

"You can chain me, you can torture me, you can even destroy this body, but you will never imprison my mind."

Mahatma Gandhi

N vs Sweden



Level 4



Any



190 minutes



Complexity: Level 4

Group size: Any

Time: 190 minutes

Overview: This simulation activity looks at issues surrounding women seeking asylum, using a case brought to the European Court of Human Rights.

Objectives:

- To reflect on the issues facing women seeking asylum
- To develop critical thinking skills, logical argumentation, and a sense of justice
- To develop an understanding of the role of the European Court of Human Rights

Materials:

- Copies of the case
- Copies of role cards
- Additional information for the facilitator

Preparation: Prepare the role cards, making sure that you have enough copies for participants.

Ensure that there are separate spaces for the 3 groups to work at the preparation stage, and a plenary room where the court hearing can take place.



Instructions

- 1) Tell the group that the session will be devoted to a case which came before the European Court of Human Rights. Ask participants what they know about the Court and the European Convention of Human Rights.
- 2) Inform them that the case deals with the rejection of an asylum claim made by an Afghan woman to the Swedish government. Depending on the group, you may need to clarify some of the terminology relating to migration (e.g. asylum seeker, migrant, refugee).
- 3) Hand out copies of the case for participants to read individually. Give them about 10 minutes to read this in silence.
- 4) Tell participants that the question they are to consider in the trial is: "Would deporting N. be a violation of article 3?". Make sure that everyone understands this question, in broad terms.
- 5) Divide the participants into 4 groups:

Group 1 represents N.

Group 2 represents the Swedish Government

Group 3 represents the European Court of Human Rights

Group 4 represents experts from UNHCR

Give each group the appropriate role card and explain that they have 30 minutes to clarify their positions. Groups 1 and 2 should prepare their arguments to put to the court, while Group 3 should prepare questions for both sides. Group 4 needs to be ready to present information about conditions facing Afghani women claiming asylum, without taking sides in this particular case.

- 6) After 30 minutes, invite the participants for the Court hearing.

The Court hearing is presided over by the judges and should last 30 minutes. Groups 1, 2, and 4 each have 5 minutes to present their main arguments. After the main arguments have been presented the judges should put questions to the different parties.
- 7) Each of the judges should then come to an individual decision. Allow them about 5 minutes for reflection. Bring the group back together and ask the judges to present their individual decisions and the arguments.
- 8) Inform the participants about the real decision of the European Court and the reasoning behind it. Ask for their reactions and then proceed to the debriefing and evaluation.

The verdict:

The Court had to establish whether the applicant's personal situation was such that her return to Afghanistan would contravene Article 3. (...) The court found that as the applicant had resided in Sweden since 2004, she might be perceived as not conforming to the gender roles ascribed to her by Afghan society. Moreover, she had attempted to divorce her husband and had demonstrated a real and genuine intention of not living with him. However, if the spouses were deported to Afghanistan, separately or together, the applicant's husband might decide to resume their married life together against her wish. The new Shiite Personal Status Law required women to comply with their husbands' sexual requests and to obtain permission to leave the home, except in emergencies. (...) The Court could not ignore the general risk indicated by statistics and international reports. As regards the applicant's extramarital relationship, she had failed to submit any relevant and detailed information to the Swedish authorities and she has not even tried to explain why she failed to do so. Nevertheless, should her husband perceive the applicant's filing for divorce or other actions as an indication of an extramarital relationship, adultery was a crime under the Afghan Penal Code. Should the applicant succeed in living separated from her husband in Afghanistan, women without male support and protection faced limitations on conducting a normal social life, including the limitations on their freedom of movement, and lacked the means of survival, which prompted many to return to abusive family situations. (...) There were no strong reasons to question the veracity of the applicant's statement that she had had no contact with her family for almost five years and therefore no longer had a social network or adequate protection in Afghanistan. In the special circumstances of the present case, there were substantial grounds for believing that if deported to Afghanistan, the applicant would face various cumulative risks of reprisals from her husband, his family, her own family and from the Afghan society which fell under Article 3¹.

Accordingly, the Court found that the implementation of the deportation order against the applicant would give rise to a violation of Article 3 of the Convention.

**Debriefing and evaluation**

You can use this activity to support participants understand more about the concerns of women seeking asylum and the gender issues relating to migration. The activity can also be used to raise awareness of the work of the European Court of Human Rights. Depending on your focus and the composition of your group, use some of the questions below to run the debriefing.

- Did you find the issues raised by this case easy to resolve? If not, which ones were most difficult for you?
- Did you find your role difficult to play? If so, what was difficult?
- Do you think the judges made the right decision?

