

CHAPTER 1 : RECOGNITION AS A REFUGEE PURSUANT TO ARTICLE 1, A, 2 OF THE 1951 GENEVA CONVENTION

1. Persons falling under Article 1, A, 2 of the 1951 Geneva Convention

1.1 Definition

2. Notion of persecution

2.1 The persecution or well-founded fear of persecution should have an individual character

2.1.1 Invocation of a general situation in the country of origin which does not entitle refugee recognition

2.1.2 Invocation of general and non-discriminatory measures that do not suffice to be recognized as a refugee

2.2 Required threshold of gravity (of the persecution)

2.2.1 Measures lacking sufficient degree of gravity

2.2.2 Measures with sufficient degree of gravity characterizing them as persecutions

2.2.3 Appreciation of the disproportionate character of a sanction or penal punishment

2.3 Internal Flights Alternatives (IFA)

a) Possibility in the individual case

b) Reasonableness of the relocation for the person concerned

i) Claimant's personal profile

ii) Country's particular political, ethnic, religious and other makeup

- Existence and legality of government-sponsored population transfer programmes

- Government policies of segregation or other limitations on freedom of movement and choice of residence

- numbers, ethnicity, religion and related features of others already in the area in question and the area's absorption capacity

c) Cumulative required elements

i) Actual existence of a risk free area (established by evidence)

ii) Stability in the area and likelihood of durable safety

iii) Accessibility of the area (internally or from outside the country)

iv) Fitness of the area for habitation (no undue hardship or risk)

d) Burden of proof

Resort to the relocation notion shall not constitute an additional burden of proof for the claimant

3. Reasons of the fears of persecution

3.1 The fear of persecution must be based on one of the reasons set out in article 1, A, 2 of the 1951 Geneva Convention

3.2 Political opinions

3.2.1 Existence of persecutions and well-founded fears of persecution owing to political opinions

a) Militant activities in an opposition party / political movement

b) Participation in demonstrations against the ruling regime in the country of origin

c) Publication or dissemination of opposition leaflets or manifesto

d) Involvement in resistance against an occupation army

e) Political involvement advocating Woman rights

f) Political involvement advocating rights of an ethnic or national minority

g) Links to a deposed regime

h) Family links with a political opponent

i) Imputed political opinions to persons due to their activity or behaviour

j) Draft evasion or desertion for a political reason

k) Involvement in political police

l) Brimades, discriminations, harassment, ill-treatment, violence, vexations

m) Administrative constraints

n) Constraints relating to cultural, artistic or philosophical activities

3.2.2 Absence of persecutions and well-founded fears of persecution owing to political opinions

- a) Membership of opposition movement or political party
- b) Involvement in demonstrations
- c) Lack of political motivation in the initiated prosecution

3.3 Membership of a national or ethnic minority

3.3.1 Existence of persecutions and well-founded fears of persecution owing to membership of a national or ethnic minority

- a) Discriminatory administrative measures, censorship
- b) Repeated threats, brimades and violent acts
- c) Discriminations and brimades due to a mixed marriage
- d) Arrests, detentions, ill-treatments and tortures
- e) Ritual practice of female genital mutilation
- f) Slavery
- g) Deportation
- h) "Ethnic cleansing"
- i) Draft evasion or desertion based on membership to a minority
- j) Family links
- k) Draft evasion or desertion
- l) Administrative constraints
- m) Constraints relating to cultural, artistic or philosophical activities

3.3.2 Absence of persecutions and well-founded fears of persecution owing to membership of a national or ethnic minority

3.3.3 Internal Flight Alternative (IFA)

- a) Relevance in the individual case
- b) Reasonableness of the relocation for the person concerned
 - i) Claimant's personal profile
 - ii) Country's particular political, ethnic, religious and other makeup
 - Existence and legality of government-sponsored population transfer programmes
 - Government policies of segregation or other limitations on freedom of movement and choice of residence
 - Numbers, ethnicity, religion and related features of others already in the area in question and the area's absorption capacity
- c) Cumulative required elements
 - i) Actual existence of a risk free area (established by evidence)
 - ii) Stability in the area and likelihood of durable safety
 - iii) Accessibility of the area (internally or from outside the country)
 - iv) Fitness of the area for habitation (no undue hardship or risk)
- d) Burden of proof
 - Resort to the relocation notion shall not constitute an additional burden of proof for the claimant

