) 3 S.C.R. 46). (...) According to the Islamic and Syrian family culture as described in the documentary evidence, the minor female claimant especially would in all probability have to accept the husband chosen for her by her father, and would pass from her father's guardianship to that of her husband. According to the documentary evidence, the claimant's ex-husband felt obliged to obey his own father, and would expect his children to obey him in turn. (...) In addition, the minor female claimant would run the risk of being denied an education or an occupation. She would also risk suffering excision or a clitoridectomy, which the panel recognizes as a

form of persecution. (...) In France, the claimant seemed to have been a victim of a miscarriage of justice.

CRDD TA0-06676 et al., March 4, 2002. The principal claimant (who was accompanied by her young minor son) claimed refugee status as a woman subject to domestic abuse. She alleged that her ex-husband physically abused her during their marriage and continued to harass, stalk and intimidate her after she left him. She decided to flee Russia after her ex-husband forced his way into her parents' home and attempted to rape her in front of her son, who was seriously injured in the ensuing struggle. The minor claimant had also been harmed prior to this. The Refugee Division found that the claimant feared serious harm amounting to persecution at the hands of her ex-husband. Her testimony that she had made several unsuccessful efforts to obtain state protection was supported by the documentary evidence, which indicated that the Russian police are often reluctant to get involved in what they see as purely domestic disputes.

CRDD MA1-07929, March 13, 2002. The claimant, aged 17, feared persecution in her country by reason of her membership in a social group, namely women. She alleged that her father wanted to force her to marry a 65-year-old man, a polygamist and the father of 15 children. The claimant's testimony was credible in the panel's view. Furthermore, according to the panel's specialized knowledge, the spouse could request that his new spouse once again undergo genital mutilation. The panel moreover had taken into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution because the feared harm was tantamount to persecution. According to the documentary evidence, in Guinea, custom took precedence over written law. It was therefore unreasonable to evoke state protection in this case, even less internal flight. The panel concluded that the claimant was a Convention refugee.

d. that the feared persecution would occur if she was to return to her country of origin, and

CRDD T95-05227 et al., July 2, 1996. The principal claimant was regularly abused by her common law husband, a former police officer with extensive police contacts. When the principal claimant attempted to obtain police protection, she was told that nothing could be done for women who were abused in domestic situations unless there were serious injuries or a death. The documentary evidence indicated that the police rarely offered or provided effective assistance to women who were subjected to domestic violence, and that such assistance as was provided by government agencies was ineffective. The minor claimant, the principal claimant's four-year-old daughter, had suffered adverse emotional and psychological effects as a result of the abuse experienced by her mother. And the principal claimant feared that her husband would use the minor claimant as a pawn, inflicting harm upon the child. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. It held there was a reasonable chance that the claimants would face gender-related persecution if they were to return to Venezuela. Given the husband's connections, no internal flight alternative was available to the claimants.

CRDD T98-06186, November 2, 1999. The claimant, a sex-trade worker in debt-bondage, was found to face a serious possibility of serious harm if she returned to Thailand, either in the form of continued sex-trade debt-bondage or serious physical reprisals for an attempt to avoid her debts. The Refugee Division stated that it would be wrong to adopt a narrow definition of social group on the basis that prostitution may be found to be immoral, distasteful, or undesirable. The fact that the claimant was a woman was a major cause of her predicament. Her particular social group was women. Alternatively, former sex trade workers comprise a particular social group in that they are a group associated by a former voluntary status, unalterable due to its historical permanence. The claimant's failure to claim in France, return to Thailand, and her delay in claiming in Canada, were satisfactorily explained. The issue of state protection was considered and was not available in Thailand. *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, and *Chan v. Canada (Minister of Employment and Immigration)* [1995] 3 S.C.R. 593 were considered. The dissenting member found that there was no nexus between the claim and a Convention ground. The claimant had been victimized by members of organized crime specializing in the trafficking of women for the purposes of sexual exploitation. Victims of organized crime do not constitute a particular social group. The claimant's involvement in prostitution was neither innate nor unchangeable. Alternatively, the claimant did not establish that adequate state protection was not available. Various case law and the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were referred to.

CRDD T99-07761, September 27, 2000. The claimant was a young Arab Israeli woman and a Roman Catholic. When she was a young teenager, her family forced her to marry a relative. Her husband and her in-laws kept her a virtual prisoner and constantly abused her. When she and her husband came to Canada, they separated. The claimant started seeing another man and became pregnant. She feared that she would be the victim of a family honour killing if she returned to Israel. The Refugee Division found that the claimant's "marriage" amounted to statutory rape without her consent. The documentary evidence indicated that at least 60 Arab women were victims of honour killings in the 1990s and that the efforts of the Israeli government to combat these crimes has at times been inadequate. The claimant faced a serious possibility of being persecuted should she return to Israel. The Israeli State would be willing to protect her, but she would not receive adequate state protection.

***Zadeh, Muhammed Nadir Ghani v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-1290-96), Richard, February 17, 1997.** The Court found there was no basis to interfere with the panel's rejection of the female claimant's claim of persecution based on her husband's political beliefs. The female claimant also alleged persecution on the ground that she was a woman. The panel found that without a "male protector" there was "more than a mere possibility" that she would be persecuted. Apart from one vague reference, there was no documentary evidence before the panel supporting the finding concerning the "male protector". This issue having been central to the panel's decision, the Court concluded that "the Board's decision to reject her claim of fear of persecution on the ground that she was a woman", was patently unreasonable in

the circumstances. The female claimant's application allowed. (CRDD decision T94-05119 et al., March 8, 1996).

Prado De Guerra, Maria Elena v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-1391-01), Dawson, May 8, 2002; 2002 FCT 519. The applicants are Mrs. Prado de Guerra and her three minor children. Their husband and father, Eduardo Javier Guerra, came to Canada in 1998; the applicants followed in 1999. Their claims were based on Mr. Guerra's fear of union members in Argentina. Mr. Guerra and Mrs. Prado de Guerra then separated, and their refugee hearings were disjoined. The CRDD rejected Mr. Guerra's claim (CRDD T99-12622, June 19, 2000). Mrs. Prado de Guerra amended her PIF, setting out that she now primarily fears persecution from her estranged husband. Based on its "specialized knowledge", the Refugee Division concluded that Mr. Guerra would not be in Argentina because he would delay his removal or would have the option of going to the USA. (1) The Refugee Division failed to give notice under *Immigration Act*, s. 68(5). While for proper reasons it would be open to the Refugee Division to reject Mrs. Prado de Guerra's testimony about her husband's stated intentions and his dealings with immigration authorities, the Refugee Division instead rejected that testimony on the basis of its speculation. (2) The Refugee Division went on to say "Eduardo does not appear to be this monster who would track the applicant all the way to Buenos Aires just to hurt her". This, in spite of Mrs. Prado de Guerra's testimony, which the Refugee Division found credible, that while in Canada her husband had started beating her almost every week, had raped her, had threatened to seek revenge on her because she had left him taking the children, had made threats to hurt her in the past nine months, and she feared he would follow her wherever she went in Argentina and that he would kill her. The Refugee Division erred when, for the reasons it did, it concluded that there was no more than a mere possibility that Mr. Guerra would go to Buenos Aires to persecute the applicants. Application allowed. (CRDD decision T99-08639, February 5, 2001).

Canada (Minister of Citizenship and Immigration) v. Raymond, Marie Francise (F.C.T.D., no. IMM-3142-01), Blanchard, September 13, 2002; 2002 FCT 970.

The panel had accepted the claim. The claimant had lived with a Canadian businessman and had been the victim of conjugal violence in Haiti and in Canada. She alleged that she would not receive protection in Haiti. According to the Court, the expression that it is [translation]"possible, even probable, that the ex-spouse could get in contact with the claimant ... if she had to return to Haiti" does not lead to the conclusion that the panel used a standard of proof less than that of a "serious possibility" or "reasonable chance". The panel did not disregard the discrepancies between the written narrative and the oral testimony, but had attributed them to the stress the claimant was experiencing when she was completing her PIF. The uncontested evidence demonstrated that the ex-spouse had interests and contacts in Haiti and that he was obsessed with the idea of recovering what had been stolen from him and had every interest in returning to Haiti. The evidence that the claimant would be found in Haiti was not contested. Application denied. (RPD decision MA0-08690, June 4, 2001).

e. that she has no reasonable expectation of adequate national protection.

CRDD T93-12477, April 19, 1994. The claimant had suffered many years of continual harassment and severe physical and mental abuse at the hands of her former husband. When she complained to the police, they refused to get involved with what they viewed as a domestic dispute. The fact that her former husband had close contacts with the police also hampered her efforts to get help. The panel found that the claimant belonged to a particular social group: Bulgarian women. It held that the claimant's evidence of past personal incidents of persecution in which state protection did not materialize provided clear and convincing proof of the state's failure to extend to her adequate and effective protection. There was no internal flight alternative available, as the claimant's former husband would be able to locate her using Bulgaria's residence registration system; his police contacts would be able to assist him in that regard. Given her former husband's past actions, there was no reason to believe that he would not try to pursue the claimant. In assessing the claim, the panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The claimant was found to be a Convention refugee.

CRDD U95-02138, September 10, 1996. The claimant, a young female member of the All India Sikh Student Federation, was detained several times by the police and subjected to sexual advances. Member Maraj noted that, while Sikh militancy had diminished in the Punjab at the time the claimant was detained, the police had not let up with their security activities. In the context of the social ethos of the community in which the claimant lived, her frequent arrests would have tarnished her reputation. Women detainees were particularly vulnerable to rape while in custody, and rape and other violence against women by security forces and the police had been recorded all over India. What happened to the claimant offended against the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The claimant belonged to the social group of "Sikh women fearing police harassment who cannot obtain state protection". As the police would have a record of her, the claimant had good grounds for fearing persecution in other parts of India as well as in the Punjab. Elsewhere in India, as a single woman without male protection she would have been vulnerable to discrimination amounting to persecution. In dissent, Member Sotto found the claimant lacking in credibility.

CRDD T98-05518, December 3, 1998. The claimant feared persecution at the hands of her abusive estranged husband. State protection was not provided to the claimant when she reported her husband's serious threats to the police. The documentary evidence indicated that, despite the passage of legislation aimed at domestic violence, spousal abuse is not taken seriously in Jamaica. Moreover, the claimant came from a humble background and appeared to be a submissive person who would not have the capacity to strongly enforce her rights under the 1995 Domestic Violence Act. While the claimant and her husband were now divorced, there was a continuing link between them in the form of their children, who lived with the husband. Taking into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related

Persecution, the Refugee Division found that the claimant was a member of a particular social group, abused women in Jamaica who are unable to avail themselves of the strict provisions of the law, which on the face of it might appear to provide some measure of protection. Her delay in making a refugee claim was explained by her initial lack of awareness of the fact that she could make a claim on the ground of domestic abuse.

CRDD M96-06372, April 16, 1999. The claimant had a history of violent physical abuse by her husband and feared that he would kill her if she returned to the Philippines. She had made at least three unsuccessful attempts to gain police protection. Her husband was never detained or charged. In considering the claim, the Refugee Division referred to the Framework of analysis provided in the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The documentary evidence indicated that violence against women, particularly domestic violence, is a serious problem in the Philippines, that domestic violence is considered a personal rather than a criminal matter and that cases of domestic violence are rarely prosecuted. The situation is evolving, but there was no indication that the 1997 bills on domestic violence had been passed into law. State protection would not be available to the claimant. Since the claimant's husband had links with the police, he would be able to find her anywhere in the Philippines. It would not be reasonable to expect her to live in hiding in her own country. She did not have an internal flight alternative (IFA).

CRDD T99-11955, April 27, 2000. The claimant alleged a fear of persecution at the hands of her ex-boyfriend, who became abusive towards her after she refused to marry him. Her ex-boyfriend was one of the wealthiest people in her small village. After he tried to rape her, her mother reported the abuse to the police and was told that they could not waste their time with domestic matters. The claimant had no male relatives to defend her. According to the documentary evidence, violence against women is a serious and widespread problem in El Salvador and the police do not take domestic violence seriously. Moreover, incidents of domestic violence and rape are underreported because of societal and cultural pressures on the victim, fear of reprisal and publicity, poor handling of victims by the authorities and the belief that such cases are unlikely to be resolved. Given the claimant's particular circumstances as a young woman without male protection, the profile of her persecutor in the hierarchical ordering of gender and wealth in Salvadoran society, the fact that her home was in a remote area far from the police and legal services, the Refugee Division found that adequate state protection was not available to her. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD MA0-03034, October 18, 2000. The claimant was afraid of being persecuted by reason of her membership in the social group of women. She had been the victim of blows and wounds and threats of death from her husband. When she asked for protection from the authorities, they refused her, essentially because her husband, a former military man, worked in the service of the local magistrate. The documentary evidence indicated that violence against women was a very widespread problem in Haiti. The authorities were not applying the laws that provided penalties for abusers or persons who committed crimes of physical aggression. In the case of domestic violence, even though there had

been discussions at the level of Parliament, it seemed that there was a lot of talk, but that it had not been dealt with, which illustrated a willingness of that society to not deal with the problem. The claimant was a Convention refugee.

Myrie, Oraine Elizabeth v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-1213-96), Noël, January 15, 1997. The claimant alleged that she was a Convention refugee by reason of her membership in a particular social group, namely women victims of domestic violence in Jamaica. The Refugee Division did not question the fact that the claimant had been the victim of violent domestic abuse, but the panel found that the claimant had failed to provide clear and convincing evidence of the state's inability to protect her. The panel considered the following factors in arriving at this conclusion: that the claimant was a relatively wealthy person, and as such she had better means to ensure protection than the average Jamaican woman; that she had the option of divorcing her husband, which option was not pursued even when she found herself in Canada; that there existed a variety of legal proceedings available to victims of abuse in Jamaica; and that she took the risk of being deported back to Jamaica by remaining in Canada without a valid visa for a period of ten months, which the panel found was not the type of behavior which supported the claim that the state was unable to protect her. The Court concluded that it had not been shown that the decision itself was unreasonable or that it was based on improper legal principles. Application denied. (CRDD decision T94-07176, March 11, 1996).

James, Cherrie Anne Louanne v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-3352-97), Wetston, June 1, 1998. In the Court's view, the claimant provided clear and convincing evidence of the state's failure to provide effective protection and the finding of the Refugee Division to the contrary was perverse. In addition, the assistance provided to the claimant by a police constable in leaving the country is not evidence of the state's willingness and ability to provide protection. Application allowed. (CRDD decision U96-02421, July 16, 1997).