- *Ask the judges:* What were the important factors for you in making the decision?
- *Ask everyone:* In the real case, the European Court felt that there was a risk of Article 3 being violated. How did they justify this decision?
- What are the aspects of this case which are specific to women?
- Why it is important to adopt a gender perspective on migration issues?
- N's credibility and consistency was questioned during the trial. How do you explain this, and was it fair?
- Have you heard of this case before? Are you aware of anything like this in your country?
- This case presents the risks faced by N. in the event of deportation back to Afghanistan. Which other risks do asylum seeking women face - both while fleeing, and in the 'host' countries?
- Does your country respect international standards with respect to protection of asylum seekers and refugees?
- What is the general attitude of people in your country towards asylum seekers? Does the attitude differ towards female asylum seekers?
- What kind of support is available to asylum seekers/refugees/migrants in your community?
- Certain rights, such as the freedom from torture, cannot be restricted or limited. Why do you think this is the case?
- Why do we need the European Court of Human Rights? Who can take a case before the Court?

Tips for facilitator

You could adapt the simulation in various ways. Instead of having a big trial, you could set up mini-courts, each with its own mini-trial. You would ideally have equal number of members in each group.

You should encourage participants to use their time in working groups to clarify the case and to prepare opening statements, or to prepare questions for all sides, in the case of the judges.

You could use this activity to further explore the connection between gender and migration. Refer to the ECHR database to find court cases brought against your country (<http://hudoc.echr.coe.int>). Make sure you have prepared yourself beforehand on the role and functioning of the court, and on issues surrounding women refugees or asylum seekers.

Be aware that the activity may stir up islamophobic views or beliefs about cultural superiority. These often arise when discussing women of Muslim faith. Ensure that judgements about the particular situation in Afghanistan do not lead participants to make generalisations about how women are treated or viewed by the Islamic faith.





Suggestions for follow-up

You could follow up this activity in various ways:

Explore the issue of women in armed conflict by engaging participants in research and discussion. This is one of the main areas of action identified by the Beijing Declaration and Platform for Action. (<http://beijing20.unwomen.org/en/in-focus/armed-conflict>).

The activities “3 things” and “Can I come in?” from *Compass* also address issues concerning refugees.

You could explore further the position of women of Muslim faith in your country/ community, including the challenges they face.

In *Bookmarks*, you can find further ideas and activities that look at hate speech against refugees and migrants, such as “The stories they tell”.



Ideas for action

Participants could research cases brought against their country at the European Court of Human Rights and/or the current stance of their government with respect to asylum seekers and refugees. The HUDOC database provides access to the case-law of the Court (hudoc.echr.coe.int/). Participants could also investigate the support services available to asylum seeking women and LGBT+ persons.

Organise a Living Library together with participants and invite refugees and immigrants as books. The Living Library works in the same way as a normal library, but instead of books there are people. It aims to break down prejudices, by allowing members of the public who may have a preconceived idea about individuals from particular communities to meet and talk and listen. The Council of Europe publication “Don’t judge the book by its cover”² offers helpful advice for setting up a living library project.

The manual *We Can! Taking Action against Hate Speech through Counter and Alternative Narratives* provides ideas on how to take action online and offline to challenge hate speech against refugees in the media, and how to promote respect for their human rights.

1. Source: European Court of Human Rights / Information Note no. 132 – July 2010

2. <https://rm.coe.int/16807023dd>



N. Vs Sweden

This case came before the European Court of Human Rights. It concerns N., a woman born in Afghanistan and living in Fagersta, Sweden.

13 August 2004 – N. and her husband, X., arrive in Sweden, illegally helped by a smuggler.

16 August 2004 – N. and X. apply for asylum and residence permits. They state they have been persecuted since 1996 because of X's involvement in the Communist party. This had also led to his arrest on 2 occasions, and to the couple's relocation to Kabul. X claims poor health: sleepiness, anxiety and aggressive behaviour. N. claims that her political stance was well known in Afghanistan, as she was a teacher for women: this was not accepted by the leading elite in Kabul.

29 March 2005 - the Migration Board rejects the couple's application. It argues that the situation in Kabul is better than in other parts of the country and questions the claim that the couple's lives will be in danger if they return to Afghanistan. The Migration Board rules that the information provided is too vague, and that poor mental health is not grounds for asylum.

2005 - The couple appeals the decision. In addition to the claims above, N. also informs the court that she has separated from her husband, lives alone and intends to pursue a divorce, even if X opposes it. This puts her at risk of serious persecution in Afghanistan as she would be considered to have brought dishonour both on X and on her family. She believes that X's family will seek revenge and that at best, she will become a social outcast. She also claims that she was not able to obtain a divorce in Afghanistan, pointing that the punishment for adultery in Afghanistan would be death by stoning.

