



Complementary Protection
UNHCR Training – Belarus
31 October 2013

OBJECTIVES

- To gain an understanding of the three grounds for granting complementary protection:
 - Death penalty
 - Torture or inhuman or degrading treatment or punishment
 - Threat to life in context of international or internal armed conflict

REQUIREMENTS- COMPLEMENTARY PROTECTION

1. Not a refugee (Always assess refugee protection first)
2. Serious harm
3. Lack of protection

SERIOUS HARM - ELEMENTS

1. Death penalty
2. Torture or inhuman or degrading treatment or punishment
3. Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict

SERIOUS HARM - ELEMENTS

1. **Death penalty or execution**
2. Torture or inhuman or degrading treatment or punishment
3. Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict

LEGAL REFERENCES

International –

- ICCPR – Optional Protocol 2

Europe -

- Article 2(2) – EU Charter of Fundamental Rights
- Protocols 6 & 13 – ECHR
- QD

DEATH PENALTY OR EXECUTION

FACTS AND FIGURES – AMNESTY INTERNATIONAL STATISTICS – 2012

- 682 executions confirmed in 21 countries
- Number of countries that no longer have the death penalty – 97
- Majority of executions were carried out in China, Iran, Iraq, Saudi Arabia and the United States

DEATH PENALTY OR EXECUTION

Examples of non state entities that carry out extra-judicial killing:

- Paramilitary groups
- Death squads
- Private contractors
- Criminal gangs
- Terrorist groups

SERIOUS HARM - ELEMENTS

1. Death penalty or execution
2. **Torture or inhuman or degrading treatment or punishment**
3. Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict

LEGAL REFERENCES

International –

- ICCPR – Art. 7
- CAT – Art. 3
- CRC – Art. 37(a)

Europe –

- ECHR – Art. 3
- QD

WHAT IS THE SCOPE OF TORTURE?

- What constitutes an “act” of torture?
- What distinguishes acts of torture from other forms of ill-treatment?
- Who can be the perpetrators of torture?
- Must torture be inflicted for a particular purpose?

WHAT CONSTITUTES AN “ACT” OF TORTURE?

- An identifiable act or deed
- Could an omission amount to an “act” of torture?
- Could a single act amount to torture?

SEVERE PAIN OR SUFFERING

- Can be physical or mental suffering
- Severe pain
- Only acts of a certain gravity will constitute torture

Ireland v. U.K. , Judgement of 18
January 1978; Selmouni v. France, 28
July 1999

EXAMPLES OF PHYSICAL TORTURE

- Beatings
- Burns
- Electric shocks
- Suspension
- Suffocation
- Exposure to excessive light/noise
- Sexual aggression
- Administration of drugs
- Prolonged denial of sleep, food, hygiene, medical assistance

EXAMPLES OF MENTAL TORTURE

- Mock execution
- Making the victim believe that reprisals will be taken against family/ loved ones
- Being forced to witness execution / torture of others
- Prolonged incommunicado detention

WHO CAN BE THE PERPETRATORS OF TORTURE?

State and Non-State Actors

- H.L.R. v. France [1997] ECtHR
- UN Human Right Committee, General Comment 20: Torture can be inflicted “*by people acting in their official capacity, outside their official capacity or in a private capacity.*”

MUST TORTURE BE INFLICTED FOR A PARTICULAR PURPOSE?

May be inflicted for variety of reasons including:

- Punishment
- Confession
- Information
- Discrimination of any kind

INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- Must reach certain level of severity and involve physical or mental suffering
- Humiliates or debases the individual
- Shows lack of respect for the person's human dignity
- Arouses feelings of fear and anguish capable of breaking the person's moral and physical resistance.

Inhuman or Degrading Punishment

- Is the punishment imposed in disregard of international standards?
- Is the punishment necessary to achieve a legitimate penal objective?
- Are there adequate alternatives?
- Is the punishment imposed in an arbitrary manner?
- Does it accord with public standards of decency?
- Is the punishment unusually severe and hence degrading to human dignity?

SERIOUS HARM - ELEMENTS

1. Death penalty or execution
2. Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin
3. **Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict**

ISSUES

1. Is the applicant a “civilian”?
2. Is the situation an “armed conflict”?
3. What counts as “indiscriminate violence”?
4. What does it mean to say that the threat of indiscriminate violence is “individual”?
5. What is the meaning of “serious” threat?

IS THE APPLICANT A “CIVILIAN”?

- A non-combatant
- Define broadly -
 - Not taking part in hostilities including
 - Soldiers who have laid down their arms and
 - Persons placed *hors de combat*

See: 1949 Geneva Conventions; Prosecutor v. Akayesu,
ICTR

IS THE SITUATION AN “ARMED CONFLICT”?

International Humanitarian Law distinguishes two types of armed conflict:

1. International armed conflicts
2. Non-international armed conflicts

See: ICRC, [How is the Term “Armed Conflict” Defined in International Humanitarian Law?](#), Opinion Paper, March 2008

INTERNATIONAL ARMED CONFLICT

- Armed conflict between two or more opposing states

Does the war have to be formally declared?

NON-INTERNATIONAL ARMED CONFLICT

- Armed conflict between government forces and non- governmental armed groups OR
- Armed conflict between non- governmental armed groups only

INTERNAL DISTURBANCE

- A situation characterized by acts of violence and disorder, but falls short of armed conflict
- **When does an internal disturbance become an armed conflict?**

THE THRESHOLD QUESTION

- Don't set bar too high
- Where armed groups involved in fighting have clear command structures + control over territory such that they can be expected to implement Protocol II to the 1949 Geneva Conventions = Armed Conflict

WHAT COUNTS AS “INDISCRIMINATE” VIOLENCE?

- Random violence
- Violence that fails to distinguish between military targets and civilians
- Violence in which the means and methods affects civilians disproportionately

SCENARIOS ON INDISCRIMINATE VIOLENCE

Basic Facts: There is civil war in Syria. Ahmad is a wealthy businessman in Maaloula, Syria, a Christian town north of Damascus. A rebel group takes over and sets up its command post 3Km from Ahmad's home. Fighting is intense at times as government forces try to re-capture the town.

Consider the following scenarios. Is the violence "indiscriminate"?

SCENARIO ONE

One evening some rebels attack the compound where Ahmad and his family live. Ahmad's son is taken hostage until a large sum of money is paid.

SCENARIO TWO

The government launches a surprise attack on the town. It directs the attack at the rebel headquarters 3Km from the residential district where Ahmad lives. The residences are heavily bombed and Ahmad's compound sustains heavy damage and several family members and neighbours are killed and injured.

INDIVIDUAL THREAT AND INDISCRIMINATE VIOLENCE

UNHCR POSITION

- Individual threat does not require that the person be targeted or singled out;
- Rather it means that the threat is real and immediate

WHAT IS THE MEANING OF “SERIOUS” THREAT?

- Serious threat means that it is a grave threat.
- Factors:
 - Nature of threat
 - Whether any actual harm was inflicted
 - General situation in country – COI vital
 - Extent of conflict/ number of casualties
 - Personal circumstances of applicant

SUMMARY

Complementary protection – to provide protection for persons who do not fit the refugee definition.