G.D.C.P. v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-5451-01), Heneghan, September 20, 2002; 2002 FCT 989. The principal applicant suffered domestic and sexual abuse at the hands of her boyfriend. The Refugee Division found her credible but concluded that she had not exhausted all avenues of protection in her country. The Refugee Division applied the wrong test in determining whether state protection was available. An applicant is not required to show that she has exhausted all avenues of protection. Rather, she has to show that she has taken all steps reasonable in the circumstances, taking into account the context of the country of origin in general, the steps taken and the applicant's interactions with the authorities. Application allowed. (CRDD decision TA0-14209, November 7, 2001).

B. ASSESSING THE FEARED HARM

Considerations

The circumstances which give rise to women's fear of persecution are often unique to women.

Genital mutilation

CRDD T95-00479, July 5, 1996. The claimant was a six-year-old female orphan, and a member of the Majerteen clan. She had been adopted in Canada by her uncle and his wife, who were Canadian citizens. She based her claim on her membership in the Majerteen clan, and on her status as a young Somali female who would be subjected to female genital mutilation. By virtue of her age, and in particular her status as an orphan without close relatives on whom to rely for support and protection, and her membership in the Majerteen clan, the claimant would have been significantly marginalized were she to have returned to Somalia, and such marginalization would have amounted to persecution.

CRDD M95-13161, March 13, 1997. The claimant, a Hausa woman who was a practising Muslim, maintained that she feared returning to Ghana because she would have been subject to forced Female Genital Mutilation (FGM). The Refugee Division found that FGM violates the rights to life, liberty and security of the person, the right to health and the right not to be subjected to cruel or inhuman treatment. It violates the right not to be married against one's consent, inasmuch as it is frequently a precondition of marriage. It violates the right to special protection for motherhood, since it makes childbirth more risky. Since FGM is a sustained and systemic violation of several of the most fundamental human rights, it amounts to persecution. There was a reasonable possibility that the claimant would have been forced to undergo FGM if she was returned to Ghana. At the claimant's age, obligatory FGM would have been outside the norm, but not exceptional. As the government refused to enforce its own legislation banning FGM, state protection was not available to the claimant. She had a well-founded fear of persecution as a member of a particular social group, females who are subjected to FGM.

CRDD A96-00453 et al., December 8, 1997. Citizens of the Republic of Guinea, the claimants - a couple and their four children - said they had a well-founded fear of persecution in their country of origin because of their refusal to subject their two youngest daughters to the Fulani (also known as the Peul) tribal customs, including the tradition of clitoridectomy, or mutilation of the female genital organs. Although the excision is usually performed around the age of seven, it can be carried out at any time. This practice was illegal according to the penal code, but this code was not enforced. It was the women in the extended family who decided whether or not it should be practised. The panel ruled that the two youngest claimants were Convention refugees, since they belonged to a particular social group (i.e. that of women) and, according to the evidence on the record, they would undergo genital mutilation if they returned to Guinea. In

addition, they could not avail themselves of State protection. With regard to the eldest daughter who had already been forcefully subjected to this practice in her country, the panel ruled that, given the gulf between the claimant's social values and those of the more restrictive Fulani society, the atrocity of the persecution suffered and the psychological trauma she would suffer by returning to such a society and having to relive morally shocking situations, there were compelling reasons under subsection 2(3) of the *Immigration Act* to grant her refugee status. The problems the parents and their son might encounter for failing to comply with the Fulani customs did not constitute persecution and, moreover, there was an internal flight alternative in other regions available to them.

CRDD T97-03141, May 27, 1998. The claimants feared persecution as members of the Darod clan and the Majerten and Marehan subclans. Three of the minor claimants also feared persecution because of the practice of female genital mutilation (FGM). The Refugee Division found that the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution applied to the three minor claimants, that they had a well-founded fear of persecution because of their membership in the particular social group of female children, and that state protection would not be available to them from FGM. Since FGM is a widespread practice in Somalia, the existence of an internal flight alternative (IFA) was not an issue for these claimants. The principal claimant was a woman alone with seven children in her care. All of the claimants had a well-founded fear of persecution in Mogadishu because they were Darod. Mogadishu was not yet a stable environment for a lone woman with seven dependents. An IFA was not available to the claimants because the family was a mixture of Majerten and Marehan subclans. The Refugee Division also considered various other factors for one of the minor claimants.

CRDD T98-04876 et al., September 14, 1999. The minor claimants, aged eight and four, based their claim on their membership in a particular social group: minor females at risk of genital mutilation (FGM). Their mother, the principal claimant, based her claim on her membership in a particular social group: women breaching cultural and social mores. The claimants were members of the Yoruba tribe. Power in traditional Nigerian families rests with the male head of the family. FGM is a pervasive and widely tolerated practice. The Refugee Division accepted that the patriarch of the principal claimant's ex-husband's family intended to take custody of the minor claimants and to have the FGM procedure performed, and that he had the power to carry out his intentions. It is well-established that the performance of FGM is a persecutory act. Government protection was not available to the claimants. While the government has publicly opposed FGM, it has taken no action against the practice. The principal claimant was at risk of serious harm at the hands of the patriarch as a woman challenging both his authority and cultural norms. The Refugee Division referred to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD MA1-00356 et al., December 18, 2001. The principal claimant and her two minor daughters feared persecution because of their membership in two social groups, the family and women. The principal claimant, who stayed with her in-laws with her daughter when her husband left her, subsequently married another man. Her first

husband's parents required that she leave her daughter with them. They subsequently had her excised without telling the claimant their intentions. The claimant had two more daughters with her second husband. Her second husband's parents were also all prepared to have the claimant's second daughter excised. The member who chaired the panel was of the opinion that the claimant was credible. Her testimony revealed that, according to tradition, she had to obey her in-laws. If she did not obey, her in-laws would do everything possible to separate the couple. And if the couple separated, the claimant feared that she would lose her children and they would then be excised like her first daughter had been. This member referred to *K.L.W. v. Winnipeg Child and Family Services et al.* [2000] 2 S.C.R. 519, which stated that the removal of a child from a parent's care was detrimental to the psychological well-being of the parent, given the distress caused by breaking the emotional bond between parent and child. According to this member, the Supreme Court recognized that the psychological well-being of a person is protected by section 7 of the *Charter of Rights and Freedoms*. He was of the opinion that what the principal claimant had experienced in being persecuted in the past and in being continually in danger of losing her daughters either definitively or so that they would be excised if she were to return to her country constituted a serious and sustained attack on one of her basic rights, which could be considered persecution. Bearing in mind the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the chair of the panel decided that the claimants were members of a social group, namely women. The documentary evidence also corroborated the principal claimant's allegation. There was more than a simple possibility that the minor claimants would undergo genital mutilation against their will if they were to return to Guinea. They would be unable to receive protection since the documentary evidence indicated that, in spite of the laws in effect, the tradition is so entrenched that forced marriages and excision are still widely practised in Guinea, mainly by the Peul ethnic group, which is the group the claimants belong to. The second member, who agreed with the decision of the chair of the panel as a whole, did not share his viewpoint regarding application of the Supreme Court decision, since according to him, removal of her children did not, of itself, constitute a ground for persecution under the Convention. Moreover, according to the documentary evidence, the children's father agreed with the claimant's position regarding the excision, and since the claimant left her country, there had been a breakdown of relations between her husband and his family. The panel concluded that the claimants were Convention refugees.

CRDD MA1-02054 et al., December 21, 2001. The claimants alleged that they had a fear of persecution by reason of their membership in the social groups, namely women and illegitimate children. The principal claimant, a member of the Peul ethnic group, was the mother of two illegitimate minors born of a relationship with a friend whom she planned to marry. The man's marriage proposal was rejected by the claimant's father because it was contrary, not only to the customs practised in the Peul community, but also to Islamic moral principles. The claimant stated that, in order to punish her, her father forced her to marry another man. The claimant feared for herself, her daughter-who would have to undergo genital mutilation-as well as for her son, who would be condemned to live in shame his whole life. The panel was of the opinion that the principal claimant's testimony was credible. The panel found that the forced marriage, the

genital mutilation that the claimant's daughter risked, and the prejudice feared by the claimant's son amounted to persecution. According to the panel, given that the documentary evidence indicated that in Guinea custom had precedence over written law, it was unreasonable to seek, in this case, state protection, much less an internal flight alternative. The claimants were Convention refugees.

Annan v. Canada (Minister of Citizenship and Immigration), [1995] 3 F.C. 25 (T.D.).

The Muslim son of a local police inspector harassed the claimant, a Christian woman, whom the son wished to marry. When she rejected his proposal, he abducted her and, with friends, gang-raped her. He summoned a Muslim religious leader, who decided that the claimant should be circumcised, but she escaped. Though she complained to the police, the police did not act. She went to another part of Ghana, but was advised that her attackers were on her trail. She feared that, were she to return, she would be forced by fanatic Muslims to undergo circumcision. The Refugee Division did not question the claimant's credibility, but rejected the claim on its merits. According to the Court, the claimant had a well-founded fear of persecution. Furthermore, she could not count on state protection: one must consider not only the state's ability to protect but also its willingness; and while the Ghanaian government had sometimes shown an intention to make circumcision illegal, it was still tolerating this atrocious mutilation. There was no internal flight alternative: Ghana is a small country; the local police inspector might obtain information about the claimant from colleagues elsewhere; and the claimant would be returning to Ghana alone. Application allowed. (CRDD decision M94-03192, January 4, 1995).

Sawadogo, Salamata v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-4162-00), Rouleau, May 17, 2001.

The applicant had been afraid that she would have to go back to live with her husband, whom she had married against her will. She had said that her husband had forced her to undergo an excision after the police refused to protect her. The panel had not believed that the applicant had undergone the excision after her marriage, because she did not fit the profile of a person generally targeted for this procedure, according to the documentation on the record. The Court allowed the application for the following reasons: 1) the panel had not mentioned the certificate provided by the Canadian doctor attesting that the applicant had undergone an excision, or the report on the applicant's psychological profile; 2) the panel had not indicated whether it believed that the applicant had been excised at a young age; 3) the documentation on which the panel based its doubt regarding the applicant's credibility allowed the conclusion that older women undergo this procedure; 4) the panel was required to indicate specifically why it dismissed the applicant's explanations as to why she could not avail herself of state protection; 5) the applicant's argument that the panel did not have to deal with the issue of compelling reasons in view of the applicant's lack of credibility, is groundless; and 6) the Court considered that the panel cross-examined the applicant about the distance between the police station, the hospital and her home in order to confuse the applicant, and that this constituted an example of bias on the part of the Refugee Division. Application allowed. (CRDD decision M99-11847, July 12, 2000).

Adodo, Lydia Oritseweyinmi v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-6503-00), **McKeown, October 25, 2001; 2001 FCT 1159**. The applicant based her claim on her fear of: (i) forced marriage to Alhaji, a Muslim, and (ii) forced circumcision. (1) The Refugee Division stated that "she claims that she was allowed to attend in Canada for the competition because of Alhaji's close relationship with the National Chairman of the volleyball association. She did not know the National Chairman's last name ..., despite the fact that she was on the team." However, in the transcript, the applicant twice stated the National Chairman's full name. Also, the Refugee Division drew an improper inference regarding this evidence. (2) Based on the evidence, the Refugee Division did not make a reviewable error in referring to the three sisters not being circumcised. (3) The Refugee Division stated that the "documentary evidence before the panel states that "Itsekiri people in general do not practice female genital mutilation (FGM)". This statement was contained in Response to Information Request NGA35426.E, but that Response relied on Response to Information Request NGA34047.E, which clearly did not say that Itsekiri people in general do not practice FGM. The Court upheld the part of the Refugee Division's reasoning relating to denial that the applicant was going to be forced to enter into a marriage to Alhaji, but did not uphold the Refugee Division's reasoning relating to forced circumcision. Application allowed. (CRDD decision TA0-07666, November 21, 2000).

Forced marriage

CRDD M97-06821 et al., July 14, 1998. The claimant was beaten and threatened with death by her brother-in-law, whom she refused to marry, and was harassed and sexually assaulted by the police when she attempted to file a complaint. She went to stay with her family in the United States. When she returned to Pakistan for a family wedding, she discovered that her family had arranged her marriage to an older widower. She refused the marriage and was beaten and threatened with death. In reaching its decision that the claimant had a well-founded fear of persecution, the Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and documentary evidence that violence against women is widespread in Pakistan and that the police and the courts rarely become involved.

CRDD V99-02940 et al., May 8, 2000. The claimants were two young women, one being a minor. The Refugee Division considered the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues. One of the claimants claimed to fear discrimination, as a female, from her grandparents, who viewed her family as a failure for having produced only girls. She came to North America to earn money to remit to China in an attempt to improve her immediate family's reputation. She feared the stigma that would attach to her as a "failure" if she were forced to return to China. The Refugee Division found that this stigma did not amount to persecution in the circumstances. It was noteworthy that the claimant failed to mention the problem in her interview at the port of entry or in her Personal Information Form (PIF). This claimant was not a Convention refugee. The other claimant alleged that her abusive father, who was deeply in debt, had arranged for her to marry in exchange for a sizeable dowry. She stated that she would rather commit suicide than marry the man. The Refugee Division

found that the feared harm amounted to persecution. The claimant's father maintained the household registration in which the claimant was still registered, and state protection would not be available to her in a rural village. This claimant was a Convention refugee.

CRDD T99-09887, May 17, 2000. The claimant was Yoruba. She feared a forced arranged marriage. The marriage was arranged by the claimant's father. The claimant tried to avoid the arranged a marriage, however her father insisted, and the man who was to be her husband locked her up, beat her, and raped her. She went into hiding and fled Nigeria. She produced various documents, all of which contained details consistent with her claim. The documentary evidence indicated that arranged marriages of educated women like the claimant are less prevalent in urban areas of Nigeria. However, considering that the claimant's parents were both from small villages and that the family was indebted to the man she was supposed to marry, it was plausible that a marriage would have been arranged in this case. As traditional marriages are not against the law in Nigeria, adequate state protection was not available to the claimant. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD T99-14088, June 2, 2000. The claimant, a teenaged minor, was forced to marry her cousin. She resisted the marriage and endured weeks of physical and psychological abuse before escaping with the aid of another cousin, who received beatings and death threats as a result. The police refused to become involved. The Refugee Division determined that the claimant faced persecution based on her membership in a particular social group: women in forced marriages. The documentary evidence indicated that domestic violence in Pakistan is a serious and widespread problem, that the police rarely take action and that women are reluctant to file charges because of societal mores that stigmatize divorce and make women economically and psychologically dependent on their relatives. It would be objectively unreasonable for the claimant to seek state protection. No internal flight alternative (IFA) was available to the claimant, as women who breach customary norms have great difficulty finding refuge, are unfamiliar with public transport, usually have no money and are vulnerable to further abuse if they move around. Some women's shelters are available, but they are usually unable or unwilling to protect women from family members. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD T99-06804, July 11, 2000. The claimant's in-laws suspected her of causing her husband's death. To clear her name, she was expected to undergo certain rites and to marry her younger brother-in-law. She refused to participate in some of the rites because she was a Christian. She also refused to marry her brother-in-law, as he was a polygamist. She was accused of being a witch and feared that she would be killed by her in-laws if she returned to Nigeria. She was particularly fearful of one brother-in-law who was a senior police officer with the apparent ability to locate her anywhere in Nigeria. According to the documentary evidence, the practice of levirate marriages is deeply rooted in Nigerian society. The documentary evidence also supported the claimant's assertion that the police do not intervene in matters which they perceive as being family

related. The claimant had a well-founded fear of persecution on the interrelated grounds of religion and membership in a particular social group should she return to Nigeria, and neither state protection nor an internal flight alternative (IFA) would be available to her.

