

DOWNLOAD PDF PERSECUTION FOR REASONS OF RELIGION UNDER THE 1951 REFUGEE CONVENTION ANTHONY GOOD

Chapter 1 : Persecution for reasons of religion under the Refugee Convention - Edinburgh Research Explo

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Female genital mutilation; Sexual violence and abuse and rape. Gender-specific harm is not different from other forms of ill treatment and violence that are commonly held to amount to persecution. The fact that violence against women is common and widespread in a particular society does not mean that it cannot amount to persecution. Each case should be considered on its own merits against country information and not disregarded because such treatment is common and widespread. Some forms of harm can have implications beyond the physical, social and psychological consequences with which they are most obviously associated. Sexual violence in particular carries traumatic social repercussions for both women and men that may be affected by their cultural origins or social status. Where a victim of sexual violence may have no alternative but to marry her attacker or become a prostitute, these are also human rights violations. Social and cultural norms regarding appropriate gender roles and behaviour may mean that lesbians face violations of their human rights. For example, many lesbians have effectively been denied the right to sexual orientation because they have been forced into marriage See Special Issues: In addition there are certain discriminatory measures which, in themselves or cumulatively with others may amount to persecution. For example, if the discrimination has consequences of a substantially prejudicial nature for the person concerned, this may amount to persecution. Examples of such discrimination, some of which can be seen more often to affect women, include: Women in particular may be subjected to discriminatory treatment that is enforced through law or through the imposition of social or religious norms that restrict their opportunities and rights. This can include, but is not limited to: A broad range of penalties may be imposed for disobeying restrictions placed on women. A failure of state protection exists in the following situations: Such failure of state protection may occur but is not limited to, legislation e. State protection must be meaningful, accessible, effective and available to an individual regardless of their gender, race, ethnicity, sexual orientation, disability, religion, class, age, occupation or any other aspect of their identity. In some cases there may be protection in theory, but actual practice must be examined. Corroborative evidence will not always be available. It is not always reasonable or possible for a woman to alert the authorities to her need for protection, for example, if by doing so she risks violence, harassment or rejection by her society or even persecution. Men may be reluctant to report sexual violence and rape because of the stigma and shame with which it is associated. The implications of gender in determining the reasonableness of an internal flight alternative should also be recognised in decision making. The question to be asked in deciding whether it is reasonable to expect an asylum seeker to relocate is: The caseworker may need to take into account the implications of gender in determining the reasonableness of an internal flight alternative. For example, in certain countries, financial, logistical, social, cultural and other factors may result in particular difficulties for women or for particular women e. Women may have family ties i. The Convention grounds In the absence of gender as an enumerated Convention ground within the Refugee Convention means that there is considerable debate about how gender issues in the asylum claim are dealt with under international law. It is important to understand that claims for asylum based on gender can, more often than not, be properly recognised within the meaning of the Convention if these experiences are properly understood within the social and political context within which they occur. The refugee definition, properly interpreted, therefore covers gender-related claims. Gender-Related Persecution, paragraph 6 Race Whilst actual or attributed racial identity is not specific to either women or men, it may operate in tandem with gender to explain why a particular woman or man fears persecution. Equally rape and sexual violence may be used as a weapon of war aimed at emasculating men and reducing their capacity or willingness to fight. Religion Both women and men may face harm for their adherence to, or rejection of, a

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religious belief or practice. Where the religion assigns particular roles or behavioural codes to women and men, a woman who refuses or fails to fulfil her assigned role or abide by the codes may have a well-founded fear of persecution on the ground of religion. Failure to abide by the behavioural codes set out for woman and men may be perceived as evidence that an individual holds unacceptable religious opinions regardless of what he or she actually believes about religion. Imputed or attributed religious identity may therefore be important. There may be considerable overlap between religious and political persecution. This may occur, for example, where the state supports or favours a particular religious persuasion or tolerates or otherwise fails to provide protection against the activities of non-state agents who are supporters of a particular religious persuasion. Whilst actual or attributed national identity is not gender specific, it may operate in tandem with gender to explain why a woman or man fears persecution. Women may be deprived of full citizenship rights in certain circumstances, for example, if they marry a foreign national. In such circumstances it may be necessary to consider what harm results from this loss and whether it amounts to persecution on the basis of nationality.

