

H&C DECISION MAKING

Participant's Guide

Module 4

DOCUMENT 7 - SAMPLE H&C RISK FACTS WITH DECISION

NOTES:

These are not perfected decisions; however, they illustrate officers taking into account the various elements of the decision-making principles.

For each example, a chart has been provided to show a portion of the officer's decision-making steps to describe context of the application. The rationale is an excerpt of the decision where the officer articulates their analysis of the evidence and facts and then determines whether there are sufficient grounds to justify granting an exemption.

1. Domestic Violence in Mexico (NOTE: State protection is being addressed)

<p>Fears: Domestic Violence in Mexico from two former partners</p>
<p>Supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • <i>Applicant stated she was subjected to physical and psychological abuse by her former common-law spouse in Mexico prior to entering Canada.</i> • <i>Applicant stated she was abused by another man, whom she met in Canada and who has since returned to Mexico.</i> • <i>Applicant stated in 2012, new partner was charged with assault and threat to cause death or bodily harm</i>
<p>Not supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • <i>The applicant has not provided evidence to support that she faces a threat from this man or her former common-law spouse if returned to Mexico.</i> • <i>She has also not provided information to support that avenues of redress and recourse would be unavailable to her in Mexico</i> • <i>Various facts regarding country conditions and human rights in Mexico as they pertain to women and the protection available from domestic abuse (from the officer)</i>
<p>Rationale (excerpt from original decision)</p>
<p>Written submissions indicate that the applicant was subjected to physical and psychological abuse by her former common-law spouse in Mexico prior to entering Canada. She also became involved with a man in Canada in 2011 who is the father of her Canadian citizen child. She indicates that the man was controlling and abusive of her while they were in their relationship. When he was told she was pregnant with his child he became even more violent as she refused to abort her pregnancy. In early January 2012 she went to police and lodged a complaint against this man who was charged with assault</p>

and threat to cause death or bodily harm, as he blacked her eye and threatened to blacken the other eye if she returned to Mexico. He failed to attend court and she indicates that he has returned to Mexico, and has threatened to harm her if she returns to Mexico with her child. Details of the identity of this man, and his former immigration status in Canada have not been provided by the applicant. The applicant has not provided evidence to support that she faces a threat from this man or her former common-law spouse if returned to Mexico. She has also not provided information to support that avenues of redress and recourse would be unavailable to her in Mexico.

In conducting this assessment, I have considered the most current, publicly available documentary evidence regarding country conditions and human rights in Mexico, particularly as they pertain to women and the protection available from domestic abuse.

A Research Directorate, Immigration and Refugee Board of Canada (IRB) Responses to Information Request document dated 04 February 2008 specifically provides information related to the protection available to women victims of domestic violence in the state of Veracruz. The document informs that state laws exist in Vera Cruz with regard to domestic violence, including the state Civil Code (*Codigo Civil para el Estado de Veracruz de Ignacio de la Llave*), the state's Penal Code (*Codigo Penal para el Estado Libre y Soberano de Veracruz de Ignacio de la Llave*). This legislation contains provisions related to domestic violence, including the definition of the crime of rape, including marital rape, and the definition of domestic violence as repeated physical and emotional abuse of a family member.

“The state's domestic violence law (*Ley de Asistencia y Prevencion de la Violencia Familiar en el Estado de Veracruz*) enacted on 8 September 1998 defines domestic violence and provides for the establishment of government bodies and mechanisms to help prevent domestic violence and to assist victims. Mechanisms outlined in the law include specialized psychotherapeutic assistance, training and awareness programs for personnel who deal with domestic violence cases, and the use of conciliation presided over by a judge for certain cases.

Regarding government protection efforts, women victims of violence in Veracruz state can access government-run services such as those offered at the Centre for the Assistance of Crime Victims (Centro de Atencion a Victimas de Delitos, CAVD) (Veracruz n.d.a) and through the 075 women's line for telephone assistance. The Veracruz Institute for Women (Instituto Veracruzano de las Mujeres), which began work in April 2007, also coordinates a number of programs aimed at assisting women victims of domestic violence. A municipal branch of the National Network of Family Development Agencies (Sistema Nacional para el Desarrollo Integral de la Familia, DIF) operates a city shelter in Coatzacoalcos, Veracruz. As well, the Office for the Assistance of Women, Vulnerable Groups and Victims (Direccion de Atencion a Mujeres, Grupos Vulnerables y Victimas) of the Veracruz State Commission for Human Rights (Comision Estatal de Derechos Humanos Veracruz) offers various support services for women.

According to the Veracruz state government website, the Office of the Attorney General of the State of Veracruz (Procuraduria General de Justicia del Estado de Veracruz, PGJEV) runs the CAVD, offering free and confidential legal, psychological and social support services to crime victims and their families. In addition to these services, CAVD administers public prevention programs to address domestic violence, among other social concerns. There also exists Specialized Agencies for Sexual Crimes and Family Protection (Agencia Especializadas en Delitos Sexuales y Proteccion de la Familia) which operate with support from the state Public Prosecutor's offices (Ministerio Publico) to provide assistance to female victims of violence in more remote areas of the state.

The 075 Women's line offers specialized assistance for women on various issues, including domestic violence, by providing, among other things, health, psychological and legal services. During the period from 16 April to 10 September 2007, the line received 127 calls from women seeking assistance.

In a July 2007 press release, the Veracruz Institute for Women noted a number of projects it was undertaking, including the following: gender violence training for public prosecutors and municipal authorities; a media campaign to combat violence against women; the introduction of service of a female lawyer who travels to various municipalities to offer legal assistance for domestic violence cases; the creation of a citizen's support network for women affected by gender violence; improvements to the 075 Women's line; the creation of a community centre/shelter "Sembradores" for women and their children facing emergency violent situations; improvements to services offered by the shelter Casa Refugio Ziwakaitzintli; and improvements to the Coatzacoalcos shelter.

The DIF municipal shelter in Coatzacoalcos is a member of the National Network of Shelters (Red Nacional de Refugios) and is intended to provide a safe space for women and their children fleeing domestic and sexual violence (Veracruz 2006). While the shelter is open to all women who are victims of domestic violence, it reportedly provides special assistance to women who head families by supporting their efforts to maintain or find employment. In this context, the shelter promotes training and awareness opportunities on topics such as women's rights.

The goal of the Office for the Assistance of Women, Vulnerable Groups and Victims is to respond to intervention requests filed by women and other vulnerable members of society. These requests can be filed in person or by other means of communication. The Directorate carries out this mission by providing assistance, such as legal counselling and humanitarian aid, and by initiating inquiries to assess intervention requests from women, vulnerable groups and victims.

The applicant has not provided evidence with her application to support that she faces domestic violence or the threats of this harm in Mexico. Despite this, having read and considered all the information presented by the applicant and her counsel as well as publicly available documentation, I find that the evidence before me does not support that the applicant is personally and directly impacted by country conditions in Mexico, or that avenues of redress or recourse are not available to her in Mexico if required. As such, I find the grounds raised relating to adverse country conditions and/or discrimination in returning to Mexico do not justify granting an exemption.

