

FEMALE GENITAL MUTILATION

As a Form of Gender-Based Persecution

Notes for Remarks
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Rites vs. Rights: Female Genital Mutilation
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Thank you for the opportunity to participate in this discussion on female genital mutilation (FGM) and women's human rights.

By way of introduction, let me say that the Immigration and Refugee Board (IRB) has been in operation since 1989 and is mandated by Parliament to determine Convention refugee status in Canada. It applies the definition of who is a Convention refugee found in the 1951 United Nations Convention Relating to the Status of Refugees. This definition states basically that a Convention refugee is someone who has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.

The IRB makes up to 30,000 decision on refugee claimants each year, of which 33% involve women. From 1989 to the present the acceptance rate for women claimants has consistently been somewhat higher than the overall average. Refugee claims are usually heard by two IRB members and separate determinations are made for each claimant in hearings involving more than one family member.

The United Nations High Commission on Refugees (UNHCR) estimates that there are 20 million refugees, of which 80% are women and children. However, the vast majority of refugee claimants who reach industrialized countries such as Canada are men. This fact alone would argue for ensuring that our determination systems are equipped to recognize forms of persecution suffered primarily if not exclusively by women.

In May 1994 Canada became the first country to recognize female genital mutilation (FGM) as a form of gender-based

persecution¹. A ten-year old girl who feared FGM in her native Somalia was determined to be a Convention refugee in Toronto (CRDD T93-12198, 14/7/94). My colleague, Joyce McCaffrey, and I heard the claim and applied the Gender Guidelines to assess the evidence presented in the case.

A critical issue in any refugee claim is the seriousness of the harm feared by the claimant. The Gender Guidelines point to the use of the international human rights instruments to weigh the nature and extent of harm feared and, accordingly, we considered the Universal Declaration of Human Rights (UDHR) and the United Nations Convention on the Rights of the Child (UNCRC).

Article 3 of the UDHR states that "Everyone has the right to life, liberty and the security of person" and the panel concluded that "the minor claimant's right to personal security would be grossly infringed if she were forced to undergo female genital mutilation..."

Article 19 of the Convention on the Rights of a Child calls on governments to "protect the child from all forms of physical and mental violence, injury or abuse..." Article 24 recognizes the "...right of the child to the enjoyment of the highest attainable standards of health..." and calls on governments to "...take all effective and appropriate measures...to (abolish) traditional practices prejudicial to the health of children." Finally, Article

¹ Several years ago the French Commission for Appeals of Refugees denied the claim of Aminata Diop, a twenty-two year old woman from Mali, for credibility reasons, but recognized that genital mutilation could be a form of persecution under the Geneva Convention.

37 explicitly protects children from acts of cruelty, torture and any other form of "inhuman or degrading treatment".

The mother of the young claimant testified at the hearing and described her own experience² of undergoing FGM as a child and her determination to spare her daughter the same fate. She stated that "Even though this event took place over twenty years ago, I can still easily visualize the scene and feel the pain and trauma all

² I was subject to this operation when I was eight years old. One afternoon, a group of women, including my mother and aunts, gathered at our house so that they could circumcise me and my cousin who was of the same age. I was told that it is a common thing and that it would enhance my chances of getting married to a good man. They took me into an empty room and tying my arms behind my back. Two pairs of women grabbed my legs and spread them wide open. They held my legs very tight so that I would not be able to move them. Then, another lady started to get a new blade and took the cover off of it. She was holding the blade in her hand when she disappeared between my legs. She inserted her fingers into my inside to search for my clitoris. She got a good grip of my clitoris and started to pull it out, and I felt the pain and started to scream. She cut off my clitoris with the blade and I screamed more and more. This did not deter her nor did it make her to stop cutting my body any further. She continued slicing away my labia minor at which point, I lost consciousness. Subsequently, she scraped raw the wall of my vulva and bound them together with thorns. She place a stick between the raw walls of my vulva so that I would have barely sufficient means to expel my bodily wastes. I woke up in the middle of the night and realized that my legs were tied together to restrain me from any movement. I also saw my cousin lying next to me with her legs also tied together. We were not allowed to urinate for two days and we were not given any liquids to drink. My legs were left tied together for ten days after which time I started to walk again with great difficulty and pain. Even though this event took place over twenty years ago, I can still easily visualize the scene and feel the pain and trauma all over again when I start to talk about it. (Typed as per original with errors and/or omissions)

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The panel also relied on documentary evidence from African-based experts on FGM such as Berhane Ras-Work, President of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC). In its documents the IAC describes the devastating lifelong effects on the physical and emotional health of girls who are subjected to FGM. Referring to the practice as a "torturous custom", the IAC works in 24 African countries to eradicate "harmful traditional practices".