Political opinion Holding political opinions different from those of the home government is not in itself a ground for refugee status. An applicant must show that they have a fear of persecution for holding such opinions. There may however, also be situations in which the applicant has not given any expression of their opinions but an opinion has been imputed to them because of something they have, or have not, done. Claims on these grounds will often involve an openly expressed opinion, which is directed against and is not tolerated by the state. Whilst many women will be involved in such conventional political activities and raise similar claims this does not always correspond to the reality of the experiences of women in some societies because of the gendered roles and responsibilities outlined above. Gender roles in many countries mean that women will more often be involved in low level political activities for instance hiding people, passing messages or providing community services, food, clothing or medical care. The response of the state to such activity may be disproportionately persecutory because of the involvement of a section of society, namely women, who because of their gender it is considered inappropriate for them to be involved at all. Involvement in such activities could be seen to imply that the person holds a political opinion: Furthermore a person may be attributed a political opinion that they do not actually hold. In these circumstances it is essential to look at what motivates the persecutor, as they will be attributing the political opinion to the individual. For instance a woman who is forced to provide food for a rebel group may be attributed a political opinion by the state even though she does not support the group. Non-conformist opinions or behaviour may in certain circumstances be the expression of a political opinion or may result in a woman having a political opinion attributed to her whether she holds one or not. For instance opposition to institutionalised discrimination against women in society can be seen to constitute a political opinion. Non-conformist behaviour in certain cultures such as refusing to wear a veil, pursuing an education or choosing a partner could also lead to a woman having a political opinion attributed to her. Equally the refusal of men to grow a beard or dress accordingly to social norms may be interpreted as meaning that men hold a particular political opinion.

Membership of a Particular Social Group Most claims on the basis of gender will be covered by other Convention grounds i. However in some cases gender may be a factor in recognising membership of a particular social group PSG or an identifying characteristic of such a group. These guidelines and existing case law indicate that particular social groups can be identified by reference to innate or unchangeable characteristics. There are cases where women are persecuted solely because of their family or kinship relationships, for example, a woman may be persecuted as a means of demoralising or punishing members of her family or community, or in order to pressurise her into revealing information. An applicant need not show that the members of a PSG know each other or associate with each other as a group. Neither must an applicant demonstrate that all members of a PSG are at risk of persecution in order to establish the existence of that group in the perception of others. 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.

Procedural issues Procedural issues can mean that gender issues may not come to

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light at an early stage in the determination process. Although some women asylum seekers arrive alone, others arrive as part of a family unit and are sometimes not interviewed or are cursorily interviewed about their experiences even when it is possible that they, rather than, or as well as, their male relatives, have been persecuted. Male relatives or associates may not raise relevant issues because they are unaware of the details or their importance or are ashamed to report them. It is important that the right questions are asked during the interview in order that all of the information that is of relevance to the decision can be properly assessed. Political activities also include, community activism, providing food or shelter, message taking, hiding people or refusing to conform to particular social norms. Women may also have a different perception of torture, which may not equate with the types of harm they fear, for example sexual violence, violence within the family, marriage-related harm, female genital mutilation See Special Issues: In addition interviewers should be aware of the need for culturally sensitive communication to ensure as much information about the basis of the application is available as is possible. Cultural and other differences and trauma can play an important role in determining demeanour i. For example, they may not be able to provide membership cards or newspaper cuttings relating to their political involvement because they have been indirectly involved through a supporting role or because the political opinion has been imputed to them. Similarly, information about violence within the family or community may be difficult to find. Background reports and country information often lack analysis of the position and status of women. Statistical data on the incidence of sexual or other violence is often inadequate or lacking. It is important that those working with, or representing, refugee women are familiar with the role, status, and treatment of women in the country from which a woman has fled. It is essential to consider a number of issues when gathering information. These include, but are not limited to: Gender-Related Persecution to include explicit reference to the ways in which gender should be taken into account when deciding whether an individual is in need of international protection. These guidelines are intended to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field. You can find more information about FGM [here](#) , and more information about smuggling and trafficking [here](#). A number of countries including Canada, the United States, Australia, Germany, Ireland, the Netherlands, South Africa, Sweden and the UK have now included explicit reference to gender or sex as grounds for refugee status in their domestic refugee legislation, or have recognised that particular forms of gender-related violence or harm constitute forms of persecution. The Canadian gender guidelines were subsequently updated in [and](#) have formed the template for many of the guidelines subsequently published in other countries including in the United States , Australia and more recently Sweden, the Netherlands and South Africa. Web links to the gender guidelines produced in the UK and elsewhere can be found below. Their video advocacy documentaries *Gender Against Men* and *They Slept with Me* have been particularly effective in this regard. There have since been a number of media reports addressing this question. For a more general overview of masculinities in conflict and peacebuilding context, Saferworld produced a comprehensive report on *Masculinities, conflict and peacebuilding*: For questions surrounding men, forced migration and resettlement, *Forced Migration Review* recently published a piece exploring *Who will resettle single Syrian men?* Scholarly research has also started to critically explore masculinities in conflict , as well as the roles of intersecting masculinities in the European refugee crisis. CASE LAW Leading jurisprudence in many national jurisdictions has also recognised various forms of gender-related persecution as grounds for asylum. Links to important cases involving gender-related and gender-specific persecution can be found below.