2. Discrimination in Japan (NOTES: Application is for a mother and two children, as husband has been missing since the 2011 Tsunami. Generalized risk is being addressed)

Fears: Discrimination in Japan as female Japanese national married a male Nigerian national

Supporting an exemption

Facts:

- *Principal applicant married man of a different race - Nigerian national*
- *Children were discriminated for being of mixed race*
- *Applicant and husband were discriminated with respect to housing and meaningful employment*
- *Applicants faced racial taunts and harassment*

Not supporting an exemption

Facts:

- *No information received from either applicants or counsel with respect to facing discrimination since their return to Japan*
- *Various facts relating to availability of redress and recourse in Japan (from the officer)*

Rationale (excerpt from original decision)

The applicants entered Canada on 28 March 2011 and submitted refugee claims that were refused by the RPD on 20 March 2012.

Written submissions indicate that the applicants' home was destroyed during the March 2011 earthquake and the applicants were left with no electricity or permanent place to live as a result. In an affidavit signed on 13 June 2012 the PA indicates that she has not seen her husband since the day of the Japanese earthquake/tsunami in March 2011. She indicates that she married her husband, the father of her two daughters, in 1998. Her husband is Nigerian and as a result of her marriage to him she has been discriminated against in Japan in terms of her and his ability to obtain housing and meaningful employment. They also faced racial taunts and harassment in their day to day lives. When their children were born and attending school in Japan, they too faced racism and harassment.

Updated information has not been provided by the applicants or their counsel with respect to their applications since July 2012. I have not read nor have I considered the RPD's Reasons and Decision in conducting this assessment. Submissions indicate that the RPD panel was satisfied that the applicants had experienced discrimination in Japan due to the PA's marriage to a man of a different race, and her children being of mixed race. I do not doubt that the family have faced discrimination in Japan for the reasons as described by their counsel, and in the PA's affidavit.

I have read and considered the documentation provided by the applicants which consists of news articles and reports with regard to the prevalence of discrimination in Japanese society as it relates to persons of mixed or other racial origin. I have also conducted research using the most recent and widely available information regarding general country conditions in Japan, and the avenues of redress and recourse available to the PA and her children in returning there. It is noted that information has not been provided by the applicants, either directly or through their legal counsel to support that the applicant have faced discrimination and/or adverse country conditions in Japan since their return in January 2013, approximately seven months ago.

The US Department of State Country report on Human Rights Practices for 2012 informs that Japan has a parliamentary government with a constitutional monarchy. The most prevalent human rights problems primarily in regard to the applicants included societal discrimination against women in employment and against ethnic minority group members and foreigners, including permanent residents. The report supports that the Japanese government enforced laws prohibiting human rights abuses and

prosecuted officials who committed them. However, while the Japanese Justice Ministry's Human Rights Counseling Offices exist for the purposes of answering questions and providing consultation on human rights issues, human rights groups reportedly; "...did not believe these offices were independent or effective and reported that they lacked public trust".

"There was no independent ombudsman office per se at the national level, although the Administrative Counseling System, a department of the government's Ministry of Internal Affairs and Communications, was well resourced and provided many of the same functions as a national office. Its director general represented Japan on international ombudsman bodies. There were 50 consultation desks and approximately 5,000 administrative counselors countrywide as well as counseling centers within department stores in 19 cities to provide free and confidential counseling that was easily available. During the year beginning April 2011, the ministry effectively processed approximately 185,000 cases on medical insurance and pension questions, the major issue, and also provided counseling on approximately 24,000 cases regarding the 2011 earthquake and related disasters".

Japanese law prohibits discrimination based on race, gender, disability, and social status but does not prohibit discrimination based on language, sexual orientation, or gender identity. Although the government reportedly enforced these prohibitions to some degree, in particular, discrimination against women, ethnic minority group members, and foreigners, among other groups remained problems.

The report informs; *"Despite legal safeguards against discrimination, the country's populations of Chinese, Korean, Brazilian, and Filipino permanent residents--many of whom were born, raised, and educated in Japan--were subjected to various forms of entrenched societal discrimination, including restricted access to housing, education, health care, and employment opportunities. Other foreign nationals resident in Japan as well as "foreign-looking" Japanese citizens reported similar discrimination and also stated that they were prohibited entry, sometimes by signs reading "Japanese Only," to privately owned facilities serving the public, including hotels and restaurants. Noting that the discrimination is usually open and direct, respected NGOs (Non-governmental organizations) persisted in complaining of government inaction to prohibit it".*

Updated information has not been provided to indicate if the PA's spouse has been found in Japan. Submissions indicate that the PA and her husband travelled to Nigeria at the time of their marriage. However, it is not known if she secured Nigerian citizenship rights at any time during their marriage. The US Department of State Country Report on Human Rights Practices for Nigeria in 2012 supports that Nigerian citizenship is derived from the child's parent, indicating that the children may have a claim to Nigerian citizenship should the PA wish to obtain this on their behalf.

I acknowledge that the propensity for discrimination in Japan against the PA's children in particular, given their mixed race, is hurtful to the applicants and seriously problematic; however, the objective evidence supports that laws exist in Japan to provide avenues of redress and recourse should these be required. Although these laws are not ideally enforced, the information before me do shows "redress is available. Having read and considered the information and evidence presented by the applicants as well as publicly available documentation, I find the grounds presented are not sufficient to justify relief under H&C considerations.

3. Criminal gangs in Honduras (NOTE: State protection is being addressed)

Fears: Fears the prospect of extortion and threats due to having complained to police about his treatment at the hands of the maras.

<p>Supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • <i>Applicant was taxi driver in Honduras and was a victim of extortion and kidnapping.</i> • <i>Documentary evidence established that gang members and criminals target people employed in the transportation industry, including bus and taxi drivers.</i> • <i>Documentary evidence confirming Honduras is one of the most violent countries - esp with respect to the youth gangs (i.e. MS-13 an 18th Street).</i>
<p>Not supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • <i>Although documentary evidence established that gang members and criminals target people employed in the transportation industry, the problem is widespread in Honduras and not specific to the applicant - generalized risk to the citizens.</i> • <i>Various facts related to state protection in Honduras established various avenues of redress and recourse are available.</i>
<p>Rationale (excerpt from original decision)</p>
<p>At the time of his refugee claim hearing the applicant stated that in August 2009, while working as a Taxi Driver, he was approached by a man who demanded he pay a “war tax”. The applicant asked other taxi drivers about this money and was told that he would have to put money in an envelope for payment every Friday to be picked up by members of the Mara, a criminal gang. The applicant began making the weekly payment. The applicant indicated that when his taxi broke down in February 2010, and he was unable to make his payment that week as it took a week to fix the cab, he was abducted by two members of the mara at gunpoint. The applicant stated that after he pled for his life and offered to make payment the next day, the gang members left him. The applicant stated that he went to the hospital for medical attention. When he returned home he took his wife and children to stay with relatives. He then returned to his home and called the police. He then went to stay at his cousin’s home. The applicant left Honduras, travelling through Guatemala reaching the US on 02 March 2010. He entered Canada on 28 April 2010. The applicant testified that the gang members continue to ask about him in Honduras.</p> <p>In their reasons and decision, the RPD panel indicated that the determinative issue involved nexus and generalized risk. They also considered the issue of the applicant’s failure to claim asylum in the US where he stayed for approximately two months without status. The panel held the view that the applicant was a victim of crime in Honduras, which did not provide him with a link to a Convention ground. As a result the claim failed under section 96 of the IRPA. The panel furthered determined that the applicant’s risk was a risk generally faced by other citizens of Honduras. Documentary evidence established that gang members and criminals target people employed in the transportation industry, including bus and taxi drivers, and that the problem is widespread in Honduras and not specific to the applicant. The applicant stated that he was also targeted as he was aware of a criminal act in that his friend was murdered by the maras because he did not pay extortion money. The RPD panel determined that the applicant did not provided credible evidence to indicate that the maras pursued him because of this knowledge. The applicant also indicated that he would be targeted as he would be perceived as being wealthy after returning from Canada. The panel did not find this to constitute a particularized risk under the IRPA. The applicant’s claim was subsequently denied.</p>