The IAC states categorically that "in spite of the urgency and the magnitude of the problem, very little action has so far been taken by governments in the countries concerned to stop FGM". In Somalia, where FGM has been illegal since 1947, it is estimated that 98% of Somali women have undergone the procedure. Based on the evidence the panel concluded that "the authorities in Somalia will not protect the minor female claimant from the physical and emotional ravages of FGM given the evidence of its widespread practice in that country".

The Gender Guidelines outline common forms of persecution directed primarily against women which can give rise to a gender-based "particular social group". Among these is "severe discrimination based on the fact that they are women" and "transgressing certain gender-discriminating religious or customary

laws and practices"³. The Supreme Court of Canada handed down a landmark decision last year in Canada Attorney General) v. Ward (June 30, 1993) which elaborates on the interpretation of "membership in a particular social group". It allows for groups defined by "an innate or unchangeable characteristic" which "would embrace individuals fearing persecution on such bases as gender, linguistic background and sexual orientation". The Convention ground of membership in the particular social group "women" is analogous to the other grounds of race, religion, nationality and political opinion.

Women refugee claimants who oppose the practice of FGM may also be recognized as Convention refugees on the grounds of political opinion or religion. According to the Gender Guidelines:

Political Opinion:

A woman who opposes institutionalized discrimination of women, or expresses views of independence from male social/cultural dominance in her society, may be found to fear persecution for reasons of imputed political opinion (i.e. she is perceived by the established political/social structure as expressing politically antagonistic views). Two considerations are of paramount importance when interpreting the notion of "political opinion":

- (1) In a society where women are "assigned" a

³ In 1985 the Executive Committee of United Nations High Commissioner for Refugees (UNHCR) passed Conclusion No.39 which explicitly: Recognized that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention.

subordinate status and the authority exercised by men over women results in a general oppression of women, their political protest and activism do not always manifest themselves in the same way as those of men.

- (2) The political nature of oppression of women in the context of religious laws and ritualization should be recognized. Where tenets of the governing religion in a given country require certain kinds of behaviour exclusively from women, contrary behaviour may be perceived by the authorities as evidence of an unacceptable political opinion that threatens the basic structure from which their political power flows.

And similarly:

Religion:

In the context of the Convention refugee definition, the notion of religion may encompass, among other freedoms, the freedom to hold a belief system of one's choice or not to hold a particular belief system and the freedom to practise a religion of one's choice or not to practise a prescribed religion. In certain states, the religion assigns certain roles to women; if a woman does not fulfil her assigned role and is punished for that, she may have a well-founded fear of persecution for reasons of religion. A woman may also be perceived as expressing a political view (and have a political opinion imputed to her) because of her attitude and/or behaviour towards religion.

The international discourse on women's human rights increasingly recognizes FGM as a form of violence against women and a violation of basic human rights.

- * The Declaration on the Elimination of Violence Against Women (United Nations General Assembly Resolution 48/104 adopted on 20/12/93) explicitly recognizes female genital mutilation and other traditional practices harmful to women as a form of violence against women.
- * In 1990 the United Nations Committee on the

Elimination of All Forms of Discrimination Against Women adopted general recommendation No.14 which noted "with grave concern that there are continuing cultural, traditional and economic pressures which help to perpetuate harmful practices, such as female circumcision".

- * The United Nations Population Fund's recommendations on reproductive rights for the 1994 International Conference on Population and Development describe genital mutilation as "a major lifelong risk to women's reproductive health and a violation of the rights of girls and women. Governments should vigorously act to stop that practice and to protect the right of women and girls to be free from such unnecessary and dangerous procedures."
- * At the World Conference on Human Rights in Vienna in 1993, women called for the integration of women's rights into the human rights mechanisms of the United Nations. Shortly afterwards the UN Commission on Human Rights adopted a Canadian-Sponsored resolution appointing the first special rapporteur on violence against women (Radhika Coomaraswamy, Director of the International Centre for Ethnic Studies in Sri Lanka).
- * The forthcoming declaration from the recent International Conference on Population and Development held in Cairo, will include a call to governments to "prohibit female genital mutilation wherever it exists and to give vigorous support to efforts among non-government and community organizations and religious institutions to eliminate such

practices".

- * The United Nations High Commissioner for Refugees (UNHCR) issued a Memorandum: Female Genital Mutilation on May 10, 1994 through its Division on International Protection which states that "a woman can be considered a refugee if she or her daughters/dependents fear being compelled to undergo FGM against their will; or (if) she fears persecution for refusing to undergo or to allow her daughters to undergo the practice."

I look forward to your questions and comments. Thank-you.