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Chapter 2 : Gender Issues in the Asylum Claim | Rights in Exile Programme

Persecution for reasons of religion under the Refugee Convention. / Good, Anthony. *Permutations of Order: Religion and Law as Contested Sovereignities.* Ashgate Publishing, Good A. *Persecution for reasons of religion under the Refugee Convention.* In *Permutations of Order: Religion and.*

If this were unconditionally true, then international refugee law would be in jeopardy. If the concept of persecution could be expanded or narrowed at will, then the states would be at liberty to re-define the scope of their obligations as they see fit. But in which respects? And does it suffer from indeterminacy, or is it blessed with indeterminacy? The Double Edge of Indeterminacy 6The Refugee Convention relies heavily on the concept of persecution, but does not define it. It only gives us two direct indications: It must be emphasized here that the converse is not true: This view, expressed by Atle Grahl-Madsen more than forty years ago, has become canonical in the literature and in international practice. They all highlight, however, four universally accepted characteristics of persecution. They help in establishing some basic distinctions, and in structuring analysis. Still, as more than fifty years of debates on the correct interpretation of the refugee definition show, they leave ample room for divergent readings. In a way, the indeterminacy of the concept of persecution provides the refugee definition with an indispensable element of flexibility. It seems as if the drafters have wanted to introduce a flexible concept which might be applied to circumstances as they might arise; in other words, that they capitulated before the inventiveness of humanity to think up new ways of persecuting fellow men. The requirement of accuracy, which stays at the forefront in criminal law, is conspicuously absent here. Refugee status is meant to cater to the needs of persons who are placed in an intolerable position in their countries of origin, and the ways and manners through which intolerable life is inflicted upon hated minorities may always change. We should not lose sight of the fact that refugee status is a trump card on migration control. One example will suffice here. The two problems are not unconnected, as the following example shows. As Lord Steyn has emphasized in the *Adan and Aitseguer* judgment: In the quoted passage, Lord Steyn went on to say: It is in no way a criticism of the Government of the United Kingdom that it should try to find a solution to this problem. By a stroke of the pen, the EU Directive on the Qualification of Refugees has made it mandatory for all Member states to adhere to the more liberal protection theory. We now know that persecution can emanate from the authorities or even from private parties, at least as long as the authorities are unable or unwilling to provide effective protection from the latter. The definitional problem par excellence is however still standing: What types of harm are sufficiently severe to come within the scope of this notion? At the same time, it is precisely here that the virtues of flexibility are most needed, if the Convention is to stand the test of time. How have international doctrine and practice reacted to the challenge? As I will try to show, giant steps have been made in the quest for a principled approach. Persecution readily includes, but is not restricted to, threats to life, limb, or liberty see above. Here we are on a relatively solid ground. I cite as examples the curtailment of freedom of thought and religion, as well as the discriminatory deprivation of opportunities for cultural and economic self-fulfillment. But the price to be paid in terms of predictability, objectivity, and consistency within and across jurisdictions is huge. The case-law and doctrine produced under this approach is in fact messy at best, incoherent at worst. Let me mention the Swiss example. But then, if one peruses the case-law, it turns out that ethnic cleansing policies not involving murder or torture, drastic limits on religious freedom unless you are a priest, and economic proscription short of the denial of subsistence are not usually considered as persecution by Swiss judges. And such external reference has always been looked for in the province of international human rights law. Today, it is strongly supported by UNHCR, it is widely accepted in the literature, and it is followed by several jurisdictions. Acts of persecution within the meaning of article 1 A of the Geneva Convention must: Not really, not in its entirety. To be sure, his position takes into account the diversity of the rights that are recognized by those instruments, and it is far too nuanced and sophisticated to be rendered in full here. Such rights include for example the right to life, the prohibition of