CRDD TA0-13595 et al., August 21, 2001. The claimant feared persecution based on gender and membership in a particular social group. The claimant described the role of her father, his religious faith, and his abuse of her and other family members. Her father and her ex-fiancé had targeted her for honour killing. She had refused to go through with an arranged marriage and married another man. They had a child. After their child was born, the claimant's husband was severely beaten by her ex-fiancé, and the police refused to investigate their complaint. There was persuasive documentary evidence of the existence of revenge killings in Turkey, and legislation provides for reduced sentences through a provocation clause. There was more than a mere possibility that the claimant would face persecution in Turkey by reason of her gender and membership in a particular social group. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD MA0-00006, November 26, 2001. The claimant alleged that she had a well-founded fear of persecution by reason of her membership in a particular social group, namely women. The claimant feared her father, who had inflicted physical punishment on her because she had refused to marry an older man, who already had two wives and twelve children. The claimant testified that she first fled to Cameroon, then to Russia where she married a physician of Congolese origin. She subsequently settled in the Congo where her husband, because of his political activities, was kidnapped together with his children. The panel took into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and other guidelines taken from international documents concerning violations of women's fundamental rights. Moreover, the documentary evidence described forced early marriages and discrimination against women in the Central African Republic. A large part of the claimant's allegations was corroborated either by the documentary evidence or by her own testimony. She testified in a spontaneous manner, and no significant contradiction was noted between her testimony and the documentary evidence. Furthermore, the panel was of the opinion that the claimant could not avail herself of the protection of the state in her country. Regarding the possibility of an internal flight alternative, even though the claimant was now of the age of majority, it would have been difficult for her, given her profile and her psychological assessment, to seek refuge in another part of her country, where women's rights were flouted at every level. The claimant was a Convention refugee.

RPD MA1-08227, August 19, 2002. The refugee protection claimant feared persecution by reason of her membership in a particular social group, namely women involved in an arranged marriage. She claimed to be a person in need of protection because, if she were to return to her country, her life would be at risk or she would run the risk of cruel and unusual treatment or punishment. The claimant testified that her father had promised her in marriage to a man much older than she is to settle a large debt owed to him. According to the documentary evidence, forced marriages exist in the Republic of Djibouti among the Issa, the ethnic group of which the claimant is a member. Girls as young as 13 years

old are offered in marriage. The panel referred to paragraphs 215 and 216 of the Handbook on Procedures and Criteria for Determining Refugee Status concerning claims for refugee protection made by minors. It also referred to case law, which indicated that a fundamental human right of women is violated when they are forced to enter into marriage against their will. Furthermore, the panel also took into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the lack of protection and the possibility of an internal flight alternative, and concluded that the claimant was a Convention refugee.

RPD TA1-21612 et al., September 9, 2002. The female claimant alleged a fear of persecution by reason of her membership in a particular social group, women who refuse to follow traditional practices, and her perceived political opinion. The male claimant alleged a fear of persecution by reason of his political opinion. After the male claimant, facing persecution for his political beliefs, disappeared, the female claimant was forced into a levirate marriage with his brother against her will. Her new husband mistreated her and threatened to kill her. The male claimant was a member of the opposition Movement for Democratic Change and was employed by a non-governmental organization doing community-related work. He went into hiding after five MDC members were killed. The evidence of the female claimant regarding the practice of levirate marriage was consistent with the documentary evidence, which shows that, despite legal prohibitions, women are still vulnerable to entrenched customary practices, including the forcing of a widow to marry her late husband's brother. Spousal abuse is endemic in Zimbabwe and the police do not respond to requests for assistance. As for the male claimant, the documentary evidence contains numerous instances of violent and sometimes fatal attacks on MDC members. Both claimants had a well-founded fear of persecution.

***Vidhani v. Canada (Minister of Citizenship and Immigration)*, [1995] 3 F.C. 60 (T.D.).**

The claimant was an Asian, Muslim woman from Kenya. Her father arranged a marriage for her, to a man whom she did not wish to marry. The claimant feared she would be abused by her father if she refused to marry the man, and abused by the man himself if she did marry him. She had not sought police protection. She testified that she feared the police would sexually attack her if she complained with respect to being forced into a marriage. The Court referred to two possible particular social groups (PSGs): first, Asian women in Kenya; second, women forced into arranged marriages without their consent. Regarding the issues of PSG and persecution, the Court considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. It noted the reference to gender-related cases in *Canada (A.G.) v. Ward*, [1993] 2 S.C.R. 689, and stated that the claimant fell within the category of PSGs defined by an innate or unchangeable characteristic. Women forced into marriages have had a basic human right violated. A restriction on the exercise of a human right does not constitute persecution in every case. The Division failed to consider properly what would happen to the claimant if she refused to marry. It found that she could approach the state for protection against paternal abuse; however, it did not have documentary evidence about the authorities' attitude, nor did it make any adverse credibility finding. It should have dealt with her testimony about possible sexual attack, and determined whether this

constituted persecution. Application allowed. (CRDD decision U93-04148, June 9, 1994).

U.G. v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-1907-96), Heald, July 10, 1997. The claimant was a Zimbabwean woman who had been forced into marriage under customary and traditional law, and claimed that her husband abused her, physically and sexually. The issues before the Court were whether the Refugee Division erred (1) in finding that the claimant had not established an absence of state protection, and (2) in concluding that the claimant had unreasonably delayed her departure from Zimbabwe. Although the Refugee Division found that women in forced marriages and in abusive situations may fall within the definition of "particular social group", it came to the conclusion that the claimant failed to establish that the available legal protection was ineffective. The Court held that the panel did not err in finding that there was not an absence of state protection at all relevant times: "Zimbabwe is a country in transition. The practice of wife substitution has not been banned outright. The Refugee Division accepted the view that customary and traditional law is still extant in Zimbabwe. This view is consistent with the relevant documentation." With respect to the unreasonable delay issue, the panel held that the claimant exaggerated the abuse by her husband, and that she had considerable independence and opportunity to leave. She had a valid passport, sufficient trip money, and a sister in Canada, for which no visa was required for travel. The Court agreed with the Refugee Division's conclusion that the claimant's failure to remove herself from the allegedly abusive situation was "inconsistent with her testimony with regard to the serious harm she allegedly suffered and fear[ed] at the hands of her husband, and [was] not the action of a reasonable person in the situation the claimant alleged." Application denied. (CRDD decision U95-02789, May 10, 1996).

Canada (Minister of Citizenship and Immigration) v. Lin, Dan (F.C.T.D., no. IMM-2996-00), Tremblay-Lamer, March 21, 2001. The applicant was born in China in 1983. She came to Canada on August 13, 1999, by boat. The Refugee Division determined that she had a well-founded fear of persecution on the basis that her father had forced her to enter into marriage and there was no state protection available to her. The Minister applied for judicial review. The respondent's claim involved a father with a history of abuse who maintains the household registration in which the respondent remains registered. Given these circumstances and considering the respondent's testimony, her mother's corroboration that she would be hurt if returned, and the expert's evidence on child abuse, the Court found the Refugee Division decision to be reasonable. The Court rejected the Minister's arguments that the Refugee Division had failed to consider IFA and had failed to adequately consider state protection. Application denied. (CRDD decision V99-02957, May 8, 2000).

Diallo, Houssainatou v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-5850-01), Pinard, November 26, 2002; 2002 FCT 2004. The claim based on the claimant's membership in a particular social group, i.e., women who are victims of forced marriage, was rejected on the basis of a lack of credibility. According to the Court, the claimant's responses were not vague. The claimant's explanations for the

delay in making a claim were reasonable. Based on the evidence, the delay of approximately five months was explained by the fact that the claimant had the right to be in Canada under a student visa, and she was suffering from severe depression. Application allowed. (RPD decision MA1-02434, December 7, 2001).

Domestic violence

CRDD T93-07375, January 18, 1994. The claimant, a woman, married a Barbadian national in Canada. During the course of her marriage to him, he physically and sexually assaulted her and physically assaulted their children. She sought protection from various agencies in Canada and moved on 12 occasions to escape his abuse. Following his return to Barbados, the claimant's husband had told the claimant's mother that when her daughter returned to Barbados he would kill her. The panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and, in particular, the availability of state protection. Although the documentary evidence showed that domestic violence is treated seriously by the Barbadian authorities, the panel concluded that adequate protection was not available for the claimant given the extremely abusive behaviour of her husband, her lack of mobility because of her children and evidence of similarly-situated women within the claimant's family. In the panel's opinion, the only refuge for the claimant was to remain outside of Barbados and in a country to which her husband has no physical access.

CRDD U96-03318, June 9, 1997. The claimant's in-laws, dissatisfied with the dowry paid by the claimant's family, began to physically abuse her and demand more money after her arranged marriage. She miscarried twice as a result of beatings by her mother-in-law and brother-in-law. She escaped after her husband threw kerosene on her, but her in-laws followed her to her parental home, where they assaulted her and threatened her and her family. She reported the incident to the police, but the police were unwilling to help her. After considering the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the Refugee Division found that the claimant had a well-founded fear of persecution as a member of a particular social group, namely women subject to domestic violence arising out of a dowry dispute. According to the documentary evidence, illegal demands for dowry in India claimed more lives in the years 1988 to 1991 than the Sikh separatist movement, and there were no convictions for dowry deaths between 1992 and 1994. State protection was not available to the claimant as the authorities were unwilling to provide it.

CRDD M97-04087 et al., December 15, 1997. The principal claimant had been married to her husband against her will, in 1986. He beat her frequently, drank and was reluctant to work. She sought help from her parents, who did not want to interfere with Indian customs and who kept sending her back to her husband. She ran away to a cousin in Delhi, but the cousin told the principal claimant's husband. He came to take her back, and threatened her life and the lives of their daughters (the minor claimants) if she ever complained to the police. The Refugee Division found the claimants to be Convention refugees. The Division cited the Chairperson's Guidelines on Women Refugee Claimants

Fearing Gender-Related Persecution, and found that Section I, subsection 3 of the guidelines applied. That subsection refers to acts of domestic violence and the state's inability or unwillingness to adequately protect the victim.

CRDD T96-04627, December 23, 1997. The claimant had been physically and sexually abused by her stepfather since she was a child. Her explanations for failing to make a refugee claim on two prior occasions, first in Canada and then in Barbados, were plausible. She had first come to Canada only six months after the issuance of the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, and she had been unaware that she could make a refugee claim on the basis of physical and sexual abuse. She had not felt safe in Barbados, to which her stepfather often travelled for work. Her delay in claiming after coming to Canada a second time was explained by the fact that she had met a man and had believed he would marry her; she had therefore taken no independent steps to regularize her status, until he became physically abusive. Despite the passage of the Domestic Violence Act 1995, the effectiveness of the steps taken by the St Vincent government to address the issue of domestic violence was limited by lack of information, overburdened courts, and societal attitudes, and particularly by the attitude of the police. The claimant would not be able to avail herself of state protection.

CRDD T96-02426, January 7, 1998. The claimant was a victim of domestic abuse. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, and determined that the claimant was not a Convention refugee. Adequate state protection was available to her in Jamaica. The documentary evidence indicated that the problem of domestic violence was being addressed by legislation and services, which were extensive and growing rapidly.

CRDD M95-08207, February 18, 1998. The claimant maintained that her common-law husband, who was dependent on alcohol and drugs, had beaten her often and had threatened to kill her. As noted by the Refugee Division, the documentary evidence indicated that the police in Grenada were often reluctant to intervene to assist women who were victims of domestic abuse. When the state has not acted effectively to alter the disposition of the police toward spousal violence against women, it might reasonably be assumed that the state itself is unwilling to provide women with protection when they are assaulted and abused by their spouses. More than seven years had elapsed between the claimant's arrival in Canada and her making of a claim: the Division noted the claimant's explanation -- that she had avoided claiming for fear of being returned to Grenada -- as well as counsel's observation that the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution had been introduced only in relatively recent times. The claimant had established a well-founded fear of persecution on the basis of her membership in a particular social group: women who flee persecution in their homelands from violent spouses, against whom the state is unwilling to offer protection.

CRDD M98-09327, August 25, 1999. The claimant alleged a well-founded fear of persecution in her country for reasons of the violence to which she was subject for several years at the hands of her common law spouse. The claimant apparently suffered

insults, physical and mental cruelty, degrading treatment, rape and loss of freedom. After being threatened with a weapon, the claimant decided to seek police protection. A few days later, however, her common law spouse threatened to kill her if she again spoke to a police officer or a soldier about their life together. The Refugee Division found the claimant's testimony credible and had taken into account the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and the situation of women generally in Honduras. Furthermore, according to the documentary evidence, the situation of women who were the victims of conjugal violence in Honduras was very difficult. Remedies and protection were almost non-existent for such women, despite the existence of a law against domestic violence. The claimant was a Convention refugee.

CRDD A99-00937 et al., August 16, 2000. The claimant alleged that she was subjected to long-term physical abuse by her husband. She alleged that the interpreter who assisted her in filing her claim and who had prepared the port of entry (POE) mail-in forms had counselled her to lie about or embellish part of her story and had offered to fabricate a false story in return for money. As the interpreter had an employment relationship with the claimant's first counsel, counsel withdrew. The interpreter/immigration consultant testified and was found to be evasive and untrustworthy. The panel noted that the interpreter's inappropriate advice came close to costing the claimant her refugee claim. Despite a large number of implausibilities and contradictions in the claimant's evidence, there were no contradictions and implausibilities in her testimony about the actual spousal abuse. A concern was raised that the claimant's description of her abuse did not match the typical pattern. Her counsel however, presented documentary evidence, obtained from an expert, indicating that the pattern of abuse described by the claimant was one of numerous known patterns, and psychiatric reports from Poland which confirmed a disorder of the claimant's husband. State protection with respect to spousal abuse, in the circumstances, was not adequate. Also, an internal flight alternative (IFA) was not available to the claimant. The claimant had a well-founded fear of persecution as a member of a particular social group: battered wives. The minor claimant, her daughter, had a well-founded fear of persecution as a member of the claimant's family.