The applicant and his counsel have indicated in written submissions that he continues to fear returning to Honduras due to the prospect of extortion and threats due to his having complained to police about his treatment at the hands of the maras. The applicant has not provided evidence or documentation in support of his stated hardship due to discrimination or adverse country conditions.

In conducting this assessment, I have read and considered the Immigration and Refugee Board (IRB) Research Directorate documentation dated 12 January 2012 regarding the Honduran response to gang-related violence and criminal activity. The report informs that Honduras is considered one of the most violent countries in the world. *“According to the Violence Observatory in Tegucigalpa, a United Nations (UN)-supported monitoring group, there was an average of 20 homicides per day during 2011, representing a rate of 86 murders per 100,000 inhabitants. This has increased from 57.9 per 100,000 inhabitants murdered in 2008, 66.8 in 2009, and 77.5 in 2010. The majority of these violent deaths have been attributed to youth gangs like the Mara Salvatrucha (MS-13) and 18th Street, as well as to drug cartels”.*

The report informs that the government of Honduras has made legislative efforts to combat crime. *“In 2003, the Penal Code was amended to punish the manufacture and trafficking of arms as follows: [translation] Article 332-A. Manufacture and Trafficking of War Material, Weapons and Ammunition. Unauthorized persons who make, store, transport, use, traffic, bring into or remove from the country, acquire, supply or sell weapons, ammunition, explosives or war or combat material, including any model of AK 47, are liable to eight (8) to ten (10) years of imprisonment and a fine of five thousand (5,000) to ten thousand (10,000) lempiras. The National Police or any other authority that seizes such material shall immediately make it available to the public prosecutor. However, Freedom House estimates that there are 800,000 privately held firearms in Honduras and that only 21 percent of them are registered (2011). A subsequent amendment to the Penal Code was made in 2005 to punish illicit associations as follows: [translation] Article 332. Illicit Association. The leaders or heads of gangs and other groups formed for the continuing purpose of carrying out any criminal act are liable to twenty (20) to thirty (30) years in prison and a fine of one hundred thousand (100,000) to three hundred thousand (300,000) lempiras. The other members of these illicit associations are liable to the same penalty of imprisonment, reduced by one third (1/3).*

The leaders or heads are those who stand out or are identified as such and whose decisions influence what the group thinks and does.

AFP (Agence France-Presse) reports that the anti-gang law (ley antimaras), as the amendment to Article 332 is commonly called, was approved to curtail gang violence in the cities. According to the news agency, around 800 gang leaders have been detained since its implementation in 2005. However, the amendment has been criticized. 2011). The US Department of State observes that human rights organizations consider the amendment an "undue restriction on the right to associate freely". For example, a representative of the UN Committee on the Rights of the Child called for the repeal of the amendment because it is incompatible with the Convention on the Rights of the Child. Furthermore, Guatemalan president Álvaro Colom, as reported by AFP, expressed the view that the Honduran anti-gang law had not brought about a substantial reduction in violence. He added that Honduras continues to have the same problem with violence and called for an integrated anti-gang law for El Salvador, Guatemala and Honduras.

In March 2010, the Honduran Minister of Security indicated that its [translation] "security strategy" includes plans to introduce life sentences for "hit men, drug traffickers and kidnappers".

Later in 2010, the Honduran congress passed a law that allows for the seizure of assets belonging to organized crime. During the year, authorities seized assets, including vehicles, country estates, houses and livestock, worth US\$14 million. On 22 June 2011, new taxes on mining, telephone and other sectors were approved to raise revenue to combat gangs and drug trafficking. The Honduran government expected to raise US\$79 million per year for the next five years with the new taxes. However, three months after it was introduced, the Honduran congress revised the law when business leaders complained that the new taxes were "crimping mining investment" and argued that "the revenues generated would far exceed [the initial] target". As a consequence, the tax on mining was cut from five to two percent and the tax on bank withdrawals was abolished; the one percent tax on mobile phone companies and the 0.5 percent tax on fast-food restaurant profits were kept intact.

In November 2011, the US ambassador to Honduras was reported to have urged Honduran authorities to consider extradition as a legal mechanism to combat organized crime and drug. The extradition of Honduran citizens, however, is prohibited by Article 102 of the Honduran constitution. Sources indicate that the Honduran government will introduce a law to grant amnesty to members of gangs who leave the gang life. The proposed legislation, which is called the Social Amnesty Law (*Ley de Amnistía Social*) and is supported by the National Police, the armed forces, religious groups, and civil society organizations, seeks to offer gang members reintegration into society after showing repentance).

In terms of non-legislative efforts to combat crime in Honduras, the report informs; "In January 2010, prior to taking office, the incoming Minister of Security announced that the new government would [translation] "launch a war against Mexican and Colombian drug cartels with special integrated forces of police officers and soldiers". After taking office, the Minister indicated that a new maximum security jail, located in Támara, would be opened in April 2010.

After El Salvador introduced an anti-gang law on 1 September 2010 to establish penalties for belonging to gangs, Honduran authorities declared an alert for a possible migration of gang members into Honduras. Sources report that the Minister of Security announced operations at the border with El Salvador to bar El Salvadoran gang members from entering the country. However, sources also report that, in order to avoid identification or association with these groups, gang members are taking steps to change their behaviour and appearance.

The Honduran government has also joined regional initiatives to address criminal activities. Honduras is part of the Central American Regional Security Initiative (CARSI), a US-funded "effort to improve citizen security and the rule of law in the region". The initiative offers US Agency for International Development (USAID) programs for gang and crime prevention as well as vocational and educational initiatives for vulnerable communities facing gang and drug trafficking-related problems. InSight - Organized Crime in the Americas, a research web portal launched in 2010 under the auspices of the Fundación Ideas para la Paz, reports that most of CARSI's budget [73 percent] is geared towards providing equipment and training to security forces.