3.4 Religion

3.4.1 Existence of persecutions and well-founded fears of persecution owing to membership of a religious community

- a) Hindrance to religious liberty
 - i. Prohibition of membership of a religious community
 - ii. Prohibition of worship (in public or private sphere)
 - iii. Prohibition of religious instruction
- b) Aggressions and threats due to a religious conversion
- c) Inter-religious, intra-religious aggressions and threats
- d) Discriminations, attack on properties and various pressures
- e) Forced conversion
- f) Forced compliance or conformity with religious practices
- g) Deportation
- h) Slavery, servitude
- i) Draft evasion or desertion based on religious grounds / Conscientious objection

3.4.2 Absence of persecutions and well-founded fears of persecution owing to membership of a given religious community

3.4.3 Internal Flight Alternative (IFA)

- a) Relevance in the individual case
- b) Reasonableness of the relocation for the person concerned
 - i) Claimant's personal profile
 - ii) Country's particular political, ethnic, religious and other makeup
 - Existence and legality of government-sponsored population transfer programmes
 - Government policies of segregation or other limitations on freedom of movement and choice of residence
 - Numbers, ethnicity, religion and related features of others already in the area in question and the area's absorption capacity
- c) Cumulative required elements
 - i) Actual existence of a risk free area (established by evidence)
 - ii) Stability in the area an likelihood of durable safety
 - iii) Accessibility of the area (internally or from outside the country)
 - iv) Fitness of the area for habitation (no undue hardship or risk)
- d) Burden of proof
 - Resort to the relocation notion shall not constitute an additional burden of proof for the claimant

3.5 Membership of a particular social group

3.5.1 Social group – Definition

- a) To share common characteristic other than their risk of being persecuted...
- b) ... or to be perceived as a group by society
- c) The characteristic is innate, unchangeable or otherwise fundamental to identity, conscience or the exercise of one's human rights

3.5.2 Social group – Existence

3.5.2.1 Non-exhaustive list of persecutions

- a) Discriminatory administrative measures, censorship
- b) Repeated threats, discriminations, brimades harassments and violent acts
- c) Freedom of movement, arrests, detentions, ill-treatments and tortures
- d) Ritual practice of female genital mutilation
- e) Slavery
- f) Deportation
- g) "Ethnic cleansing"
- h) Draft evasion or desertion
- i) Espionage
- j) War and civil war
- k) Strike or involvement in a strike movement
- l) Trade Unionism / Advocacy group
- m) Administrative detention in rehabilitation or forced labour camps
- n) Obstacles to the continuation of primary/secondary/university studies or of a professional/vocational training
- o) Obstacles or difficulties occurring during professional activity
- p) Intervention or risk of intervention of judicial lawsuits, penal sanctions or imprisonment
- q) Sexual orientation
- r) Marriage
- s) Health – Reproductive health
- t) Property and inheritance
- u) Decision making – Civil rights
- v) Citizenship
- w) Equality – Non-discrimination
- x) Forced military recruitment of children
- y) Cultural and social life

3.5.3 Social group – Absence

- a) Provisions applicable to all nationals of a country and measures with general enforcement
- b) Difficulties related to the overall political situation

- c) Difficulties related to the overall situation of the economy and of the employment market
- d) Stealing of public properties, bribery