CRDD TA0-00844, March 24, 2001. The claimant alleged a fear of persecution should she return to Russia because of her abusive relationship with her former husband, who was a member of an extreme nationalistic group. She described a history of violence and abuse, including a rape and subsequent miscarriage. Attempts to obtain state protection were not successful. The claimant went to her parents, but was pursued and forced to return with her husband. She fled to a friend's, but again, was pursued and forced to return with her husband. Her allegations were supported by medical reports and letters from friends in Moscow indicating that the claimant's former husband was continually searching for her and leaving threatening messages. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The Refugee Division found that state protection is not available in Russia for women who are consistently abused. In this case, the claimant also would not have family support. The claimant had a well-founded fear of persecution by reason of her membership in a particular social group, abused women.

Fouchong, Donna Hazel v. Canada (Secretary of State) (F.C.T.D., no. IMM-7603-93), MacKay, November 18, 1994. The claimant had been beaten, sexually abused, and threatened with death by her husband. Two reports to the police yielded no assistance. After arriving in Canada, the claimant obtained a divorce. She asserted that she feared persecution by reason of membership in a particular social group, namely, women abused by their former spouses who profess fear of persecution at the hands of a former spouse if returned to the claimant's country of origin. The Court found that the Refugee Division had dealt improperly with the issue of whether the claimant was a member of a particular social group. Rather than assessing the claimant's situation in terms of the principles set out in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, the Refugee Division decided the issue, against the claimant, on the basis that there was no prior jurisprudence in which similar facts had led to recognition of a particular social group. However, the Court did not endorse the claimant's assertion of social group membership for it is inappropriate to define a social group solely in terms of the common victimization of its members. It was insufficient for the Refugee Division simply to conclude that this was not a situation of spousal abuse, but instead a situation in which the claimant feared criminal attacks by a former spouse. It was not unreasonable for the Refugee Division to conclude that state protection would be available to the claimant. The circumstances in Grenada, as elsewhere, may well need improvement, but there was documentary evidence of increasing concern and developmental measures to protect women victimized by spousal abuse or by other illegal violence. Application denied. (CRDD decision U93-07212, December 3, 1993).

Narvaez v. Canada (Minister of Citizenship and Immigration), [1995] 2 F.C. 55 (T.D.).

The claimant feared violence by her ex-husband if she returned to Ecuador. On the one occasion when she sought police protection during seven years of abuse, the police arrived at her home some time after she called, and her complaint was struck from the police record. The Court overturned the Refugee Division on the basis that the Refugee Division had not dealt properly with "membership in a particular social group". The Court considered *Canada (A.G.) v. Ward*, [1993] 2 S.C.R. 689 and the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The Court concluded that "women in Ecuador subject to domestic violence belong to a particular social group". Further, the Refugee Division failed to consider the police treatment of women in Ecuador subject to domestic violence. The past experience of the claimant and the experiences of similarly-situated women were evidence of the lack of protection available. In the Court's opinion, the fact that the claimant was now divorced did not affect the level of state protection. Application allowed. (CRDD decision U93-10881, July 19, 1994).

Cuffy, Loferne Pauline v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-3135-95), McKeown, October 16, 1996.

The claimant was a victim of domestic violence. Although she attempted to get help from the police, they refused saying that they would take action only if there were physical evidence of the abuse. The Refugee Division determined that the claimant was not a Convention refugee, as it found that the claimant had failed to exhaust all other avenues of protection available to her before she left the country. The Court found that the claimant had gone to the

police on several occasions, but they had not assisted her. The Refugee Division had confused "the documentary evidence with respect to the existence of counselling and other resources with the ability of the state to provide protection." The claimant had no obligation to use her own resources nor was an offer of counselling what state protection required. In the Court's view, "counselling is no substitute for the absence of police protection". Application allowed. (CRDD decision T94-07002, October 30, 1995).

Forced abortion

CRDD V95-02063, April 22, 1997. The claimant had three children. When she became pregnant for the second time, she underwent a forced abortion, after which an IUD was forcibly inserted. She was warned that any future pregnancies would be aborted and that she would be sterilized. Her second child was born outside China, and the claimant did not disclose the child's parentage on their return to China. When the claimant refused to submit to a second abortion after becoming pregnant with her third child, her husband's business was confiscated. The third child was born in Canada. The Refugee Division found that the claimant had a well-founded fear of persecution by reason of imputed political opinion - her demonstrated determination to exercise reproductive choice in defiance of China's one-child policy - and her membership in a particular social group, "Women in China Who Fear Forced Sterilization Because They Have Violated the Chinese Birth Control Policy By Having More Than One Child". There was wide variance in the degree and manner in which the one-child policy was being applied; however, it would have been unreasonable to expect the claimant to stand up to the authorities, in the hope that any penalty imposed might have stopped short of forced sterilization.

CRDD VA0-00592, June 21, 2000. Because the claimant's first child was mentally handicapped, she and her husband decided to have another child in violation of China's one-child policy. She was arrested when she was eight months pregnant and forced to have an abortion. The Refugee Division found that the claimant had a subjective fear of persecution, that she had in fact been persecuted in the past by being forced to undergo an abortion, and that there was more than a mere possibility that she would suffer either another forced abortion or forced sterilization or both if she returned to China. The Refugee Division referred to various aspects of the situation and their relationship to the attention of the authorities. She had a well-founded fear of persecution as a member of a particular social group: women in China who have one child and are faced with forced sterilization.

Lai, Quang v. Canada (Minister of Employment and Immigration) (F.C.T.D., no. IMM-307-93), McKeown, May 20, 1994. The female claimant was forced to undergo an abortion, in connection with China's one-child policy. The Refugee Division rendered its decision prior to *Cheung v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314 (C.A.) and *Chan v. Canada (Minister of Employment and Immigration)*, [1993] 3 F.C. 675 (C.A.). It found: that China's one-child policy was not inherently persecutory; that the steep fines imposed as penalties did not constitute

persecution; and that, even if there were a reasonable chance of the female claimant's being forced into another abortion, the situation was not related to any of the Convention grounds. The Court stated that forced abortion, being an invasion of a woman's body, was equivalent to forced sterilization and according to *Cheung* and *Chan*, the latter constituted persecution. The issue was not whether the female claimant had been forced to undergo an abortion in the past, but instead whether there was a reasonable chance that she would be forced to undergo one if returned to China. The previous abortion was relevant to that issue, but evidence of other matters, such as local practices, would also have to be considered. Economic sanctions did not constitute persecution. Application denied. (CRDD decision T90-10540 et al., February 3, 1993).

Compulsory sterilization

CRDD V99-03499, February 15, 2000. The claimant, a young rural woman, alleged a fear of forced sterilization under China's family planning policy if forced to return to China. She stated that her husband had left her after borrowing money from her family. Her father and brother told an immigration officer that the claimant's husband was dead. The claimant explained this inconsistency by stating that her family was embarrassed that her husband had jilted her and preferred to act as if he were dead. The Refugee Division accepted this explanation, noting that the inconsistency was a minor one, not necessarily touching the heart of the claim, and that the claimant was generally credible. As the Federal Court of Appeal stated in *Cheung v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314 (C.A.), the forced sterilization of women is a fundamental violation of basic human rights, and the threat of forced sterilization can be grounds for a fear of persecution.

Liang, Zhai Kui v. Canada (Minister of Employment and Immigration) (F.C.T.D., no. IMM-2487-93), Denault, November 2, 1993. The Court agreed with the Refugee Division that a person faced with forced sterilization as a result of the one-child policy in China has a fear by reason of membership in a particular social group. The issue was whether or not the fear was well founded. The panel weighed the documentary evidence and testimony and it was open to the panel on the evidence to conclude that there was no serious possibility of forced sterilization. Application denied. (CRDD decision U93-00876, April 30, 1993).

Cheung v. Canada (Minister of Employment and Immigration), [1993] 2 F.C. 314 (C.A.). In *Cheung*, the Federal Court of Appeal held (1) that "women in China who have more than one child, and are faced with forced sterilization because of this, form a particular social group so as to come within the meaning of the definition of a Convention refugee" and (2) that "forced or strongly coerced sterilization in the context of China's one child policy" constitutes persecution. After the birth of her first child, the appellant had undergone three abortions; thereafter, she became pregnant again, but this time she went into hiding to have her second child. She left this child, the second appellant, with her in-laws. The evidence showed that this second child would be denied food subsidies and would receive a poor education, or none at all. Shortly afterwards, the

Family Planning Bureau took the appellant away to be sterilized; before she could be sterilized, the appellant fled to her in-laws; she became pregnant again and had yet another abortion. It was accepted by the Refugee Division panel that the appellant would be sterilized if forced to return to China. However, the panel held that China's one child policy was a law of general application; there was no "persecutory intent on the part of the Chinese government" and it was "not a policy born out of caprice, but out of economic logic." The Court held that the panel erred by focusing on the general aim of the law, rather than examining the methods used to enforce it. "In so doing, the Board ignored the severity of the intrusiveness of sterilization to a person's mental and physical integrity." Also, it erred when it referred to the lack of a persecutory intent, as a persecutory effect is sufficient. The Court referred to the earlier Court of Appeal decision in *Canada (Minister of Employment and Immigration) v. Mayers*, [1993] 1 F.C. 154, and in particular to the criteria set out therein which may form a useful basis for determining what constitutes a particular social group. In doing so, the Court concluded that women in China who had one child and were faced with forced sterilization satisfied enough of those criteria to constitute a particular social group. However, the Court went on to say that only those women who also had a well-founded fear of persecution as a result of that could claim refugee status. Mr. Justice Linden agreed that China's one child policy was of general application; however, he stated that the forced sterilization of Chinese women who have had a child was not. He stated: "This is a practice that affects a limited and well defined group of people and does not have general application." There was evidence that it was not universally applied throughout China. The Court went on to hold, citing *Padilla* [(1991), 13 Imm. L.R. (2d) 1 (F.C.A.)], that, even if forced sterilization were a law of general application, the operation of a law of general application may be persecutory. In this case, the Court held that the appellant's fear was that of "extraordinary treatment in her case that does not normally flow from that law". Linden J.A. went on to state that the punishment or treatment under a law of general application could be so "completely disproportionate to the objective of the law" as to be persecutory, regardless of its intent. Linden J.A. stated that forced sterilization of women was a fundamental violation of a basic human right, in that it violated Articles 3 and 5 of the *United Nations Universal Declaration of Human Rights*, which read as follows: Article 3 Everyone has the right to life, liberty and security of the person. Article 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Noteworthy is the following finding of the Court: The forced sterilization of a woman is a serious and totally unacceptable violation of her security of the person. Forced sterilization subjects a woman to cruel, inhuman and degrading treatment. ... There is a point at which cruel treatment becomes persecution regardless of whether it is sanctioned by law; the forced sterilization of women is so intrusive as to be beyond that point. ... The practice of forcing women to undergo sterilization is such an extreme violation of their basic human rights as to be persecutory, even though this was thought to advance the modernization of China. The final result in *Cheung* was that the Court held that the panel erred in its findings. (CRDD decision T90-01620, December 5, 1990).

Chan v. Canada (Minister of Employment and Immigration) [1993] 3 F.C. 675 (C.A.).

In late 1989, following the birth of the appellant's second child, officials from the Public Security Bureau visited the appellant on several occasions and accused him of

violating China's one-child policy. The appellant's wife lost her job owing to this violation. The appellant agreed to be sterilized within three months. Before the expiry of this period, the appellant fled China without undergoing the sterilization procedure. The Refugee Division panel had found that the appellant did not have a well-founded fear of persecution owing to his membership in a particular social group or his political opinion. The panel found that sterilization was not a form of persecution for a Convention reason but rather, "a measure on the part of the PRC government to implement a family planning policy applicable to all of its citizens." In its judgment, the Federal Court of Appeal dismissed the appeal from a decision of the Refugee Division. Heald and Desjardins, J.J.A., in separate reasons for decision, held that the appellant, a Chinese citizen, did not have a well-founded fear of persecution by reason of his membership in a particular social group or his political opinion. Mahoney, J.A., dissenting, disagreed with the majority result, instead finding that the facts of this case were indistinguishable from those in the earlier Federal Court of Appeal decision in *Cheung v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314 (C.A.). Both Heald and Mahoney, J.J.A. held that forced sterilization constituted persecution. Desjardins, J.A., on the other hand, found that forced sterilization was outside the scope of the definition of Convention refugee.

***Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593.** The majority judges decided the case on the basis that the claimant had failed to prove a well-founded fear of persecution, namely that he faced involuntary sterilization as a result of the Chinese one-child policy. All judges referred to the UN Handbook (UNHCR) in assessing the evidence and accepted the Handbook as a highly persuasive authority. Key factors in the majority's assessment of the evidence as insufficient were: physical coercion was a last resort, after economic sanctions; considerable local variation in enforcement techniques; and absence of documents or anecdotal evidence corroborating the claimant's story. Even the economic sanctions taken against the claimant and his wife had been incomplete and remitted in part. The claimant had retained his managerial post; his wife's fine had been reduced 40%; and his driver's licence had been renewed. This was inconsistent with a serious risk that involuntary sterilization would be imposed. The majority refused to address the particular social group issue -- whether *Cheung v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314 (F.C.A.) should be followed in the wake of *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 -- in the absence of facts squarely presenting the issue. Mr. Justice La Forest, writing for the dissenters, would have returned the case to the Refugee Division for factual findings on the issue of well-founded fear of persecution. He stated that forced sterilization violates a fundamental human right. The dissent made two important interpretations of *Ward*: the "is/does" distinction was never intended to override the *Ward* categories; and the element of voluntary association, in the second *Ward* category, is with a status. A person does not need to join a social group within the second *Ward* category; behaviour alone can make her part of a group, if the reasons for her behaviour are fundamental to human dignity.