La Vanguardia, an online Honduran newspaper, reports that the presidents of Honduras, Guatemala and El Salvador met on 19 May 2011 to design a plan to combat organized crime in four ways: crime fighting, crime prevention, rehabilitation and strengthened institutions. On 11 November 2011, Central American governments approved twenty-two such programs and agreed to implement eight of them in 2012. According to AFP, these eight programs include crime prevention, modernization of the penitentiary system, professionalization of the police, judicial investigation, and border security. Bilateral negotiations have also been carried out with the government of El Salvador on aspects of border security and the [translation] "standardization of laws to combat criminality", and with the government of Nicaragua to [translation] "purge" Honduras' police of criminal elements.

The report also informs that the Honduran government has involved the use of the army in combatting gangs and organized crime. *"In November 2011, sources reported that the Honduran government launched Operation Lightning (Operación Relámpago) with the army and the National Police in dangerous areas of Tegucigalpa and San Pedro Sula. The operation seeks to address the escalating violence associated with street-level drug trafficking (narco-menudeo) and gangs. During the first days of the operation, 10 persons were arrested for not carrying identity documents, one more was detained for robbery and another one for carrying drugs. A report published by El Heraldo, a Tegucigalpa-based newspaper, reported that the operation was less effective in San Pedro Sula, given the daily reporting of [translation] "double-homicides".*

La Prensa, a San Pedro Sula-based newspaper, reports that Operation Lightning was launched on 1 December 2011 in Olancho, a department that, according to President Lobo, is [translation] "under the control of organized crime and drug traffickers". The newspaper indicates that several weapons and bulletproof cars were seized on the operation's first day in the department. President Lobo was reported to have highlighted the results of Operation Lightning in a television and radio broadcast that included mention of a 36 percent reduction in the homicide rate, and a vow to extend the operation to other regions of the country.

AFP reported that President Lobo asked the Honduran congress to grant [translation] "greater powers to the armed forces," given the "deterioration" of the National Police. Honduras Weekly corroborated this report. Sources report that the Congress granted the army police functions such as the ability to patrol, arrest, and carry out search warrants".

The report supports that the government is also responding to allegations and findings of police corruption. *"AFP reported in November 2011 that President Lobo appointed a commission, headed by the rector of the National Autonomous University of Honduras, to develop a plan to [translation] "purify" the police.*

Sources also report that, in November 2011, Congress created the independent Directorate of the Investigation and Evaluation of the Police Career (Dirección de Investigación y Evaluación de la Carrera Policial) to investigate police officers, replacing the former Office of Internal Affairs (Oficina de Asuntos Internos) within the Ministry of Security (Secretaría de Seguridad). The new organization has [translation] "technical, operational, administrative and budgetary autonomy" to guarantee transparency and to ensure that there is no longer impunity within the police (ibid.). An article in Proceso Digital, a Honduran online newspaper, also reports the introduction of [translation] "toxicological, psychometric, [and] polygraph tests, [as well as] socio-economic or financial background studies" for police officers. As reported by the Associated Press, the polygraph tests were begun on 28 November 2011 to investigate whether police officers had ties with [translation] "organized crime and drug trafficking".

Despite country conditions that are not ideal, the information obtained in my research supports that avenues of redress and recourse are available to the applicant in Honduras if required. Having read and considered the information and evidence before me, I find the grounds presented are not sufficient to justify relief under H&C considerations.

4. Members of a drug cartel (NOTE: Relocation is being addressed)

Fears: PA being sought by members of a drug cartel.

Supporting an exemption
Facts: <ul style="list-style-type: none"> Each of the major Mexican drug cartels operates within a very specific region of the country.
Not supporting an exemption
Facts: <ul style="list-style-type: none"> Applicant has not identified which drug cartel he fears Applicant has not provided evidence to indicate he would be unable to relocate to a different region of Mexico. Applicant has not provided evidence to indicate that he and his wife would be unable to seek employment in relocated region - were able to secure full-time jobs upon arrival to Canada, completed post-secondary education and some post-secondary training in Mexico
Rationale (excerpt from original decision)
<p>The Applicants indicate in their H&C submissions that they will not be able to continue to support themselves if they return to Mexico. They note that, as the PA is being sought by members of a drug cartel, it will be very difficult for the PA and his wife to find and maintain employment and this will result in them being unable to support themselves and their family. I note that the Applicants have submitted little documentation to support their statements that the PA's situation with the drug cartel would affect the employment prospects of the PA and his wife in Mexico. However, I also note that I have reviewed several publicly available documents concerning current country conditions in Mexico and find from this review that the option of relocation would be available to the Applicants.</p> <p><u>i). Relocation:</u></p> <p>From my review of several documents concerning conditions in Mexico, in particular, an article from the U.S. Congressional Research Service titled: <i>Mexico's Drug Trafficking Organizations: Source and Scope of the Rising Violence</i>, I find that each of the major Mexican drug cartels operates within a very specific region of the country. I note that, though the Applicants indicate that members of a drug cartel are looking for the PA, they have submitted little evidence to indicate which drug cartel these individuals belong to. I also note that the Applicants have not submitted any documentation to indicate that they would be unable to relocate to a different region of Mexico, away from the drug cartel that is looking for them.</p> <p>Accordingly, I find that there is little to indicate that the Applicants would be unable to relocate to a different area in Mexico, an area that is outside of the region of the drug cartel that is looking for them. I also find that there is little to indicate that, once they were away from the drug cartel, the PA and his wife would not reasonably be able to obtain employment in Mexico and continue to support their family.</p> <p>I acknowledge that there will be a period of economic adjustment for the Applicants upon their return to Mexico, as both the PA and his wife will need to find employment. I further acknowledge that this period of economic adjustment will likely result in some difficulty for the Applicants. As well, I note the Applicants' submissions that their extended family in Mexico is not in a position to provide the Applicants with financial assistance. However, I find that the PA and his wife have demonstrated, having obtained full-time jobs shortly after their arrival in Canada, that they are able to quickly adapt to employment conditions in a new country. In addition, I note that the PA and his wife are Mexican</p>

citizens, that their first language is Spanish and that they have both completed their secondary education, as well as some post-secondary training, in Mexico. I find that these factors will assist the PA and his wife to obtain employment in Mexico and will help to mitigate any initial period of economic needs that they might experience. Further, I do not find that the economic needs that the Applicants might experience when they first return to Mexico would be greater than what would be expected for individuals who return to their country after an extended period of absence.

I note that the Applicants also indicate in their H&C submissions that the PA's situation with the Mexican drug cartel would cause extreme psychological stress for their extended family, were the Applicants to return to Mexico. I acknowledge that the Applicants' extended family may experience psychological stress if the Applicants were to return to Mexico. However, as the Applicants' extended family are not the subjects of this H&C Application, I have only considered the impact the Applicants might face in this decision.