3.5.4 Internal Flight Alternative (IFA)

- a) Relevance in the individual case
- b) Reasonableness of the relocation for the person concerned
 - i) Claimant's personal profile
 - ii) Country's particular political, ethnic, religious and other makeup
 - Existence and legality of government-sponsored population transfer programmes
 - Government policies of segregation or other limitations on freedom of movement and choice of residence
 - Numbers, ethnicity, religion and related features of others already in the area in question and the area's absorption capacity
- c) Cumulative required elements
 - i) Actual existence of a risk free area (established by evidence)
 - ii) Stability in the area and likelihood of durable safety
 - iii) Accessibility of the area (internally or from outside the country)
 - iv) Fitness of the area for habitation (no undue hardship or risk)
- d) Burden of proof
 - Resort to the relocation notion shall not constitute an additional burden of proof for the claimant

3.6 Special situations

3.6.1 Gender related persecution

- a) Grounds of persecution / with gender perspective
 - i. Race and nationality
 - ii. Religion and political opinion
 - iii. Membership of a particular social group
- b) Types of persecution
 - i. Sexual violence
 - ii. Punishment for transgression of a law, policy or practice
 - iii. Method of implementation of a legitimate law (forced abortion, sterilization...)
 - iv. Discrimination amounting to persecution – denial of Justice

3.6.2 Situation of deserters and draft evaders

- a) Draft evasion or desertion must have been dictated by one of the reasons set out in article 1, A, 2 of the 1951 Geneva Convention
- b) Draft evasion or desertion based on reasons of conscience
- c) Sanction inflicted due to a draft evasion or desertion, based on one of the reasons set out in the article 1, A, 2 of the 1951 Geneva Convention

3.7 Circumstances not constituent of persecutions based on one of the reasons set out in article 1, A, 2 of the 1951 Geneva Convention

- 3.7.1 Condemnation or risk of condemnation for a petty offence or any other common law crime
- 3.7.2 Professional related reasons
- 3.7.3 Personal or family background related reasons
- 3.7.4 Patrimonial situation related reasons
- 3.7.5 Voluntary renunciation of the nationality of the country of origin
- 3.7.6 Motives linked to a stay overseas
- 3.7.7 Reasons related to the general situation prevailing in the country of origin

4. Authors of the persecutions

4.1 Fears of persecution determined by the country(ies) of which the claimant is a national or – in case of stateless person – by the country where he had his habitual residence

- 4.1.1 Principle
- 4.1.2 Persecutions from authorities of a country of which the applicant is not a national
- 4.1.3 Bi-National claimants
- 4.1.4 Absence of nationality – Appreciation of the fears of persecution in case of return in the country of

habitual residence

4.2 Fears of persecution from a *de facto* State actor

- 4.2.1 *De facto* State agent – Notion
 - 4.2.1.1 Irregular forces, guerrilla organisation, paramilitary groups
 - 4.2.1.2 Non recognized entities exercising *de facto* authority over a part of the national territory
 - 4.2.1.3 Local populace
- 4.2.2 *De facto* State agent – Existence
- 4.2.3 *De facto* State agent – Absence

4.3 Fears of persecution from non-State actor

- 4.3.1 Principle
- 4.3.2 Public authorities' incentive to persecutions – Notion
- 4.3.3 Public authorities' voluntary tolerance of persecutions – Notion
- 4.3.4 Public authorities' unwillingness to protect their nationals in the country of origin
- 4.3.5 Public authorities' inability to protect their nationals in the country of origin

5. Date of persecutions

5.1 Effect of a change of circumstances in the country of origin on the merits of the fears of persecution

- 5.1.1 Lack of fear of persecution owing to a change of circumstances arising in the country of origin
 - a. Dramatic and lasting changes in the country of origin
 - b. Change in the legislation of the country of origin
 - c. Change in the implementation of the legislation in the country of origin
- 5.1.2 Change of circumstances not ending the fears of persecution
- 5.1.3 Fears owing to the occurrence of a change of circumstances in the country of origin
- 5.1.4 Invocation of compelling reasons arising out of previous persecutions before the occurrence of a change of circumstances in the country of origin
(Art. 1 C *in fine* of the 1951 Geneva Convention)