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torture, and the right to legal personality; An ostensible violation of civil and political rights from which derogations are permitted would amount to persecution, unless the conditions for a derogation are met. These rights include, for instance, freedom of expression, as well as personal freedom. David Martin has expressed this view in his usual direct fashion: The violation of other human rights must be cumulated with other harmful measures in order to attain the requisite level of seriousness. They are obviously rooted in different legal conceptions as to the proper role of human rights instruments in the interpretation of the concept of persecution: So far I have presented it mainly as a battle of ideas, but in formulating my concluding remarks I believe it necessary to highlight its policy context and substance. In fact, two radically opposed preoccupations underlie the charge of inflexibility that is made against it: The policy reasons behind this position are transparent: The gains to be obtained from a defense of flexibility as indeterminacy are, however, less clear to me. I am inclined to think that the contrary is true: It reflects the reluctance to commit oneself to a clear-cut interpretive standard that could not be easily abandoned should circumstances change dramatically. The elements listed here are universally accepted, but certainly not unproblematic. Recent Jurisprudence, *Human Rights Law Review* , , at ff has however reversed the situation.

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Chapter 3 : OHCHR | Convention relating to the Status of Refugees

The Convention refugee definition specifies that a person will qualify for refugee status only if he or she fears persecution 'for reason' of one or more of the five grounds listed in Article 1A(2).

At year-end their number was , International law recognizes the right to seek asylum, but does not oblige states to provide it. In such circumstances people can be speedily admitted to safe countries, but without any guarantee of permanent asylum. Yet it only complements and does not substitute for the wider protection measures offered by the Refugee Convention. Refugee protection and assistance organizations generally promote three "durable solutions" to the fate of refugees: While most have been granted provisional or temporary asylum in neighboring countries, they are not able to regularize their status or integrate. Their rights to move and work are often highly restricted, and educational and recreational opportunities are often nonexistent or severely lacking. These refugees may also be subject to attack, either by local security forces or by cross-border incursions from the country of origin. A special category are people who may have been forced to flee their homes for the same reasons as refugees but they have not crossed an international border. These people are called internally displaced persons. By the end of , there were approximately Increasingly the majority of current conflicts in the world involve disputes between political or ethnic groups within countries rather than wars between countries. Given this trend, the number of persons caught up in conflicts in their own countries and forced to leave their homes is likely to increase. Economic migrant " someone who has left her or his home to look for better work and a higher standard of living in another place. Immigrant " someone who has entered a new country to settle. Internally displaced person " someone who has left her or his home in fear of persecution, but has not crossed an international border. Refoulement " where an asylum seeker or refugee is forcibly returned to the country from which they have fled. Refugee " someone who has left her or his country or is unable to return to it owing to a well founded fear of persecution for reasons of race, religion, nationality, membership of particular social group or political opinion. Repatriation " people can return their home country voluntary. Prohibition on the forced return of a refugee is called nonrefoulement and is one of the most fundamental principles in international refugee law. Asylum seekers may have already suffered imprisonment and Torture in the country from which they have fled. Therefore, The consequences of detention may be particularly serious, causing severe emotional and psychological stress. Article 31 of the Refugee Convention says that refugees should not be penalized for having entered a country illegally if they have come directly from a place where they were in danger and have made themselves known to the authorities. Therefore, asylum seekers should not be detained for being in possession of forged identity papers or for destroying identity or travel documents. Articles 12 - 30 of the Refugee Convention set out the rights which individuals are entitled to once they have been recognised as Convention refugees: All refugees must be granted identity papers and travel documents that allow them to travel outside the country Refugees must receive the same treatment as nationals of the receiving country with regard to the following rights: Free exercise of religion and religious education Free access to the courts, including legal assistance Access to elementary education Access to public relief and assistance Protection provided by social security Protection of intellectual property, such as inventions and trade names Protection of literary, artistic and scientific work Equal treatment by taxing authorities Refugees must receive the most favourable treatment provided to nationals of a foreign country with regard to the following rights: The right to belong to trade unions The right to belong to other non-political nonprofit organizations The right to engage in wage-earning employment Refugees must receive the most favourable treatment possible, which must be at least as favourable to that accorded aliens generally in the same circumstances, with regard to the following rights: The right to own property The right to practice a profession The right to self-employment Access to housing Access to higher education Refugees must receive the same treatment as that accorded to aliens generally with regard to the following rights: The right to choose their place of residence The right to move freely within the country Free

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exercise of religion and religious education Free access to the courts, including legal assistance Access to elementary education Access to public relief and assistance Protection provided by social security Protection of intellectual property, such as inventions and trade names Protection of literary, artistic and scientific work Equal treatment by taxing authorities Key assistance agencies HISTORICAL DATES.