....with respect to BIOC....

I note that the Applicants also make several claims in their H&C submissions concerning the circumstances that Derrick will face in Mexico because the PA is being sought by members of a drug cartel. One of these claims is that the situation with the drug cartel will cause the PA and his wife to have difficulty finding employment which will, in turn, result in his parents being unable to support him. However, as noted in the previous section of this decision, I have found that relocation to a different area of Mexico, away from the drug cartel that is looking for the PA, would be an option for the Applicants. I have also found that, once away from the drug cartel, the PA and his wife would have the necessary skills to be able to obtain employment in Mexico and to continue to support their family, including Derrick. As well, I note that I have found that, though there will likely be an initial period of economic needs for the Applicants upon their return to Mexico, these needs would not be greater than what would be expected of other individuals returning to their country after a long period of time.

The Applicants also state that the PA's situation with the drug cartel will negatively affect Derrick as it will "interfere with his social, emotional and athletic development." The PA states that Derrick will be unable to fully enjoy life in Mexico, as he does in Canada, as the PA and his wife "would be reluctant to let our son leave our home by himself to visit friends or to go to some other activity ... He would not be able to participate in sports – either organized or friendly games with friends. He would not be able to develop friendships as easily as here in Canada." I accept that the Applicants' situation concerning the drug cartel in Mexico will cause some adversity for Derrick and that it might curtail his activities and interfere with his ability to develop friendships. However, I note that I have found that the option of relocation to a different area in Mexico is open to Derrick and his family. I further note that the Applicants have not submitted any evidence to indicate that they would be unable to live a normal life in Mexico if they were to move to a region away from the drug cartel that is looking for them.

5. Land dispute (NOTE: Onus is on the applicant to describe their circumstances. Officer did give some positive consideration rather than discounting the factor).

Fears: Risk of harm and risk to life from xxxxxx and his associates because of a land dispute.
Supporting an exemption
Facts:

Not supporting an exemption
Facts: <ul style="list-style-type: none"> • Provided little information about his H&C grounds relating returning to the same country he fears.
Rationale (excerpt from original decision)
<p>The applicants present the same risk that was presented during the refugee determination process as a factor for consideration: risk to life and risk of harm from xxxxx, the leader of the Union of Miners, and his associates over a land dispute. This is the same risk that is presented by the applicants in their Pre Removal Risk Assessment (PRRA) application.</p> <p>The application under review is based on humanitarian and compassionate grounds (H&C) as described in section 25 of the <i>Immigration and Refugee Protection Act</i> (IRPA). It must be noted that this section of the act was modified on June 29th, 2010. Following this modification, the Minister must assess risks submitted, except those that fall under section 96 and section 97 of IRPA. Those risks will not be given consideration in the H&C decision.</p> <p>The risk presented by the applicants fall under sections 96 and 97 of IRPA. Accordingly, the risks will not be given consideration as they fall outside of the jurisdiction of the H&C assessment. I have assessed these risks in the applicant's PRRA assessment.</p> <p>Regarding possible H&C grounds arising from the risk presented, the applicants provide very little information. The principal applicant states that he "will suffer various, excessive hardships that would put my life in imminent danger." However, the H&C grounds he presents (i.e. "my life and well being and the life of my wife would also be at risk") are considered risk factors. As I am unable to assess risk, and because the applicant provides little additional information about his H&C grounds, I give it little positive consideration to his exemption request.</p>

6. Adverse country conditions in Jamaica (NOTE: Generalized conditions)

Fears: The prevalence of crime, including violent crime in Jamaica and the high unemployment rates as adverse country conditions.
Supporting an exemption
Facts: <ul style="list-style-type: none"> • Various facts regarding security conditions in Jamaica
Not supporting an exemption
Facts: <ul style="list-style-type: none"> • Conditions in Jamaica are concerning but applicant has not established personal H&C considerations related to these conditions. • No updated submissions concerning his resettlement and current circumstances have been received since the applicant's removal to Jamaica was effected. • The evidence does not support a finding that the applicant would be unable to obtain employment; only that work is scarcer.

Rationale (excerpt from original decision)

The applicant cites the prevalence of crime and the high unemployment rates as adverse country conditions that warrant an exemption.

The applicant has submitted documentary evidence from the U.S. Department of State, Al Jazeera.net, Amnesty International, BBC News and the Jamaica Gleaner newspaper, etc. in support of adverse country conditions that would prevent him from continuing his financial support to his children in Canada.

As noted in the Gleaner, the global recession in conjunction with other factors including damage from Tropical Storm Nicole have had negative effects on growth and employment, while Amnesty International reports (2 April 2008) indicates that the country has one of the world's highest rates of violent crime and "gangs and police cripple Jamaica's inner cities" in an ongoing security crisis having its greatest impact on the country's poorest citizens.

The most recent version of the Jamaica DOS report in submissions notes that the "most serious human rights problems in the country were alleged unlawful security force killings, instances where cases involving the violation of rights were not resolved in a timely way, and poor prison and jail conditions, including abuse of detainees and prisoners. Other human rights problems included an overburdened judicial system and frequent lengthy delays in trials, violence against and sexual abuse of children, violence and discrimination against women, trafficking in persons, and violence against persons based on their suspected or known sexual orientation" (Jamaica: U.S. Department of State Country Report on Human Rights Practices, 2011 (<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>).

According to a Freedom House Report "The situation improved slightly in 2011, after police crackdowns on gang violence; according to police statistics, the murder rate during the first three months of the year fell 44 percent from their rate over the same period in 2010. The government also established a commission, the Independent Investigation of Commissions, to investigate incidents of civilian shootings, though local human rights organizations have expressed doubt whether the organization will have the resources it needs to function effectively" (Freedom House, Freedom in the World 2012 - Jamaica, 22 August 2012, available at: <http://www.unhcr.org/refworld/docid/503c722c2d.htm> [accessed 25 October 2012]).

While the noted security conditions in Jamaica, especially in poor and inner-city neighbourhoods, are concerning, the applicant has not demonstrated his personal circumstances justify an exemption. Similarly, while I accept that unemployment is high, the evidence does not support a finding that the applicant would be unable to obtain employment; only that work is limited. As previously noted, no updated submissions have been received since the applicant's removal to Jamaica was effected. In the absence of information concerning his resettlement and current circumstances, including employment, I am unable to conclude that these grounds warrant a relief under H&C considerations.

...

7. Adverse country conditions in Bulgaria (NOTE: Generalized conditions)

Fears Crime and criminal violence in Bulgaria.