Rape

CRDD M99-04586 et al., December 21, 1999. The adult claimant's husband, the father of the minor claimants, was arrested and tortured by the police after Sikh militants forced the family to provide them with food and shelter. The adult claimant never saw him again. She was arrested herself and was raped by a police inspector. Two weeks later, she was raped again by the inspector and his friend in her home. Noting that the police in Punjab use rape as a means of torture and of extracting information, the Refugee Division found that the adult claimant had a well-founded fear of persecution. In making that determination, the Refugee Division took the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution into account. The minor claimants had not been harassed in the past. Children are no longer used by the Punjab police as fodder in the battle against Sikh militants. Family unity is not an applicable principle in the determination of refugee claims. Moreover, the principle of indirect persecution has been rejected by Canadian jurisprudence. The minor claimants did not have a well-founded fear of persecution.

L.G. v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-3275-01), Lemieux, July 10, 2002; 2002 FCT 766. The applicant is a young Rom woman who, if believed, had been sold for sex by her step-father at age 11. He sexually abused the applicant at age 14. She suffered an attempted rape by three young men who were not prosecuted. In some measure, the applicant's allegations was central to her claim but was ignored by the Refugee Division. Implausibility findings based on how state protection agencies would behave in Canada rather than in Hungary. The panel ignored how the POE notes were taken. The panel cast doubt on the claimant's credibility yet found that evidence credible enough to rely on it as the basis for finding state protection. Application allowed. (CRDD decision TA0-04112, June 7, 2001).

Reginald v. Canada (Minister of Citizenship and Immigration), [2002] 4 F.C. 523 (T.D.). The applicant lived all of her life in Colombo. Her claim is based on her race, nationality, membership in a particular group, namely, young Tamil women from Sri Lanka, and on her imputed political opinion. It is apparent that the Refugee Division members had concerns about the style and some of the substance of the questioning of the applicant by her counsel. The Court made extensive references to the transcript of the Refugee Division hearing. Contrary to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, there was nothing sensitive, let alone extremely sensitive, about the "handling" of the applicant by the Refugee Division members when she testified as to her alleged ordeal. The Court was satisfied that, in words analogous to those of Justice Mahoney in *Kumar*, both the "gross interference" by the Refugee Division members "with the orderly presentation of the applicant's case" and the insensitivity demonstrated toward the applicant when she testified as to her alleged rape, were denials of natural justice. Application allowed. (CRDD decision TA0-11489, April 19, 2001).

The fact that violence, including sexual and domestic violence, against women is universal is irrelevant when determining whether rape, and other gender-specific crimes constitute forms of persecution. The real issues are whether the violence -- experienced or feared -- is a serious violation of a fundamental human right.

CRDD T91-01497 et al., August 9, 1994. The claimants, a mother and her minor daughter, had previously been determined not to be Convention refugees, based upon the evidence of the claimants' husband/father (the male claimant). The male claimant had since returned to Bulgaria. The Refugee Division had granted the motion to reopen the hearing, which had been based upon the argument the claimants had been denied natural justice by being hampered from presenting their evidence by the male claimant. At the new hearing, the mother testified that she had been subject to spousal abuse throughout her marriage. She was repeatedly battered, threatened with death and raped. Attempts to seek help were unsuccessful because of the Bulgarian societal attitude that the wife belonged at her husband's side, no matter what. Despite Bulgaria's signing of the *Convention on the Elimination of All Forms of Discrimination Against Women*, the authorities repeatedly ignored the violence against her. The panel referred to the *Universal Declaration of Human Rights*, the *United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment*, the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, and the report of the United Nations Committee on the Elimination of Discrimination Against Women, and held that the mother had "an internationally protected right to protection from domestic violence and failure to give that protection is a form of gender-based discrimination." The panel found that she belonged to a particular social group, women. As for the minor daughter, she had been terrorized and beaten by the male claimant and, again, state protection was lacking. The panel referred to the *United Nations Convention on the Rights of the Child* and held that Bulgaria had failed to protect the minor claimant from the physical and psychological duress occasioned by her father's violence. The panel held that she belonged to a particular social group, minors. The claimants were found to have a well-founded fear of persecution in Bulgaria due to the presence of the male claimant there and lack of state protection, and were declared to be Convention refugees.

CRDD A95-00154 et al., April 12, 1996. The claimant was brutally assaulted by her husband on numerous occasions, and was raped by him. The police refused to become involved, taking the attitude that the assaults were family matters. The Refugee Division found that sexual assault was a breach of the most basic of human rights, and was also an offence against the right of security of the person. The claimant was a member of a particular social group: namely, women subject to spousal abuse. She faced gender-based persecution. The inaction of the police in the claimant's case, as well as documentary evidence about violence against women in Poland, demonstrated that the state was unable to protect the claimant. While the claimant could relocate outside Warsaw, she had no family or friends elsewhere and no particular job skills, and her husband could readily locate her or their son. She could not, therefore, avail herself of an internal flight alternative.

CRDD TA0-03535, March 6, 2001. This claim was part of a group of similar claims which included a constitutional challenge based on section 15 of the Canadian *Charter of Rights and Freedoms*. The teenaged claimant based her claim on membership in a particular social group: female minors incapable of protecting themselves in abusive family situations. The claimant was subjected to physical and psychological abuse by her family and was sent to North America against her will. According to the documentary evidence, Chinese government policies encourage or tacitly accept human rights abuses against women and girls, China's population control policy depicts girls as problematic for families, and hundreds of millions of females suffer from domestic violence with no state agency or support system to turn to for help. The claimant's youth and gender rendered her vulnerable. She would be persecuted if she returned to China, and state protection would not be available to her. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues.

A woman's claim to Convention refugee status cannot be based solely on the fact that she is subject to a national policy or law to which she objects. The claimant will need to establish that:

a. the policy or law is inherently persecutory; or

CRDD T96-06045 et al., October 30, 1997. The claimant, a Copt, feared persecution at the hands of her abusive husband. Despite numerous attempts on her part to get assistance from relatives and her village priest, the claimant had always been forced to reconcile with her husband. According to documentary evidence cited by the Refugee Division, Egyptian law gave husbands absolute legal power over their wives, there was no public recognition of domestic violence, and support for abused wives was limited to immediate female family members. Divorce was not an option for the claimant, as the Coptic Church did not grant divorce except under exceptional circumstances. The claimant's husband had friends within the security forces, so the claimant had an additional reason for fearing that she would not be helped by the police. State protection would not be available to the claimant, and she had no viable internal flight alternative.

CRDD T98-04554, February 16, 1999. The claimant, a Muslim Yoruba woman who was in a traditional customary marriage, was subjected to serious physical, psychological and emotional abuse by her husband, a well-to-do Nigerian businessman. Among other injuries, she suffered a miscarriage and collapsed lungs and spent time in intensive care. Her injuries were documented by letters from the hospital where she was treated and a psychological report which indicated that she suffered from Post-traumatic Stress Disorder. The claimant's family refused to consent to a divorce, and their consent was required under traditional customary law. Under Muslim law, a woman cannot divorce a man. According to the documentary evidence, spousal assault is endorsed by Yoruba cultural norms and the police do not normally intervene in domestic disputes. The

government tolerates customary and religious practices that adversely affect women. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The claimant was determined to be a Convention refugee.

CRDD V97-01419 et al., August 9, 1999. The claimants were a 34 year old woman (the principal claimant) who claimed that her rights and responsibilities as a mother were violated after the death of her husband; her son and daughter; and her parents and grandmother, who claimed to have been harassed by the state authorities at the direction of the principal claimant's father-in-law. The Refugee Division found that, under Iranian law, the principal claimant would have lost the custody of her children for a significant part of their childhood had they remained in Iran and would have lost the ability to influence guardianship decisions in respect of the children. This constituted discrimination which was serious enough to amount to persecution. Depriving a woman of custody on the sole basis of her gender is a fundamental violation of her basic human rights. The principal claimant had a well-founded fear of persecution on the ground of membership in a particular social group: widowed mothers in Iran. Referring to the *United Nations Convention on the Rights of the Child*, the Refugee Division found that the minor claimants had also established their claims as members of a particular social group: children of widowed mothers in Iran. In the particular circumstances of this case, it would violate their fundamental human rights to place them in the custody of their paternal grandfather and to deprive them of the right to be with their mother. The older claimants were not credible. Some background immigration issues were referred to. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were considered.

CRDD T98-08454, March 28, 2000. The claimant alleged a fear of persecution at the hands of her ex-common law spouse. She was subjected to numerous assaults until she left. However, after she left, the abuse of the claimant continued. There were problems surrounding their child. The claimant was threatened and assaulted. Her former spouse abducted and detained the claimant, subjecting her to physical assaults and death threats. She contacted the police and the Ombudsman after this incident but no one intervened. She had also contacted authorities at other times. According to the documentary evidence, state protection is rarely available to victims of domestic abuse in Hungary, and courts often find domestic abuse by men to be acceptable, evaluating whether the abuse was in proportion to the behaviour of the wife or children. The claimant made efforts to obtain state protection, and was not taken seriously. She was also Roma. The documentary evidence indicates that while non-Roma women who complain of domestic violence suffer indifference, Roma women are more likely to be treated with direct hostility. There was more than a mere possibility that she would be persecuted if she returned to Hungary, and adequate state protection was not available. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

Hazarat, Ghulam v. Canada (Secretary of State) (F.C.T.D., no. IMM-5496-93), McKay, November 25, 1994.

The adult female claimant asserted that she feared persecution by reason of her membership in a particular social group, namely, women. There was evidence that under the government of the Mujahadeen, women are subject to laws and practices which impose various constraints; for example, they must wear the chador; they may not go outside the home or travel unless accompanied by an adult male relative; they are not permitted to be educated; and they may not participate generally in the work force. The Refugee Division concluded that these restrictions do not amount to persecution. Before the Court, the claimants submitted that the Refugee Division had failed to give reasons for this conclusion. In particular, it had failed to indicate any framework for evaluating the restrictions in question, even though frameworks were available in a number of texts, including the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The Refugee Division had reviewed the evidence in detail. Its conclusion was not perverse. Application denied. (CRDD decision V92-01002 et al., September 9, 1993).

b. the policy or law is used as a means of persecution for one of the enumerated reasons; or

c. the policy or law, although having legitimate goals, is administered through persecutory means; or

Cheung v. Canada (Minister of Employment and Immigration), [1993] 2 F.C. 314 (C.A.).

In *Cheung*, the Federal Court of Appeal held (1) that "women in China who have more than one child, and are faced with forced sterilization because of this, form a particular social group so as to come within the meaning of the definition of a Convention refugee" and (2) that "forced or strongly coerced sterilization in the context of China's one child policy" constitutes persecution. After the birth of her first child, the appellant had undergone three abortions; thereafter, she became pregnant again, but this time she went into hiding to have her second child. She left this child, the second appellant, with her in-laws. The evidence showed that this second child would be denied food subsidies and would receive a poor education, or none at all. Shortly afterwards, the Family Planning Bureau took the appellant away to be sterilized; before she could be sterilized, the appellant fled to her in-laws; she became pregnant again and had yet another abortion. It was accepted by the Refugee Division panel that the appellant would be sterilized if forced to return to China. However, the panel held that China's one child policy was a law of general application; there was no "persecutory intent on the part of the Chinese government" and it was "not a policy born out of caprice, but out of economic logic." The Court held that the panel erred by focusing on the general aim of the law, rather than examining the methods used to enforce it. "In so doing, the Board ignored the severity of the intrusiveness of sterilization to a person's mental and physical integrity." Also, it erred when it referred to the lack of a persecutory intent, as a persecutory effect is sufficient. The Court referred to the earlier Court of Appeal decision in *Canada (Minister of Employment and Immigration) v. Mayers*, [1993] 1 F.C. 154, and

in particular to the criteria set out therein which may form a useful basis for determining what constitutes a particular social group. In doing so, the Court concluded that women in China who had one child and were faced with forced sterilization satisfied enough of those criteria to constitute a particular social group. However, the Court went on to say that only those women who also had a well-founded fear of persecution as a result of that could claim refugee status. Mr. Justice Linden agreed that China's one child policy was of general application; however, he stated that the forced sterilization of Chinese women who have had a child was not. He stated: "This is a practice that affects a limited and well defined group of people and does not have general application." There was evidence that it was not universally applied throughout China. The Court went on to hold, citing *Padilla* [(1991), 13 Imm. L.R. (2d) 1 (F.C.A.)], that, even if forced sterilization were a law of general application, the operation of a law of general application may be persecutory. In this case, the Court held that the appellant's fear was that of "extraordinary treatment in her case that does not normally flow from that law". Linden J.A. went on to state that the punishment or treatment under a law of general application could be so "completely disproportionate to the objective of the law" as to be persecutory, regardless of its intent. Linden J.A. stated that forced sterilization of women was a fundamental violation of a basic human right, in that it violated Articles 3 and 5 of the *United Nations Universal Declaration of Human Rights*, which read as follows: Article 3 Everyone has the right to life, liberty and security of the person. Article 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Noteworthy is the following finding of the Court: The forced sterilization of a woman is a serious and totally unacceptable violation of her security of the person. Forced sterilization subjects a woman to cruel, inhuman and degrading treatment. ... There is a point at which cruel treatment becomes persecution regardless of whether it is sanctioned by law; the forced sterilization of women is so intrusive as to be beyond that point. ... The practice of forcing women to undergo sterilization is such an extreme violation of their basic human rights as to be persecutory, even though this was thought to advance the modernization of China. The final result in *Cheung* was that the Court held that the panel erred in its findings. (CRDD decision T90-01620, December 5, 1990).

***Chan v. Canada (Minister of Employment and Immigration)* [1993] 3 F.C. 675 (C.A.).**

In late 1989, following the birth of the appellant's second child, officials from the Public Security Bureau visited the appellant on several occasions and accused him of violating China's one-child policy. The appellant's wife lost her job owing to this violation. The appellant agreed to be sterilized within three months. Before the expiry of this period, the appellant fled China without undergoing the sterilization procedure. The Refugee Division panel had found that the appellant did not have a well-founded fear of persecution owing to his membership in a particular social group or his political opinion. The panel found that sterilization was not a form of persecution for a Convention reason but rather, "a measure on the part of the PRC government to implement a family planning policy applicable to all of its citizens." In its judgment, the Federal Court of Appeal dismissed the appeal from a decision of the Refugee Division. Heald and Desjardins, J.J.A., in separate reasons for decision, held that the appellant, a Chinese citizen, did not have a well-founded fear of persecution by reason of his membership in a particular social group or his political opinion. Mahoney, J.A., dissenting, disagreed with the

majority result, instead finding that the facts of this case were indistinguishable from those in the earlier Federal Court of Appeal decision in *Cheung v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314 (C.A.). Both Helad and Mahoney, J.J.A. held that forced sterilization constituted persecution. Desjardins, J.A., on the other hand, found that forced sterilization was outside the scope of the definition of Convention refugee.

***Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593.** The majority judges decided the case on the basis that the claimant had failed to prove a well-founded fear of persecution, namely that he faced involuntary sterilization as a result of the Chinese one-child policy. All judges referred to the UN Handbook (UNHCR) in assessing the evidence and accepted the Handbook as a highly persuasive authority. Key factors in the majority's assessment of the evidence as insufficient were: physical coercion was a last resort, after economic sanctions; considerable local variation in enforcement techniques; and absence of documents or anecdotal evidence corroborating the claimant's story. Even the economic sanctions taken against the claimant and his wife had been incomplete and remitted in part. The claimant had retained his managerial post; his wife's fine had been reduced 40%; and his driver's licence had been renewed. This was inconsistent with a serious risk that involuntary sterilization would be imposed. The majority refused to address the particular social group issue -- whether *Cheung v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314 (F.C.A.) should be followed in the wake of *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 -- in the absence of facts squarely presenting the issue. Mr. Justice La Forest, writing for the dissenters, would have returned the case to the Refugee Division for factual findings on the issue of well-founded fear of persecution. He stated that forced sterilization violates a fundamental human right. The dissent made two important interpretations of *Ward*: the "is/does" distinction was never intended to override the *Ward* categories; and the element of voluntary association, in the second *Ward* category, is with a status. A person does not need to join a social group within the second *Ward* category; behaviour alone can make her part of a group, if the reasons for her behaviour are fundamental to human dignity.

d. the penalty for non-compliance with the policy or law is disproportionately severe.

CRDD V94-01847, June 21, 1996. On one occasion, the claimant was sentenced to 20 lashes for not fully complying with the Iranian dress code. On another occasion, she and her boyfriend, whom she was meeting clandestinely, were arrested by the Komiteh, detained, and sentenced to 20 lashes each. The claimant fled Iran when her father, a member of the Komiteh, announced that he wanted her chastity confirmed by a government examiner. Since her arrival in Canada, the claimant had formed a relationship with a young man and they were awaiting the birth of their child. Under the Iranian penal code, the penalty for intercourse "between a man and a woman who are forbidden to each other" ranged from 100 lashes to death. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, and concluded that the harm feared by the claimant was directed

predominantly at women on grounds of religious precepts and cultural norms. Non-compliance with the Shariah Law entailed severe penalties for women. Twenty lashes for challenging the dress code was cruel and unusual punishment and amounted to persecution, as did the penalties which the claimant faced were she to return to Iran.

C. EVIDENTIARY MATTERS

- 1. 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.**
- 2. 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.**

CRDD U92-08714, June 4, 1993. The claimant endured severe physical abuse, as well as sexual abuse, at the hands of her ex-husband, over a period of ten years. On two occasions, the claimant sought the assistance of the police, who failed to act on her behalf. On the first occasion, the claimant telephoned the police from her house, but they did not respond to her request for help. On another occasion, the police laughed at her and said she must have done something to justify the beating. The documentary evidence confirmed that violence against women is common in Ecuador and that the government has not addressed the question as a serious public policy issue. Even though the claimant divorced her husband, she was unable to obtain state protection from abuse. The claimant was assaulted by her ex-husband, who threatened to kill her if she tried to leave the country. The panel found that the claimant had a well-founded fear of persecution based on her membership in a particular social group, that of "Ecuadorian women subject to wife abuse." In deciding the claim, the panel applied the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD T93-01878 et al., August 30, 1993. The principal claimant in these joined claims was the mother of the other claimants. They fear their husband and father respectively. He was described as an abusive, violent man who was a drug addict. The police, when called to protect the family from the physical abuse were unsympathetic and offered to help them only if they supplied the names of the drug dealers to the police; however, the principal claimant did not know who supplied the drugs to her husband. She could not get a divorce as her husband would not consent to it. She could not simply move away as the

family was living in subsidized housing and could not afford other types of accommodation. She did not receive any assistance from social assistance bureaus. The panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and found that there was adequate state protection. Documentary evidence showed that Israel considered domestic violence to be a serious matter and had passed new laws to prevent it and to punish the offenders. The claimants had recourses to bring their husband/father to justice. The claimants were found not to be Convention refugees.

CRDD T92-09186, September 13, 1993. The claimant was a citizen of Ghana. She testified to a long history of persecution from the Provisional National Defence Council (PNDC) government due to her involvement in the Ghana Democratic Movement (GDM). She alleged that she had been beaten and sexually assaulted by agents of the government during one of her many detentions. The panel found her not to be a Convention refugee, noting that there had been a change of circumstances in the home country. In reviewing various items of evidence presented at the hearing, they found that "... under the present circumstances there is not a reasonable chance that persecution would take place...". As to whether or not there were compelling reasons under section 2(3) of the *Immigration Act*, one member found that repeated rape of a vulnerable person by people in power and/or brutal sexual abuse of women as a form of reprisal can constitute atrocious treatment forming the basis for compelling reasons. The member found that "[s]uch gender-based victims, who have been violated through grave intrusions in their physical and moral integrity can be viewed as a 'special and limited category of persons' (*M.E.I. v. Obstoj*, [1992] 2 F.C. 739 (C.A.))" and that this was reflected in the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The member held that the "onus is on the claimant to persuade the panel that on the balance of probabilities, her experiences ... had led to the development of a certain distrust and disinclination to be associated with Ghana as its national." The member also suggested that it would be a good idea if "cogent" evidence, such as a medical or psychiatric report, were submitted to support the argument of compelling reasons. The claimant had not raised this issue during the hearing nor had counsel produced any evidence in support of it. All he had done was file written submissions. The member acknowledged that the claimant may have been reluctant to testify about such abuse, especially where males were present, but held that there was "... no reason for the claimant not to testify [about] the effects of her experiences on her, if not the details of the experience." The onus was not met and thus no compelling reasons were found. The other member, although concurring with the result, disagreed with the analysis of "compelling reasons". Quoting the Handbook of the United Nations High Commissioner for Refugees, Grahl-Madsen and *Obstoj*, he stated that: "[t]o expand this category to gender based victims who have been violated through grave intrusions in their physical and moral integrity, or those vulnerable persons who have been repeatedly raped by persons in power, would be to shift the focus of the *raison d'être* of the 'compelling reasons' clause from the 'scene of atrocities', 'the attitude of the population' and the 'distrust of the country itself' -- to the persecutory act itself."

CRDD T93-00853 et al., September 27, 1993. The claimants were citizens of Israel. The female claimant was a Christian married to a Jew. She alleged that she was raped by her employer and that the police refused to lay charges because she was not Jewish and because she was new in the country. She feared she might be killed by her employer if she pressed charges. The panel found her not to be a Convention refugee. The panel did not find credible that the police would not protect her. In the panel's view, there was insufficient evidence to impugn the judicial system of Israel. The panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and found that protection was available in Israel. The panel determined that the male claimant, a Jewish person from Ukraine, did not have a well-founded fear of persecution in Israel.

CRDD U96-00685, January 16, 1998. The claimant alleged a fear of persecution at the hands of her former employer, a wealthy and influential man who raped her and who continued to pursue her. The Refugee Division was guided by the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. It noted that Ecuador's Law Against Violence to Women and the Family, passed in 1995, dealt only with those in spousal relationships and did not, therefore, apply to the claimant. The documentary evidence indicated that many rapes in Ecuador went unreported, and that women might file complaints against a rapist only if they produced a witness. A Women's Bureau, established by the government in 1994, could accept complaints about abuse of women, but did not have the authority to act on them. As the aggressor in this case was a very influential man with connections, state protection would not have been forthcoming. Moreover, the claimant did not have an internal flight alternative, given the aggressor's financial resources, his influence and connections, and his obsession with the claimant.

CRDD V97-00708 et al., August 11, 1998. The claimant and her children based their claim on spousal abuse. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The fact that the claimant consulted lawyers during a trip to Canada and that she returned to Peru despite receiving advice that she could make a refugee claim was credibly explained by her refusal to leave her children in Peru. Subsequently, she was legally admitted into the United States with her two children, and came to Canada two days after her arrival in Miami because her husband knew where her family and friends lived in Florida. Her failure to make a claim in the United States was not construed against her since she could not have stayed in Miami and the alternative of relocating elsewhere in the States was not easy for a single mother with four young children, when she had the option of being near her sister in Canada. Also, at that time, the address and phone number of that sister were not known to the claimant's spouse. The claimant stated that she turned to the police three times but did not receive the protection she requested. Because of the failure of many police officers in Peru to take domestic violence seriously, special police stations have been set up to deal directly with abused women. The claimant was aware of these police services, but given the lack of evidence on how much protection would have been available to her and the fact that her husband's brother was powerful, and having been rebuffed by the police three times, this particular claimant did not have to ask again for state protection, notwithstanding the existence of women's police stations. The Refugee

Division considered whether the experience of the children was direct or indirect abuse [persecution]. While the children were not physically abused by their father, his abuse of their mother in their presence constituted direct psychological abuse, and the trauma which they suffered was as real as if they had been directly physically targeted. They were members of a particular social group, children of women who are victims of spousal abuse.

CRDD T98-04880, October 20, 1999. The Roma claimant alleged that when she filed sexual assault charges against four men, one of whom was the son of a high ranking police officer, she was offered a bribe to withdraw the charges. She refused the bribe, whereupon her family started receiving threatening telephone calls. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, which states that when considering whether it is objectively unreasonable for a claimant not to have sought the protection of the state, the decision-maker should consider the social, cultural, religious and economic context in which the claimant finds herself. Prosecution for rape is difficult in Romania as it requires both a medical certificate and a witness. Violence and discrimination against Roma in all areas of life continue. The claimant's contention that she did not receive adequate state protection was credible. There was a serious possibility that the claimant's attackers would continue to try to intimidate her into withdrawing the criminal charges if she returned to Romania.

CRDD M98-09104, December 1, 1999. The claimant was involved in a relationship with a man who physically and sexually abused her. She left him and came to Canada. When she discovered that she was pregnant with his child, he threatened to kill her if she returned to Grenada. In the opinion of a doctor who treated the claimant in Canada, she was suffering from extreme anxiety and was convinced that she would be killed by her ex-partner if she returned to Grenada. The doctor was of the opinion that being returned to her country could have tragic consequences for her mental health and her life. The Refugee Division took into consideration the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. According to the documentary evidence, violence against women is common in Grenada and most cases of spousal abuse go unreported. There are no shelters for female victims of domestic violence. Domestic violence is not considered a serious crime, and a social stigma attaches to women who file complaints against their partners. The Refugee Division found that it was not unreasonable for the claimant to have feared to report the abuse to the police.

CRDD V98-04476 et al., May 29, 2000. The claimants were the ex-wife of a violent member of the Russian Mafia and her current husband. The female claimant's ex-husband abused her for years both before and after their divorce, which he refused to accept. He threatened her with death when she started seeing the male claimant. Before he met the female claimant, the male claimant was beaten many times and forced to pay protection money to gangsters to keep his job. After he started seeing the female claimant, the male claimant was savagely beaten by the ex-husband and some other men. The ex-husband, who had close connections to the criminal underworld and the police, threatened to kill the male claimant for running away with his wife. The Refugee Division found that both

claimants had a well-founded fear of persecution. The documentary evidence about violence against women in Russia, police corruption and the pervasive influence of the Russian Mafia on the government and society as a whole indicated that state protection was not available to the claimants. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

CRDD T98-05972 et al., May 29, 2000. The adult claimant and children were abused by her common law spouse. She did not report the offender to the Hungarian police because she was terrified of him and did not believe that effective protection would be forthcoming. She left him but, on each occasion, he tracked her down and forced her to return to him. The offender had a criminal record in Hungary. He also had convictions for assaulting her in Canada and was removed. While the adult claimant's initial Personal Information Form (PIF) made no mention of the abuse and instead described discrimination based on her Roma ethnicity, the Refugee Division found that the first PIF was probably also true. The offender's convictions in Canada were evidence that he persecuted the claimants in Hungary. According to the documentary evidence, state protection is rarely available to victims of domestic abuse in Hungary. In circumstances where non-Roma women suffer discrimination or indifference, it was likely that Roma women would be treated with direct hostility. The adult claimant's failure to seek state protection did not defeat these claims as it was clear that adequate protection would not have been forthcoming. The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and the Guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues.

CRDD V97-03802, November 20, 2000. The claimant, a Roma, was a victim of domestic abuse. She allegedly feared persecution by her husband (currently her ex-spouse) and his family. The documentary evidence supported her fear that the Polish police do not assist victims of domestic violence. The Refugee Division found that it was likely that the claimant's ex-spouse would seek her out if they both returned to Poland. While the claimant had suffered discrimination and harassment as a Roma, such discrimination did not, in her case, reach the level of persecution. However, the anti-Roma attitude of the Polish police was relevant to the issue of state protection. The fact that the police do not make a serious effort to assist Roma victims of crime, combined with the general lack of protection for female victims of domestic abuse, left the claimant without recourse to state protection in Poland.

CRDD TA0-01358 et al., November 28, 2001. The claimant and her son feared persecution at the hands of the claimant's ex-husband, who abused both of them. There was psychiatric evidence that the claimant was suffering from depression and post-traumatic stress disorder. According to the documentary evidence, domestic violence is a serious problem in South Korea. A statute was enacted by the government in 1998 to address the problem, but there are many impediments to its effective implementation, including lack of police resources and unsympathetic police officers. With respect to child abuse, the government had enacted revised child protection legislation during 2000. However, the Refugee Division concluded that the impediments that have occurred in implementing the legislation to protect victims of spousal abuse are the same problems that child victims of

abuse would encounter seeking protection. When the claimant told the police that she wanted to report an assault, she was told to resolve it herself. Her failure to approach the state for protection after that did not defeat her claim because protection would not have been forthcoming had she done so. If the claimants returned to South Korea, they could be tracked down by the ex-husband through the family registration system. The claimants did not have an internal flight alternative (IFA). The Refugee Division considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution and the guidelines concerning Child Refugee Claimants: Procedural and Evidentiary Issues.

CRDD MA1-02285 et al., March 8, 2002. The claimants alleged a well-founded fear of persecution by reason of their membership in the social groups of family and women victims of violence. The principal claimant declared that her husband beat her regularly. She had complained to police, who merely took her back home to her husband. Furthermore, she had objected to her husband associating with a terrorist, and her husband had allegedly beaten her again, as well as her elder daughter who had tried to reason with him. The claimant fled the marital home with her two daughters, but her husband forced them to return home. Furthermore, in a police raid on the marital home to arrest her husband, in his absence, the police allegedly arrested the claimant and her elder daughter. During her stay in prison, the claimant was allegedly violated by a number of police officers. The claimant's testimony was credible in the panel's view. In addition, according to the documentary evidence, spousal abuse was a reality in India and cases of rape by police were not rare. Rape victims not only had difficulty filing complaints, when they did so, they were ridiculed to the point where they questioned the very effectiveness of the process. The claimants were Convention refugees.