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Chapter 4 : Convention | Rights in Exile Programme

A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality or political opinion or membership in a particular social group.

By the way, the convention has no definition of persecution and it is followed by legal practice in different ways. Human rights as the highest reason of refugee law must be interfered in the case and fill in the gaps by giving an extended interpretation. During the First World War and Russia Civil War, , Russian refugees feeling the lack of protection and went to the adjacent countries, whereas there was no possibility for hosting because they also were deeply damaged. The IGCR supported asylum-seekers meanwhile the war. Cambridge University Press, Introduction In early 20th century, the world faced too many asylum-seekers who left their homeland to find protection and keep away from violation for reasons such as war and revolution. At that point in time the young International Law was challenged by the matters that never had been experienced. Nowadays, refugee is a tool for people of the third world to reach developed countries, what is several times easier than immigration. The number of people fleeing their native countries and seeking asylum is estimated about , around the globe at the beginning of The Lexical definition First of all we see the lexical definition of persecution and its concept in dictionaries. Hostility and ill-treatment, especially because of race or political or religious beliefs. Unfair or cruel treatment over a long period of time because of race, religion, or political beliefs. The act or practice of persecuting; especially, the infliction of loss, pain, or death for adherence to a particular creed or mode of worship. First, it erroneously focuses on the intent of the persecutor rather than on the effect of the persecution on the victim. Second and more relevant to the present context, it is an approach which lends itself to an unseemly ransacking of dictionaries 7 Hathaway James C. Minister for Immigration and Ethnic Affairs, No. This does not assist in a principled analysis of the issues. Judge Haines to refuse this approach states: The first step to interpret persecution is analyzing other articles of the convention such as the article Indeed the article reveals more aspects of persecution. Other serious violations of human rights- for the same reasons- would also constitute persecution. The article 14 grants right for asylum seeking, to a person who is under persecution. Whereas the whole declaration is concerning inherent dignity, freedom, justice, and peace oh humankind; asylum from any kind of human rights is a certain right. That being said, the concept of persecution is further than physical treatment. Therefore economic sanctions that may tend to head to social ostracism, or deny one an opportunity to obtain and enjoy some of the social niceties and physical comfort certainly is not within the ambit of that phrase. The denial of an opportunity to earn a livelihood in a country is the equivalent of a sentence to death by means of slow starvation and none the less final because it is gradual. Here, we are on a relatively solid ground. First it is the lack of universal accepted definition of, and second is the barrier that is made by territorial jurisdiction of domestic courts. It does not allow finding out the unique decision by global legal practice. It seems, if we observe the salient features of human rights above all the rules and provisions as an umbrella, the difficulties will be approximately covered. As a matter of fact, International Human Rights law constitutes the broad framework within which refugee law provisions should be seen.

Chapter 5 : The limitations of the Refugee Convention | ainswlegalnetwork

According to the Refugee Convention, a refugee is someone who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality.

Chapter 6 : Convention Relating to the Status of Refugees - Wikipedia

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The Convention has shown remarkable resilience over the last 60 years as the nature of conflict as well as patterns of migration have changed. The international system of refugee protection has helped to protect millions.

Chapter 7 : What's the Difference Between an Immigrant and a Refugee? | The Borgen Project

The Convention defines a refugee as someone, who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality.

Chapter 8 : Atheist Afghan granted religious asylum in UK - BBC News

1 UN Treaty Series nÂ°, vol. , p. ; 2 It would be in jeopardy, because the concept of "persecution" is central to the universal refugee definition laid down by the Geneva Convention (GC).¹ Indeed, Article 1A GC defines the refugee as someone who has a well-founded fear of "being persecuted".

Chapter 9 : Study Guide - The Rights of Refugees

United Nations Convention on the Status of Refugees. A refugee is a person who: 'O owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.