5.2 Involvement in political activities during the stay in the host country – Refugee “*sur place*”

- 5.2.1 Circumstances giving rise to such claims
 - a) Change in the situation of the country of origin and other events over which the asylum seeker has no control
 - b) Applicant's own actions after departure from the country of origin
- 5.2.2 Assessment of claims
 - a) Scope of the 1951 Geneva Convention
 - b) Credibility issues and subjective element
 - c) Objective element
 - i) Persecutor's knowledge
 - ii) Likelihood of persecution
 - d) Standard of proof
 - e) Time limitations

5.3 Voluntary return to the country of origin, re-availment of protection of the country concerned

6. Place of persecutions and of fears of persecution

- 6.1 Persecutions suffered on the territory of a third country
- 6.2 Persecutions suffered in the host country

7. Proof of persecutions

- 7.1 Burden of proof
- 7.2 Evaluation of the elements documentary and other proofs
- 7.3 Multiple applications under different identities
- 7.4 Statements
- 7.5 Benefit of the doubt – Principle

8. Repeated applications for the recognition of refugee status

- 8.1 Conditions for the admissibility – Existence of a new fact
- 8.2 Facts posterior to the last final decision
- 8.3 Facts generating an individual and well-founded fear of persecution
 - 8.3.1 Facts not deemed to generate an individual and well founded fear of persecution
 - 8.3.2 Facts deemed to generate an individual and well founded fear of persecution

CHAPTER 2: RECOGNITION AS A REFUGEE PURSUANT TO THE PRINCIPLE OF FAMILY UNITY**1. A general principle of refugee law****2. Rationae personae scope of the principle**

- 2.1 Legal ground taken from the domain of application
- 2.2 Spouse and minor children of the refugee
- 2.3 Common law spouse of a refugee
- 2.4 Limits of the scope of the principle of family unity
 - 2.4.1 Dependant ascendants
 - 2.4.2 Adult handicapped children
 - 2.4.3 Other dependants

3. Pre-requisites for the application of the principle as regard to the spouse or common law spouse of the refugee

- 3.1 Referral date
- 3.2 Nationality

4. Pre-requisites for the application of the principle as regard to the child of the refugee**5. Situation of persons appointed a refugee as a guardian by a Court of Law****6. Reality of the relationship (matrimonial or filiation)****CHAPTER 3: EXCLUSION CLAUSES (FROM THE BENEFIT OF THE GENEVA CONVENTION)****1. Scope of application of the exclusion clauses pursuant to Article 1, F of the 1951 Geneva Convention**

- 1.1 Existence of serious reasons for considering that a person has committed one of the acts described under article 1, F of the 1951 Geneva Convention
- 1.2 Examination of the personal situation of the applicant
- 1.3 Grounds for rejecting individual responsibility:
 - 1.3.1 mental element (insanity, mental handicap, involuntary intoxication, immaturity);
 - 1.3.2 superior orders;
 - 1.3.3 duress;
 - 1.3.4 Expiation.
- 1.4 Rebuttal presumption of individual responsibility.
- 1.5 Proportionality considerations
- 1.6 Scope of application in the frame work of accelerated or admissibility procedures (lack of)
- 1.7 Standard of Proof;
- 1.8 Burden of Proof rests with the asylum country's authorities.

2. Crime against peace, war crime, crime against humanity (Art. 1, F, a)

- 2.1 Genocide crime as prescribed in the Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948), the four 1949 Geneva Conventions for the protection of Victims of War and the two 1977 Additional Protocols, the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the 1945 Charter of the international Military Tribunal (the London Charter) and the 1998 Statute of the International Criminal Court.
- 2.2 War crimes
 - 2.2.1 Carried out as part of a widespread or systematic attack directed against the civilian population.
 - 2.2.2 Isolated act as a part of a coherent or a series of systematic and repeated acts.