Sanno, Aminata v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-2124-95), Tremblay-Lamer, April 25, 1996. The Refugee Division found that the claimant, a 24-year-old woman from rural Gambia, had a well-founded fear of persecution in her village, because of the treatment by her abusive father: namely, she was beaten for refusing to enter into an arranged marriage. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were applied. However, the CRDD erred in finding that she had an IFA in an urban area, when it improperly speculated that her husband, a man from Gambia, whom she married in Canada, would be able to protect her in Gambia. The testimony from the expert witness did not support the IFA finding. Application granted. (CRDD decision U93-07096, November 16, 1993).

D'Mello, Carol Shalini v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-1236-97), Gibson, January 22, 1998. The Refugee Division's analysis of the totality of the evidence and the applicable law was inadequate: (1) with respect to the principle in *Ward* that a claimant should not be required to risk her life seeking ineffective state protection merely to prove the ineffectiveness; and (2) with respect to the documentary evidence which showed lack of police support. Application allowed. (CRDD decision U96-01262, March 4, 1997).

***Tobar, Soledad del Carmen Concha et al. v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., IMM-1139-98), Rouleau, May 26, 1999.** Women victims of domestic violence constitute a social group under the definition. A woman who claims refugee status on this ground must show that her fear is real; that the feared harm is sufficiently serious to constitute persecution; that she has no alternative of internal flight; that she has a reasonable chance of being persecuted; and that she can not reasonably expect adequate protection from the state. According to the evidence, the resources do not exist in Chile to allow the claimant to become independent. In the Court's opinion, a person cannot be returned to her country of origin if her only option is to return to living with her assailant. The Refugee Division erred in not determining whether the claimant and her children had an internal flight alternative. To determine whether a state offers adequate protection, it must be verified not only whether the state is able to offer this protection, but also whether it is willing. Relevant considerations include verifying whether domestic violence is subject to legal sanctions in the country's legislation, whether the legislation is designed to protect the victims against the assaults and, above all, whether the legislation is enforced. The existence of support services (counselling, legal aid and medical assistance) is commendable, but does not of itself constitute protection. Similarly, the existence of shelters does not necessarily indicate that protection exists, if the shelters only offer temporary refuge and the local authorities do not take the trouble to protect the victims of domestic violence. Given the rules recently established by the international community, any state that does not take steps to prevent violent crimes against women is as guilty as the perpetrators of such acts. States are in fact obligated to prevent violent crimes against women, to investigate these acts, and to punish the perpetrators. The Refugee Division studied the documentary evidence in a very selective way. Application for judicial review allowed. (CRDD decision M96-01238 et al., February 2, 1998).

***Velazquez, Sonia Laura Barragan v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-3243-98), Pinard, June 9, 1999.** The Refugee Division considered the claimant's explanation for the fact that she had not approached the state for protection before leaving Mexico. The Refugee Division also considered her psychological state, including the evidence that she was suffering from post-traumatic stress disorder. The fact that the Refugee Division did not cite any evidence showing that the Mexican state was able to protect its citizens is not sufficient to justify judicial intervention. There was documentary evidence before the Refugee Division showing the governmental initiatives and resources for the benefit of the victims of domestic violence. Application denied. (CRDD decision V96-01189 et al., June 9, 1998).

***Elcock (Milkson), Joan Theresa v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-2985-98), Gibson, September 20, 1999.** In 1994, the claimant came to Canada as a visitor. Her spouse in Grenada consented to a divorce, but threatened her with reprisals if she ever returned to Grenada. In 1997, she was arrested for being in Canada illegally. She then made a refugee claim. She fears persecution in Grenada at the hands of her former spouse. The Refugee Division found the claimant credible, but held that she did not show a failure of state protection. (1) The Court found that the Refugee Division erred in failing to effectively analyse, not merely whether a

legislative and procedural framework for protection existed, but also whether the state, through the police, was willing to effectively implement any such framework. (2) As in *Williams*, the claimant's explanation for the delay in making her claim was entirely credible. However, the Refugee Division's comments regarding delay were not central to its decision and therefore did not constitute a reviewable error. Application allowed. (CRDD decision U97-01323, May 26, 1998).

Cho, Soon Ja v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-4029-99), Gibson, August 9, 2000. The principal applicant alleges that her second husband, the father of the second and third of her children, is an alcoholic who verbally and physically abused her whenever he was drunk. Further she alleges, her oldest child, the product of her first marriage, was also the victim of verbal and physical violence. The Refugee Division accepted that the principal applicant was abused, but found that state protection is available. The Refugee Division analysis involved no capricious findings of fact and represented a reasonable and thorough analysis of current country conditions in South Korea both as to its legislative and regulatory framework for protection of victims of spousal abuse and their children and the capacity and will to effectively implement that framework. Application denied. (CRDD decision U98-01321, July 12, 1999).

Haimov, Elena v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-5865-99), O'Keefe, June 15, 2001. The applicants, Elena Haimov and her minor son, are Israeli citizens who came to Canada in 1998. The adult applicant was born in Russia and is Christian Orthodox. In 1987, she married Boris Haimov who is Jewish. The couple's son was born in 1989. In 1991, the applicants emigrated with Boris Haimov to Israel. Their refugee claim is based on persecution by Boris Haimov. The Refugee Division accepted that the adult applicant was abused by Boris Haimov in Israel, but it found that adequate state protection was available there. The Court found no doubt that the adult applicant has a subjective fear of persecution, as Boris Haimov has threatened to kill her and has beaten her. The police seem to respond to calls that the husband is threatening her and they remove him, but it seems to Justice O'Keefe, from the evidence, that when a crime is committed, nothing is done about it. When the adult applicant went to the police, the officer started to write a report but tore it up when he learned the conflict took place because the applicant and her husband were of different religions. In the opinion of Justice O'Keefe, this leads to the conclusion that there is a state inability to protect the applicants. Application allowed. (CRDD decision T98-07278, November 9, 1999).

Canada (Minister of Citizenship and Immigration) v. Olah, Bernadett (F.C.T.D., no. IMM-2763-01), McKeown, May 24, 2002; 2002 FCT 595. The respondent Klara Zakar and her daughter, Bernadette Olah, aged 11, are citizens of Hungary. They initially based their claim on the problems they faced because of their Roma ethnicity. They later asserted that what they really feared was spousal abuse from the principal respondent's common law husband. The Refugee Division concluded that the respondents were Convention refugees based on the principal respondent's fear of spousal abuse. (1) The issue of state protection goes to the objective element of the test of fear of persecution.

Relevant evidence would include the documentary evidence and the personal circumstances of the claimant. The claimant's own subjective feelings on state protection would, however, not be a relevant factor. Although the Refugee Division clearly considered the objective documentary evidence, its reasons suggest that it also considered the subjective feelings of the claimant. In the view of Justice McKeown, this was an error. (2) The Court took judicial notice that the police in Canada are frequently unable to fully protect an abused spouse from her abuser. In this case, the police responded to the incidents of abuse and even charged, arrested and detained the husband. While the protection of the state in this case could certainly have been better, the protection the applicant received was not much different from the protection that she would have received in Canada. The Refugee Division set too high a standard for state protection. (3) As there was evidence that the daughter herself had also been abused, the Court did not accept the Minister's argument that the Refugee Division's decision with respect to the daughter had been based on indirect persecution. Application allowed. (CRDD decision T98-06283, April 25, 2001).

Ferguson, Gloria v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-5927-01), Noël, November 22, 2002; 2002 FCT 1212. The Refugee Division found that the applicant was credible and had sustained physical and emotional abuse at the hands of her husband. However, her refugee claim was denied because she could have availed herself of the existing state protection in Jamaica. (1) It is not for our Court to establish a high standard of state protection for other countries. Reality has to prevail, and a test of whether the system is adequate considering the circumstances of the case should be applied. (2) Proof of inadequate state protection must be clear and convincing. (3) The applicant did inform the panel that her husband had friends within the local police. She also indicated that she could have filed (and she did without pressing charges) her complaint elsewhere, with the local police of another city, where her husband was not known. (4) The applicant made the decision not to press criminal charges against her husband because she was afraid of his reaction. This behaviour is understandable but it does not make the state protection insufficient. Application denied. (CRDD decision TA1-03733, December 3, 2001).

- 3. A change in country circumstances, generally viewed as a positive change, may have no impact, or even a negative impact, on a woman's fear of gender-related persecution. An assessment should be made of the claimant's particular fear and of whether the changes are meaningful and effective enough for her fear of gender-related persecution to no longer be well-founded.**

Jimenez Mora, Gisselle et al. v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-4041-98), Rouleau, June 25, 1999. The Refugee Division had concluded that according to recent documentary evidence, the authorities in Costa Rica had adopted the means to combat discrimination, harassment, and violence toward women. The Refugee Division had also considered that fraudulently obtaining the forged signature of the applicant's spouse (to make it possible for the applicant to leave with her

child) and consequently to abduct the child went against the *Convention on the Rights of the Child*. The Court was of the opinion that the documentary evidence "testifies to the significant improvement in the situation of women in Costa Rica and to the effort made by the authorities to protect them against domestic violence [unofficial translation]." Application for judicial review denied. (CRDD decision M97-09346 et al., July 16, 1998).

4. In determining the reasonableness of a woman's recourse to an internal flight alternative (IFA), decision-makers should consider the ability of women, because of their gender, to travel safely to the IFA and to stay there without facing undue hardship.

CRDD U95-03525, September 25, 1996. The Refugee Division accepted that the claimant, a 21-year-old Tamil woman, had a well-founded fear of persecution in the north of Sri Lanka on the grounds of perceived political opinion and membership in a particular social group (young Tamil women fearing recruitment by the Tamil Tigers). However, the claimant had a viable internal flight alternative in Colombo. Her detention for two days in Colombo, mistreatment and release upon payment of a bribe did not amount to persecution: that is, it was not a significant period of systemic infliction of threats or personal injury. According to the documentary evidence, persons able to satisfy the police with regard to their identity were being released within three days. If the claimant were to be penalized by the police for her failure to comply with a reporting condition of her release, that would constitute prosecution, not persecution. The principles articulated in the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution did not apply to this case. In Colombo there existed a large Tamil community within which the claimant could find support. (Judicial review denied *Puvanendiran, Premalatha v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no IMM-3595-96), Heald, July 8, 1997).

CRDD U97-02858, November 2, 1998. The claimant feared persecution at the hands of her abusive boyfriend, who raped her twice and stalked her when she tried to end the relationship. She reported both rapes to the Public Security Bureau (PSB) but her boyfriend was released for lack of evidence and because the PSB viewed the matter as a "domestic dispute". The boyfriend's uncle had power and influence within the PSB. The Refugee Division found that no state protection was available to the claimant in the circumstances. There is no national spousal abuse law in China and women are regarded as the property of their male relatives. Although some victims of domestic violence may have an internal flight alternative (IFA) within China, the claimant had no IFA because she would have to obtain a permit to move and her boyfriend could then find her through his uncle's PSB sources. If she became part of the large itinerant population of China without official residence status, she would not have full access to social services and education and would have to pay a premium for those services. Moreover, young rural women in such situations are frequently subject to sexual assault.

CRDD T98-07538, March 9, 2000. The claimant based her claim on her membership in a particular social group: women in China subject to spousal abuse. She was married to a Public Security Bureau detective, a man with considerable power and influence. Some of her in-laws were senior government officials. Her husband abused her physically and sexually, and her attempts to seek redress from the authorities were unsuccessful. She was assessed by a psychologist in Canada as suffering from post-traumatic stress disorder. According to the documentary evidence, violence against women is still a widespread problem in China. Laws exist to protect women's rights, but the enforcement provisions of those laws are weak. Local law enforcement authorities frequently chose not to interfere in what they regard as a family matter. The authorities were unwilling to provide the claimant with adequate protection, and she could not relocate to another city without her husband's consent. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were considered.

Quaye, Sarah Adjoa v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-3999-00), Tremblay-Lamer, May 23, 2001. The applicant is a 29-year-old citizen of Ghana who claims Convention refugee status based on her race, perceived political opinion and membership in a particular social group, namely battered women. She lived in a small farming village. Her parents had pre-arranged a marriage for her to a proposed husband who had paid for her schooling (a rich, important man in her village who lived in Germany), although she was already involved in a common law relationship and pregnant with twin children of that relationship. She refused to marry the proposed husband. She fears returning to Ghana because her tribe would kill her. The Refugee Division found she had an IFA in Accra. (1) The Court held that it was speculative for the Refugee Division to conclude that the suitor's influence does not extend beyond the applicant's village. Further, the mere enactment of new laws is not in itself sufficient to provide the applicant with an IFA in the capital. (2) The Refugee Division misconstrued the evidence when it concluded that, although the applicant was credible on the issue of gender violence, the documentary evidence is to be preferred because it indicates some effort by the government to combat abuse against women. The documentary evidence indicated that domestic violence remains a significant problem throughout Ghana. Application allowed. (CRDD decision TA0-02196, July 13, 2000).

Blanco, Alicia Zamudio v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., No. IMM-4860-00), Nadon, June 28, 2001. The claimant alleged that she belonged to the social group of women victims of domestic violence and to the social group of lesbians. The Refugee Division had found that according to the documentary evidence, lesbians are sometimes victims of discrimination, but usually only in private life. The claimant had not expressed a desire to have a homosexual relationship, wishing to live within the framework of her beliefs, which seemed to exclude such relationships. In addition, the claimant was likely to be mistreated again by her husband, without the benefit of any protection, if she returned to live in her area. Nonetheless, she had an IFA in Mexico City, where there was virtually no likelihood that her husband would find her or that her parents-in-law would meet her by chance. The claimant had demonstrated her resourcefulness in living in Canada, so that it seemed reasonable that she could live elsewhere in Mexico. According to the Court, the panel had not committed any error that

would warrant intervention by the Court. Application denied. (CRDD decision V99-01904, August 24, 2000).

D. SPECIAL PROBLEMS AT DETERMINATION HEARINGS

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.**

CRDD T93-11934, July 5, 1994. 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. The panel found that the claimant had provided clear and convincing confirmation that the state would not protect her if she returned to Syria. In assessing the claimant's credibility, the panel accepted her explanation for omitting certain important details from her Personal Information Form. Applying the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the panel noted that it was necessary to be mindful of the special problems that women face when called upon to state their claims at refugee hearings, particularly when they have had experiences that are difficult for them to speak about.