Supporting an exemption

<p>Facts:</p> <ul style="list-style-type: none"> • Victims of crime - theft, fire and assault
<p>Not supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • Incidents of crime occurred over a span of 40 years • State protection available
<p>Rationale (excerpt from original decision)</p> <p>In submissions provided in support of their Pre-Removal Risk Assessment application, the applicants have submitted that they fear generalized crime and in particular “groups of aggressive gypsies” who target the sick and the elderly. The applicants reference theft and a fire in their unoccupied home in Bulgaria in 1979 when the family was living in Hungary for a period of time. I note that the theft of furnishings from another unoccupied home which they had inherited appears to have occurred in the early 1990s according to PRRA submissions. The principal applicant was also the victim of an assault for which he required medical treatment and RPD written reasons indicate this occurred in 1983. No date is given for a fourth incident in which someone entered their home while the principal applicant was sleeping.</p> <p>I accept that the elderly may be particularly attractive targets for street criminals who anticipate little resistance, but find that it is speculative to consider that the applicants may be victimized in future. They have identified four specific incidents in which they were criminally victimized in almost 40 years between 1979 and 2007 when they departed Bulgaria. At least three of the four incidents occurred more than ten years ago and two incidents involve crimes against property in unoccupied homes.</p> <p>While I accept that the applicants are afraid of being criminally victimized, there is little evidence to suggest that they face a serious risk to their lives or a risk to the security of their persons arising from random generalized crime in Bulgaria. As noted in documentary evidence considered in their Pre-Removal Risk Assessment, the incidence and nature of crime in Bulgaria is not dissimilar to what would be experienced in a large urban area in North America, and similar “personal safety precautions” are advisable: Those who are victimized are encouraged to contact police who are noted to have demonstrated an effective response (U.S. Department of State Country Specific Information for Bulgaria, updated 20 November 2011, (http://www.travel.state.gov/travel/cis_pa_tw/cis/cis_1074.html#crime)). I do not find these risk-related grounds justify an exemption.</p>

8. Membership in a political party

<p>Fears: Based on his political opinion as an active member and position holder of the UKPNP in POK.</p>
<p>Supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • Political violence exists in Pakistan • Applicant was an active member of the UKPNP in Canada

<p>Not supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • Spouse pleads for applicant to go home. • Applicant left Pakistan for UK on his own passport. • The RPD refused the claim - finding he had delayed making a claim when in the UK, that he did not show a subjective fear, and that he was not credible.
<p>Rationale (excerpt from original decision)</p> <p>I accept that there is a great deal of political violence in Pakistan and that there is little tolerance of dissent or support for separatism.</p> <p>I accept that Mr. xxx was active in that he is a member of the UKPNP in Canada and attended (or perhaps organized) one or more protests. Ms. xxxx referred to death threats against Mr. xxxx.</p> <p>However, his own wife, notwithstanding the death threats, pleads with him to return home. Even if I accept that there is some potential for problems with authorities, she is confident there are means for him to return safely.</p> <p>I note that Mr. xxxx left Pakistan for the United Kingdom with his own passport. It does not appear he was a sought man at that time. The RPD found he had made a non-credible claim. There was no serious risk for him.</p> <p>I place a great deal of weight on his having made a non-credible claim. This is a strong negative factor in Mr. xxxx's application.</p> <p>Mr. xxxx is obliged to apply for permanent residence from abroad in the normal manner, like any other prospective immigrant from Pakistan or anywhere else. There is an exception to that rule, if he can establish that applying from abroad raises hardship factors that justify an exemption under humanitarian and compassionate considerations. He did not.</p> <p>The best interests of his children argue for his return to Pakistan, according to Ms. xxxx. Mr. xxxx does not appear to have a high level of establishment in Canada. He made a non-credible refugee claim. I find the factors in this case do not justify a positive decision. The application is refused.</p>

9. Adverse country conditions in China

<p>Fears: Risk-related grounds of homosexuality, abuse from family and being a woman in China.</p>
<p>Supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • Discrimination against homosexuals continues to exist in China. • Applicant experienced discrimination from certain individuals in China due to her sexuality. • Violence against women continues to exist in China.

Not supporting an exemption

Facts:

- Various facts regarding change in country conditions relating to homosexuals in China since applicant left in 2001, especially in Shanghai
- Applicant has not provided evidence indicating that parents have pressured her to be in a heterosexual relationship.
- Women shelters and services are available to the applicant.
- Parents are providing support.
- Applicant able to attend school and find employment while residing in China.

Rationale (excerpt from original decision)

Homosexuality

Counsel cited risk-related grounds for the applicant, should she be required to return to China. I note that counsel stated that the applicant may be at risk in China due to her homosexuality. I also note that counsel stated that she was beaten by her father, when her sexuality was revealed to her family. I note that counsel stated that the applicant may not be able to get protection against her family, should they abuse her upon her return to China.

I also note that as the Senior Immigration Officer assigned to the applicant's PRRA application submitted on December 17, 2010, I recently rendered a negative decision on the applicant's PRRA application. I note that counsel for that PRRA application cited that the applicant fears returning to China due to her sexual orientation. I also note that counsel for the applicant's PRRA application did not state that the applicant fears returning to China due to her parents' abuse.

I note that discrimination against homosexuals in China continue to exist. I also note that it has been reported that the revelation of sexual preference may result in the loss of employment or removal from school (CHN100544.E, IRB). However, country conditions document support the fact that China has become more open to homosexuals. I note that the United States Department of State (US DOS) reports that homosexuality was decriminalized in 1997 and removed from the official list of mental disorders in 2001. I also note that the first gay pride festival took place in Shanghai and the Beijing Queer Film Festival were held in June 2009. In addition, I note that in its Country of Origin Information (COI) report, the UK Home Office states that in February 2009, The Guardian reported that:

Gay men and lesbians say there is less overt hostility than in the west and certainly less physical harassment. Li's research in cities suggests about 91% of people are happy to work with gay colleagues – a higher rate than in US surveys – and that 30% back gay marriage.

I note that counsel stated that the applicant was isolated and mistreated in school, when she was caught kissing another girl. I also note that counsel stated that the applicant was discriminated against when her sexual preference was suspected by her manager at work. I note that counsel has not provided any additional details, in regards to these incidents. Therefore, I have reviewed the applicant's Personal Information Form (PIF) for additional information on these incidents. I note that based on the applicant's PIF, her experience in school occurred in 1995. I note that during this period, homosexuality was still seen as a mental disorder and was criminalized. In addition, I note that according to the applicant's PIF that the incident at work occurred in December 2001.

I also note that according to country research that there is a difference in attitude and perception between the rural and urban area of China. I note that the applicant is from Shanghai and that based on research conducted by the Refugee Review Tribunal Australia that Shanghai “has long been a vibrant site for both gay men and lesbian women.” I also note that the IRB reports that “courses on homosexuality have been offered at Fudan University in Shanghai.”

While I note that discrimination against homosexuals still occurs in China and that there are no laws that protect the rights of homosexuals in China, I find that China in general has become more open in its attitude and perception towards homosexuals. I note that the applicant may have experience discrimination in the past. However, I find that the current situation in China is very different from the one, she experienced in China in 1995 and 2001.

Although heterosexual relationships are the norm in China, I find that there is little evidence or information to support that the applicant will be forced to engage in a heterosexual relationship upon her return to China. I note that there had been reports that some homosexuals, particularly in rural China, have been pressured into heterosexual relationships and marriages. However, I note that based on the information on file, the applicant’s parents are already aware of her sexual orientation. I note that the applicant has provided little evidence or information that she has currently received any pressure to be in a heterosexual relationship by her parents.