2.3 Temporal scope of Article 1F (a)

3. Serious Common Law Crime (Art. 1, F, b)

3.1 Nature of acts mentioned in art. 1, F, b of the 1951 Geneva Convention

- 3.1.1 Acts committed within a context of political fight
- 3.1.2 Acts committed for other reasons
- 3.1.3 Proportionality considerations
- 3.1.4 Burden of Proof
- 3.1.5 Standard of Proof

3.2 Acts committed outside the country of refuge prior to admission of the applicant as a refugee

3.3 Crimes committed in the country of refuge prior to the admission as a refugee

4. Acts contrary to the purposes and principles of the United Nations

4.1 Nature of acts mentioned in art. 1, F, c of the 1951 Geneva Convention

4.2 Persons falling under the scope of Art. 1, F, c of the 1951 Geneva Convention

- 4.2.1 Functions exercised at the Head of the State
- 4.2.2 Responsibilities exercised within the State apparatus
- 4.2.3 Functions exercised within the frame-work of a security or policing service
- 4.2.4 Other situations
- 4.2.5 Burden of Proof
- 4.2.6 Standard of Proof

4.3 Temporal scope of Article 1F (c)

5. Other exclusion clauses as set out in the 1951 Geneva Convention

5.1 Persons currently benefiting from protection or assistance from a United Nations' organ or agencies other than the UNHCR (Art. 1, D)

5.2 Person recognized by the competent authorities of the country in which s/he has taken residence as having the rights and obligations attached to the possession of the nationality of this country (Art. 1, E)

CHAPTER 4: CANCELLATION OF REFUGEE STATUS**1. General legal principles**1.1 Conditions for a lawful *ab initio* invalidation of refugee status

- a) Existence of grounds for cancellation
- b) Adequate evidence
- c) Consequences of cancellation are clearly not disproportionate and of a seriously prejudicial nature
- d) Decision to cancel made in due observance of the guarantees and safeguards of procedural fairness

1.2 Reopening of a final determination

- a) Legal basis required
- b) Time limits (except in case of fraud or criminal conduct)
- c) Existence of information casting doubt on the positive RSD
- d) Existence of valid reasons to doubt about the correctness of the initial determination

2. Grounds for cancellation of refugee status

2.1 Substantive criteria for cancelling refugee status

- a) Inclusion criteria of Art. 1A(2) of the 1951 Geneva Convention were not met
- b) Exclusion clause of the 1951 Geneva Convention should have been applied
 - i) Applicant not in need of international protection
 - ii) Applicant not deserving international protection
 - iii) All elements of the relevant provision (art. 1D, 1E or 1F) should have been present at the time of the initial determination

2.2 Criteria for cancelling final administrative decisions

- a) Substantial fraud committed by applicant regarding core aspects of his/her eligibility for refugee status
 - i) Objectively incorrect statements
 - ii) Causality between the statements and the RSD
 - iii) Intention to mislead by the applicant
- b) Other misconduct of the applicant affecting materially her/his eligibility (threats, bribery,..)

c) Error of law and/or fact by the determining authority

CHAPTER 5: REVOCATION OF REFUGEE STATUS

1. Conditions

- 1.1. Refugee engaging in conducts falling within Art. 1F(a) or 1F(c)
- 1.2. All criteria for application of these clauses must be met

2. Consequence

- Revocation of refugee status (from now / *ex nunc*)

CHAPTER 6: CESSATION OF REFUGEE STATUS

1. Voluntary re-availment of the protection of its country of origin (art. 1, C, 1)

- 1.1 Return in the country of origin
 - 1.1.1 Withdrawal of refugee status incurred
 - 1.1.2 Withdrawal of refugee status not incurred
- 1.2 Steps taken at the Embassy or consulate of the country of origin
 - 1.8.1 Withdrawal of refugee status incurred
 - 1.8.2 Withdrawal of refugee status not incurred

2. Acquisition of a new nationality (art. 1, C, 3)

3. Voluntary return and re-establishment in the country of origin (art. 1, C, 4)

4. Change in the circumstances which have originally lead to the recognition of refugee status (art. 1, C, 5)

- 4.1 Change in the circumstances in the country of origin
- 4.2 Invocation of compelling reasons justifying the upholding of the refugee status
- 4.3 Change in the circumstances regarding the situation of the refugee whose status was granted on the basis of the principle of family unity

5. Withdrawal for fraud committed with the intention to obtain the refugee status