CRDD T97-06447 et al., October 22, 1999. The claimant, who claimed to have been the victim of domestic abuse, did not feel comfortable testifying in the presence of male panel Members and brought a motion requesting that her claim be heard by female panel Members. The Refugee Division noted that, absent any specific information which may give rise to a reasonable apprehension of bias, all Members are presumed to be competent to carry out their professional obligations in the context of gender-related claims. Members are aware of the difficulty female claimants have in providing detailed evidence of physical assaults, and generally female claimants are not required to give the details of such assaults. Where evidence concerning an assault is necessary, the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, specifically provide for alternate means of giving evidence. In exceptional circumstances, where requiring a claimant to appear before male panel Members would give rise to a breach of natural justice, female panel Members should be assigned to the claim. In this case, the evidence of the claimant's potential discomfort was not a sufficient basis on which to conclude that the hearing of the claim by a male Member would give rise to a breach of natural justice. The Refugee Division referred to various case law and specifically to a medical report of a psychologist.

CRDD T99-00663 et al., February 14, 2000. 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. The Refugee Division found that familial and social ostracism would be so intense for the claimants in Nigeria as to constitute persecution. The dissenting member found the claimant's testimony regarding the alleged cleansing ritual not to be credible in light of the absence of any reference to such a ritual in the documentary evidence, but was prepared to accept that the claimant had a well-founded fear of persecution, although the member was not persuaded that this was so for the claimant's children. Both Refugee Division members considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.

Thambirasa, Sakuntala v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-1224-98), Reed, February 3, 1999. The Refugee Division clearly misconstrued the evidence in stating that the claimant's reason for leaving Sri Lanka was her sexual assault and related events in Colombo. In addition, the reliance on the failure to find in the port of entry notes any reference to the events in Colombo as a reason for a finding of lack of credibility is a capricious finding: (1) There is a complete absence of any consideration being given to the reasons a Tamil woman (indeed many women) would be reluctant to disclose a sexual assault to a stranger, a male, who speaks a different language and is in a country with a culture different from her own; (2) the port of entry notes completely fill the space provided for them; (3) what is written then is chosen by the officer, not the claimant; (4) there is no expectation that the brief few lines of notes are meant to tell the whole story. Application allowed. (CRDD decision U97-00189, February 23, 1998).

- 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**

CRDD T93-06593, May 9, 1994. The claimant was detained several times for refusing to participate in pro-Khomeini demonstrations, for her association with a pro-Monarchist group, and for infractions of the dress code. In addition, she received 50 lashes for being caught by the Revolutionary Guard, unaccompanied, in the presence of a male friend. The panel found that the claimant had a well-founded fear of persecution by reason of her political opinion and her membership in a particular social group (namely, women). In coming to its decision, the panel considered the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. While the panel initially had serious concerns regarding the manner in which the claimant presented her testimony, it found that her answers did not indicate that she was a witness trying to be evasive, but rather were a reflection of an inability to focus, and of a disturbed mental state resulting from the claimant's mistreatment in Iran. A psychiatric assessment, requested by the panel, confirmed the claimant's mental condition. Due to her inability to provide coherent oral testimony, the panel's evidentiary findings were based primarily on the information in the claimant's Personal Information Form and the medical and psychiatric reports.

CRDD M94-00649, May 11, 1995. The claimant's husband was a Canadian living in the Dominican Republic. He was wanted by the Sureté de Québec. When the claimant refused to comply with certain of her husband's demands, he became violent and beat her. She could get no help from the Dominican police although she made three reports, one to local police and two at the courthouse in the capital city. Her early attempts to flee were unsuccessful. Her husband once brought her to Quebec for a five-month visit, but she did not speak English or French and was not permitted to go out. When the claimant managed to make her way back to Canada two years later, she did not immediately claim refugee status because she was not aware that she could do so. The panel found the testimony credible and consistent with the psychological portrait of a battered woman. Documentation indicated a lack of protection for women who were victims of spousal abuse in the Dominican Republic.

CRDD U96-02325, December 20, 1996. The claimant alleged that she had been abused and threatened with death by her husband, and that she was unable to avail herself of the protection of the state in Ghana. The Refugee Division had some concerns about the claimant's credibility, but gave considerable weight to a medical report and a psychiatric report, both of which stated that the claimant was suffering from depression and post-traumatic stress. The Division referred to the updated Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The claimant clearly fell within the third category identified by the guidelines; i.e., women who fear gender-related persecution due to "... 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 documentary evidence confirmed the claimant's testimony that police protection was not available to women who were victims of domestic violence. Even though wife battering was a criminal offence, it was still generally condoned in traditional society. Adequate state protection was not available to the claimant.

CRDD U96-01850 et al., September 18, 1997. The claimant had been subjected to ongoing and severe physical and sexual abuse by her husband, a member of the Jatiya Party, which currently formed part of the coalition government in Bangladesh. She had sought police protection on two occasions, but the police had refused even to register a complaint. A letter from a doctor who had treated her after one of her husband's attacks described the multiple injuries which had been inflicted upon her. A psychological assessment by a specialist in abused women and torture victims stated that the claimant suffered from acute post-traumatic stress related to physical, emotional and sexual torture. After the claimant's departure from Bangladesh, her husband had inquired about her whereabouts, threatened her parents and beaten up her brother. The claimant faced more than a mere possibility of serious harm if she returned to Bangladesh, and no state protection was available to her.

CRDD T98-07559, June 9, 1999. Throughout her 20-year arranged marriage, the claimant was beaten by her husband. She reported the abuse to the police several times, but nothing was done. She had not attempted to divorce her husband, but the documentary evidence indicates that physical abuse must result in permanent injury to constitute grounds for divorce and that economic survival is difficult for divorced women. Except for her children, the claimant had no family in Iran. Her failure to seek a divorce did not indicate a lack of a subjective fear of persecution. A psychological assessment indicated that the claimant was suffering from chronic Post Traumatic Stress Disorder. Referring to the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution, the Refugee Division found that the claimant had a well-founded fear of persecution as a woman subject to domestic abuse. There was nothing to indicate that state protection would be any more available in the future than it had been in the past for the claimant.

CRDD T98-07538, March 9, 2000. The claimant based her claim on her membership in a particular social group: women in China subject to spousal abuse. She was married to a Public Security Bureau detective, a man with considerable power and influence. Some of her in-laws were senior government officials. Her husband abused her physically and sexually, and her attempts to seek redress from the authorities were unsuccessful. She was assessed by a psychologist in Canada as suffering from post-traumatic stress disorder. According to the documentary evidence, violence against women is still a widespread problem in China. Laws exist to protect women's rights, but the enforcement provisions of those laws are weak. Local law enforcement authorities frequently chose not to interfere in what they regard as a family matter. The authorities were unwilling to provide the claimant with adequate protection, and she could not relocate to another city without her husband's consent. The Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution were considered.

CRDD A99-00789 et al., April 8, 2002. The claimant feared abuse at the hands of her husband. Her children shared in that fear, and also based their claim on their half-Romani ethnicity (through their father). The Refugee Division, noting credibility problems, the fact that the family did not fit the profile of Polish Roma in terms of language and education, and finally the testimony of the father, found that Romani

ethnicity was not established. There was medical evidence that the claimants were suffering significant emotional and mental trauma as a result of their abuse. The youngest child testified that he saw his father punch his mother, that the abuse had happened many times, and that all four children were beaten by their father. Other witnesses corroborated the claimants' testimony. The claimant's husband was mentally ill and evidence was provided relating to this issue. The Refugee Division was particularly disturbed by this evidence, and found that the claimants not only had a well-founded fear of persecution at the husband's hands, but that they might be at mortal risk from him. State protection was not available to the claimants in Poland. In Poland, spousal abuse is rampant and protection and redress are very limited. Further documentary evidence supported the finding that there is not adequate state protection for the claimant and her children from the abuse.

Mayeke, Yai Florence Futila v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-2496-98), Tremblay-Lamer, May 5, 1999. At the start of the hearing, the members assured the claimant that the panel would ask no questions about the rapes. According to the Court, since the rapes were the central elements of the claim, it was unreasonable to find that the claimant was not credible by means of an assessment of credibility based solely on incidents that immediately followed the assaults. When the panel stated that it had doubts about her credibility regarding the collateral facts, it should have allowed the claimant to testify on the central element of her claim. Such an omission constituted a denial of natural justice. As well, the Court was of the opinion that the Refugee Division had ignored the impact of the rapes on the claimant. She had pointed out that her difficulties concentrating and loss of memory were included in the list of symptoms presented in the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. In addition, the panel erred in ignoring a medical document attesting that the claimant had had a spontaneous abortion two months after her arrival in Canada. Application allowed. (CRDD decision M97-01372, April 28, 1998).

Griffith, Marion v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-4543-98), Campbell, July 14, 1999. For over twenty years, the claimant suffered extreme violence from her husband. The Court made observations regarding the failure of the Refugee Division to observe the Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. The Guidelines are a positive, enlightened, and necessary effort by the IRB to ensure knowledgeable and sensitive consideration of women claiming refugee status because of domestic violence. Panel members must apply the required knowledge in a sensitive manner. Continuing in-depth education is needed by Refugee Division members who deal with such claims. Refugee Division reasons must be responsive to what is known about women suffering domestic violence. *R. v. Lavallee*, [1990] 1 S.C.R. 852 discussed. In assessing the claimant's delays in leaving St. Vincent and making a claim in Canada, the panel should not have used the "objective" standard of the "reasonable man". Application allowed. (CRDD decision T97-06299, August 18, 1998).

***Kaur, Ravinder et al. v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-4869-00), Pinard, September 19, 2001; 2001 FCT 875.** The applicants feared persecution by reason of their membership in a particular social group. The panel had rejected the claims and had concluded that they had no credible basis. The panel had found that the applicant was not credible because she had failed to indicate in her PIF that she had been raped by police while she was in detention. However, she had amended her PIF at the beginning of the hearing by adding this incident to it, and had explained that she had not indicated this in her PIF before because she was ashamed and was afraid of people's reactions. She had explained that she was in a state of distress after the incident and had not taken care of her physical health. The Court was of the opinion that the applicant's explanations concerned central aspects of the claim and that the Refugee Division had erred in failing to consider the social and cultural circumstances which, according to the applicant's allegations, had prevented her from speaking about the incident. The panel should have, at least, commented on the applicant's explanations, which seemed reasonable. Application allowed. (CRDD decision M99-08473 et al, August 2, 2000).

***Cazak, Liliana v. Canada (Minister of Citizenship and Immigration)* (F.C.T.D., no. IMM-1110-01), Blanchard, April 9, 2002; 2002 FCT 390.** The principal applicant alleged that her husband subjected her to sexual, physical and psychological abuse. He issued death threats to both the principal applicant and her sister, the second applicant. The principal applicant stated that given the fact that her husband is a police officer, coupled with the attitudes towards domestic violence in Romania, it would have been futile for her to seek police protection. The applicants came to Canada in 1999 to participate in the World Rowing Championships, and have remained here. The Court held that the Refugee Division made unreasonable inferences that were based on speculation, stereotypes and misconceptions. (1) The principal applicant's allegations were supported by the psychological report. Notably, the Refugee Division did not reject this evidence, but rather chose to dismiss its relevance and rely on its own beliefs and speculation that word-class athletes do not fit the profile of abused women. (2) The Refugee Division repeatedly made reference to the fact that the principal applicant did not take measures to leave her husband while she had ample opportunity to do so while travelling abroad. However, she married in October 1998 and was separated less than one year later. A review of *Lavallee* ([1990] 1 S.C.R. 852) and the psychiatric report leads to the conclusion that the principal applicant's behaviour is certainly not inconsistent with the behaviour of a victim of "battered wife syndrome". Application allowed. (CRDD decision TA0-05194, February 12, 2001).

***Reginald v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 523 (T.D.).** The applicant lived all of her life in Colombo. Her claim is based on her race, nationality, membership in a particular group, namely, young Tamil women from Sri Lanka, and on her imputed political opinion. It is apparent that the Refugee Division members had concerns about the style and some of the substance of the questioning of the applicant by her counsel. The Court made extensive references to the transcript of the Refugee Division hearing. Contrary to the Chairperson's Guidelines on Women Refugee

Claimants Fearing Gender-Related Persecution, there was nothing sensitive, let alone extremely sensitive, about the "handling" of the applicant by the Refugee Division members when she testified as to her alleged ordeal. The Court was satisfied that, in words analogous to those of Justice Mahoney in *Kumar*, both the "gross interference" by the Refugee Division members "with the orderly presentation of the applicant's case" and the insensitivity demonstrated toward the applicant when she testified as to her alleged rape, were denials of natural justice. Application allowed. (CRDD decision TA0-11489, April 19, 2001).

Dhaliwal, Jaswinder Kaur v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-4787-01), Kelen, September 11, 2002; 2002 FCT 965. The Refugee Division found that the applicant was a victim of horrible physical and mental abuse by her husband. However, the Refugee Division denied natural justice when it rejected as not credible the applicant's testimony about the abuse continuing after the divorce in 2000, in that the Refugee Division had stopped the applicant's testimony about the continuation of the abuse because the Refugee Division had found that testimony unnecessary. Moreover, the Court held that the Refugee Division decision that the applicant was a credible witness with respect to her fear of persecution up to end of 1998, but not a credible witness with respect to her fear of persecution in 1999 and 2000, is irrational. Application allowed. (CRDD decision TA0-17763, August 20, 2001).

A.G.I. v. Canada (Minister of Citizenship and Immigration) (F.C.T.D., no. IMM-5771-01), Kelen, December 11, 2002; 2002 FCT 1287. The applicant, a Roma, based her claim on the abuse she suffered at the hands of her husband. He started abusing her in 1995 after he joined an extremist group called Una-Unso, whose main goal was to clear the Ukraine of ethnic minorities including Romas. The panel did not err in finding that the applicant did not have a well-founded fear of persecution by reason of her Roma ethnicity. Evidence of an objective basis does not remove a claimant's burden to prove he or she has a subjective fear. However, the panel's dismissal of the hospital and police records as being not probative was patently unreasonable. The authenticity of the records was not questioned and they provided corroborative evidence of injuries and complaints. It is patently unreasonable for the Refugee Division to dismiss this evidence because the certificates do not specify that the injuries were due to a beating by the husband. Battered women often hide the cause of their injuries due to shame (*R. v. Lavalle*, [1990] 1 S.C.R. 852). The Court has recognized that refugee claims based on spousal abuse are often delayed due to the nature of spousal abuse. The applicant's delay in making her claim ought not to be the basis for rejecting her credibility with respect to spousal abuse. Application allowed. (CRDD decision TA0-13341, November 20, 2001).