I note that the applicant lived in Shanghai. I note that Shanghai is one of the most vibrant cities for homosexuals in China. I find that although the applicant may experience discrimination from some individuals in China due to her sexuality, I do not find these grounds warrant positive consideration in this exemption request.

Abuse from her family

I note that counsel stated that the applicant may not be able to seek protection against her family, should they abuse her upon her return to China. I note that US DOS reports that:

Violence against women remained a significant problem. According to a 2008 survey by the All-China Women's Federation (ACWF), domestic violence affected one-third of China's 267 million families. The government supported shelters for victims of domestic violence, and some courts were beginning to provide protections to victims. However, official assistance did not always reach victims, and public security forces often ignored situations of domestic violence. According to reports, 30 to 37 percent of families suffered from domestic violence, and more than 90 percent of the victims were women. The ACWF reported that it alone received 50,000 domestic violence complaints annually. Spousal abuse typically went unreported; an ACWF study found that only 7 percent of rural women who suffered domestic violence sought help from police. While domestic violence tended to be more prevalent in rural areas, it also took place among the highly educated urban population. The ACWF reported that approximately one-quarter of the 400,000 divorces registered each year were the result of family violence.

The number of victims' shelters grew. According to ACWF statistics, in 2008 there were 27,000 legal-aid service centers, 12,000 special police booths for domestic violence complaints, 400 shelters for victims of domestic violence, and 350 examination centers for women claiming to be injured by domestic violence nationwide. Most shelters were operated by the government, some with NGO participation. During the year the government provided 680,000 office spaces in government buildings for women's resource centers.

Both the Marriage Law and the Law on the Protection of Women's Rights and Interests have stipulations that directly prohibit domestic violence; however, some experts complained that the stipulations are too general, fail to define domestic violence, and are difficult to implement. Because of the judicial standard of ruling out "all unreasonable doubt," even if a judge was certain that domestic violence was occurring, he or she could not rule against the abuser without the abuser's confession. Only 10 percent of accused abusers confessed to violent behavior in the family, according to 2009 data from the Institute of Applied Laws, a think tank associated with the court system. Collecting evidence in domestic violence cases remained difficult: the institute reported that 40 to 60 percent of marriage and family cases involved domestic violence; however, less than 30 percent were able to supply indirect evidence, including photographs, hospital records, police records, or children's testimony. Witnesses seldom testified in court.

Based on current country conditions research, I accept that violence against women remained a significant problem. I note that there had been criticism that the stipulations as outlined in the Marriage Law and the Law on the Protection of Women's Rights and Interests are too general, fail to define domestic violence, and are difficult to implement. However, I note that it has been reported that the number of victims' shelters have grown.

I find that the applicant has provided little evidence or information that she would not be able to access these shelters for assistance, should she find that she becomes a victim of domestic abuse. I find that the applicant has provided little evidence or information that her parents and her family have continued to threaten her. In addition, I note that the applicant stated in her H&C application that her parents are helping her (section 17 – Activities for the past 10 years).

Treatment of Women in China

I note that counsel stated that “the situation for women (let alone homosexual women), in general, in China was a serious concern as discrimination, sexual harassment, unfair dismissal and demotion continued to be a major problems [sic].” I will now analyze her return as a ‘woman’ to China.

I have reviewed country conditions document, in regards to the treatment of women in China. I have reviewed the 2010 Human Rights Report: China by US DOS. I note that US DOS states that the “constitution states that “women enjoy equal rights with men in all spheres of life. The law on the Protection of Women's Rights and Interests provides for equality in ownership of property, inheritance rights, and access to education.” However, I note that US DOS continues to report that “authorities often did not enforce laws protecting the rights of women. According to legal experts, it was difficult to litigate a sex discrimination suit because the vague legal definition made it difficult to quantify damages.” I also note that US DOS reports that women earn less than men.

I note that counsel stated that the applicant would be discriminated against due to the fact that she is a woman. I accept that women in China do face discrimination and that they are treated differently than men. I note that the applicant was able to attend school and find employment, while she was living in Shanghai. I do note that the applicant has provided information that she was discriminated against at work and at school due to the fact that she was found out to be a homosexual. I find the applicant has provided little evidence or information that she was personally discriminated against or fits a profile that faces risk in China due to the fact that she is a female. However, given some of her personal experiences, I do give some positive consideration to this particular H&C ground.

10. Adverse country conditions in Fiji

<p>Fears: Fears violence from criminals who raped her in 2002.</p>
<p>Supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • Applicant was raped in 2002. • Victim to two robberies.
<p>Not supporting an exemption</p>
<p>Facts:</p> <ul style="list-style-type: none"> • The government is making efforts to address violence against women and there are women rights groups that are active in the country. • Applicant has female family members residing in Fiji of whom there was no information regarding difficulties faced with respect to being a woman in Fiji.
<p>Rationale (excerpt from original decision)</p>
<p>The applicant states that if she returns to Fiji she will face a risk of violence from criminals who raped her in 2002.</p> <p>In support of her application she has provided a copy of a police report which was obtained in 2008 from the Fiji Police Department. The report outlines the incident that took place in November 2002 when criminals broke into their family home and robbed them. They also beat the applicant's ex-husband and raped the applicant. I accept that the incident took place as described by the applicant.</p> <p>The applicant entered Canada on 10JAN2008 at Vancouver BC and made a claim for refugee protection on 10 MAR2008. The claim was refused by the RPD on 01FEB2010.</p> <p>In their reasons for decision the RPD panel accepted the events occurred in 2002 as described by the applicant, however found that she did not establish a well-founded fear of persecution or risks or dangers outlined in 96 or 97 of the IRPA. They noted that beyond the 2002 incident, and two "low-level street robberies" the applicant and her spouse were never targeted for personal persecution or faced any personal risk or danger. They wrote, "<i>Although the November 2002 event was serious it did not lead to any serious effort on behalf of the claimants to leave the country. They did not leave until January of 2008 without there ever being any intervening serious event that could be accurately described as persecution or section 97 risks or danger. This huge delay in departure, largely unexplained by wanting to raise their daughters, reflects a significant lack of subjective fear and undermines to the extent of incredibility the allegation that their fears are well founded. While the female claimant partially explained the delay by wanting to protect her daughters, on the other hand, the daughters and the claimants remained in the country, presumably exposed to the dangers that are alleged, without any apparent effort being made for the whole family to leave the country.</i>" (RPD Reasons and Decision VA8-00972, VA8-01004 dated 01 February 2010)</p> <p>The RPD also stated that, "<i>If I am wrong in that, and if they returned to Ba they would face persecution, risks or danger, I find that the issue of internal flight alternative would also be determinative in the claim.</i>" They found that there is a viable internal flight alternative in the capital, Suva. The panel wrote, "<i>I believe that there is no serious possibility of persecution in Suva or that they</i></p>

would be in danger of torture or the section 97 risks. I base this conclusion on the actual experience of the claimants....having considered the condition there and all of the circumstances of this case including the fact that these claimants did, in fact, move to Suva, find good employment, at least in the case of the female claimant, and that they lived there for a lengthy period of time without any outward difficulties, I find that it is not objectively unreasonable for them to seek refuge in Suva". (Ibid)

The applicant has provided undated news articles on crime in Fiji and a report dated in 1998 from the Women's Crisis Centre in Fiji regarding violence against women. I find that the articles are general in nature and are not linked to the personal circumstances of the applicant. I have read and considered the document regarding violence against women in Fiji. In conducting this assessment, I have also considered the most current, publicly available documentary evidence regarding country conditions and human rights in the Fiji, and the situation for women. According to the United States (US) Department of State Country Reports on Human Rights Practices 2010, women's rights and violence against women is a significant concern in Fiji. While the issue remains problematic, the government is making efforts to address the issue and there are women rights groups that are active in the country.

Documentary evidence informs:

"Rape, domestic abuse, incest, and indecent assault were significant problems. The Crimes Decree provides for a maximum punishment of life imprisonment for rape; however, prior to the promulgation of the Crimes Decree in February, most rapes were prosecuted in the magistrates' courts, which have a sentencing limit of 10 years. There were inconsistencies in the sentences imposed for rape by different magistrates; sentences generally ranged from one to six years' imprisonment. The Domestic Violence Decree, which also came into force in February, recognizes spousal rape as a specific offense. The NGOs Fiji Women's Rights Movement and Fiji Women's Crisis Center pressed for more consistent and severe punishments for rape.

The Domestic Violence Decree created a specific domestic violence offense. Police claimed to practice a "no-drop" policy, under which they pursued investigations of domestic violence cases even if a victim later withdrew her accusation. However, women's organizations reported that police were not always consistent in their observance of this policy. Courts dismissed some cases of domestic abuse and incest or gave the perpetrators light sentences. Incest was widely believed to be underreported. Traditional and religious practices of reconciliation between aggrieved parties in both ethnic Fijian and Indo-Fijian communities were sometimes taken into account to mitigate sentences in domestic violence cases, and in many cases offenders were released without a conviction on the condition they maintain good behavior, rather than jailed. An active women's rights movement sought to raise public awareness of domestic violence.

Four women's crisis centers funded by foreign governments operated in the country. The centers offered counseling and assistance to women in cases of domestic violence, rape, and other problems, such as lack of child support.

Women have full rights of property ownership and inheritance rights, but in practice often were excluded from the decision-making process on disposition of communal land, which constituted more than 80 percent of all land. Many women were successful entrepreneurs. Other than a prohibition on working in mines, there were no legal limitations on the employment of women. The ERP prohibits discrimination on the basis of sex. In practice, however, women generally were paid less than men for similar work. According to the Asian Development Bank, approximately 30 percent of the economically active female population was engaged in the formal economy, and a large proportion of these women worked in semi subsistence employment or were self-employed.

The Ministry for Women worked to promote women's legal rights.

(US Department of State Country Report for Human Rights Practices 2010- Fiji)

Other than the police report regarding the incident of her rape in 2002, the applicant has not provided documentary evidence regarding how her current personal circumstances and country conditions justify an exemption. She has not provided evidence to support that the criminals who were responsible for the acts of aggression against her 10 years ago currently have an interest in her or her whereabouts or would have an interest in her upon her return. The applicant states that it will be difficult for her to return as a woman who is no longer married. She has not provided evidence to support that she will face personal difficulties that are not experienced by the general population. I note that the applicant's daughter and two sisters reside in Fiji. Submissions are silent regarding difficulties faced by family members in Fiji.

Having read and considered all information and evidence presented by the applicant as well as publicly available documentation, I find that the evidence before me does not support positive consideration for this H&C ground.

Positive Decision

1. Religious discrimination in Bangladesh

Fear: Fear of religious discrimination in Bangladesh for converting to Ahmadiyyism
Supporting relief for the applicant
Facts: <ul style="list-style-type: none"> • Applicant is a member of the Ahmadiyya Movement in Islam. • Applicant is a member to the Ahmadiyya Muslim Youth Association.
Not supporting relief for the applicant
Facts:
Rationale (excerpt from original decision)
<p>Mr. xxx has submitted a certificate that he is a member of the Ahmadiyya Movement in Islam. An affidavit from xxxx attests that these certificates are often relied upon by the IRB as proof that applicants are genuine followers of the Ahmadi religion. The affidavit also testifies that the applicant's counsel, Ms. Rosenblatt, represents more Ahmadi claimants before the IRB than any other counsel in Ontario. To his knowledge, the author states that during her 5 years of representing these applicants, all cases the Ahmadi certificate was accepted as proof of identity as an Ahmadi Muslim. There is a letter from Mazhar Choudhry, Vice President of Majlis Khuddamul Ahmadiyya Ottawa attesting that Mr. xxxx is a devoted member to the Ahmadiyya Muslim Youth Association. There is a letter in receipt of a prayer request sent to Hadhrat Khalifatul Masih V, the current leader of the Ahmadiyya faith, dated 18 May 1995. I accept that Mr. xxxx is a member in good standing with the Ahmadiyya Muslim Community. Because of this, I also accept that he faces certain risks should he return to Bangladesh (see section below on <i>Risk</i>).</p>

Risk factors are considered and weighed as any other factor in an H&C application though assessed within the context of hardship. Risk factors do not outweigh all other factors in a case; they are one of many factors that officers consider when making an H&C decision.

Letters from friends and family attest that Mr. xxxx experienced religious discrimination in Bangladesh. Evidence submitted states that family members in Bangladesh have stated that fanatic groups are looking for him in his country of nationality. As noted, I accept that Mr. xxxx is an Ahmadi Muslim.

A documentation package has been included on the persecution of Ahmadi Muslims in Bangladesh. The documents in the package range from 2003 – 2011. The documents tell a history of violence, religious extremism and clashes in Bangladesh towards religious minorities. The documents chart the rise of power gained by Islamic extremists. The articles state that religious minorities have been targeted by Sunni extremists, and that Ahmadiyya is targeted because a number of Islamic denominations do not regard Ahmadiyya to be a branch of Islam due to the religion's interpretation of The Prophet Mohammed. Instances of violence, discrimination and harassment have resulted as elements of political Islam have gained power in the country.

Evidence on file states that Mr. xxxx's remaining family members, bar his sister and brother-in-law, do not accept him because he has converted. His sister and brother-in-law have fled Bangladesh for their personal safety.

Counsel submits that there is no internal flight alternative for the applicant because this condition exists in all parts of the country. Furthermore, numerous news articles have been submitted regarding the authorities disregard for attacks against Ahmadis. The statement is made that persecution, violence and death can result from religious affiliation. While this remains to be seen, I do find these grounds warrant an exemption under humanitarian and compassionate considerations.