19 March 2007 - The appeal is rejected. The court rules that X has failed to demonstrate that he would be of interest to the resistance groups in Afghanistan. With respect to N., the court points out that the former ban on education of women has now been replaced by a policy of affirmative action, and that a considerable time has passed since N. was involved in women's education. With respect to her private life, the court remarks that N. was not formally divorced, and according to her statement, she had not had

an extra marital affair - so she would not be in danger of being punished for adultery. The court also notes that N. has not demonstrated that her family has rejected her, so she does have a network in Afghanistan.

4 September 2007 – N. appeals again, receives a refusal, which makes the decision final and the deportation orders enforceable.

27 October 2007, 28 January 2008 – N. invokes new circumstances and twice applies for a residence permit. She is refused.

February 2008 – she petitions the Court in Sweden for a divorce from X and intends to invoke the divorce as grounds to stop her deportation. X informs the court that he opposes the divorce.

19 November 2008 - The Court rejects the petition, claiming it has not competence, because the couple are not legal residents in Sweden.

17 October 2008 – N. requests a review of the asylum claim, and a stop to the deportation. She points to a worsening of the situation in Kabul, and a well-founded fear of persecution, as she has since started a relationship with a Swedish man and therefore risks the death penalty in Afghanistan. She claims to have had no contact with her family since 2005. The re-evaluation is rejected.

17 February 2009 – All attempts to appeal this decision are rejected and the case is transferred to the police for enforcement of deportation.

28 April 2009 – N. brings the case to the European Court of Human Rights (ECHR). To the information presented above, she adds a letter from a Swedish man that confirms that they have been in a relationship since 2008 and have been living together in his apartment since April 2009. The Government declares that this information was not presented before by N., even though it might have been relevant to her asylum claim. The Government also says that N.'s mail address has not been changed to the man's apartment. The European Court notifies the government that it is not advisable to enforce the deportation orders while the trial is ongoing.



Role card for Judges

Your role is to decide whether the deportation of N. to Afghanistan would constitute a violation of Article 3. You are also responsible for presiding over the Court hearing. You need to ensure that each party presents their main arguments in no more than 5 minutes, and you need to prepare questions for each of the parties involved. The questions should be designed to give you the information that you need to make the decision. At the end of the hearing, each of the members of your group should present their decision and the arguments supporting it.

Information on conditions facing women in Afghanistan

From UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers (July 2009)

In view of the serious and widespread human rights violations and ongoing armed conflict in many parts of the country, the UNHCR considers that a significant number of Afghan asylum seekers are in need of international protection. Applications by Afghan asylum-seekers should be determined on an individual basis, according to fair and efficient refugee status determination procedures, including the right of appeal. Favourable consideration should be given to the specific groups identified in these Guidelines, including, but not limited to (i) persons perceived as contravening Sharia law and members of minority religious groups; (ii) ethnic minority groups; (iii) persons associated with or perceived as supporting the Government, including civil society members; (iv) actual or perceived supporters of armed anti-Government groups; (v) journalists; (vi) persons associated with the People's Democratic Party of Afghanistan or other left-aligned political parties; (vii) women; (viii) children; and (ix) persons at risk of becoming victims of blood feuds.

Women are at particular risk of ill-treatment if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. Ill-treatment occurs in a variety of forms and may be inflicted by several actors, including family members. Such treatment includes domestic violence, excessive custodial sentences and degrading and inhuman treatment. The Shiite Personal Status Law (2009) requires women to comply with their husbands' sexual requests, and to obtain permission to

leave the home, except in emergencies. The code has yet to be implemented and is currently under review as a result of international pressure.

Cases of physical violence perpetrated against women and girls in Afghanistan have increased by about 40% in the period from March 2007 to March 2008. Existing figures indicate that currently up to 80% of Afghan women are affected by domestic violence.

Afghan women, who have adopted a less culturally conservative lifestyle, such as those returning from exile in Iran or Europe, continue to be perceived as transgressing entrenched social and religious norms and may, as a result, be subjected to domestic violence and other forms of punishment ranging from isolation and stigmatization to honour crimes for those accused of bringing shame to their families, communities or tribes.

Unaccompanied women or women lacking a male "tutor" (mahram) continued to face limitations on conducting a normal social life. They include divorced women, unmarried women who are not virgins, and women whose engagements to be married have been broken. Unless they marry, which is very difficult given the social stigma associated with these women, social rejection and discrimination continue to be the norm. Many Afghan women are prevented from leaving the family compound without a burqa and a male companion, who has to be a husband or a close relative. Women without male support and protection generally lack the means of survival, given the social restrictions on women living alone, including the limitations on their freedom of movement. Unable to live independently, they face years of quasi-detention, prompting many to return to abusive family situations. The results of such "reconciliation" are generally not monitored and abuse or honour crimes committed upon return are often done with impunity. Furthermore, women's rights activists face threats and intimidation, particularly if outspoken about women's rights, the role of Islam or the behaviour of commanders.

European Convention on Human Rights

Article 3 - Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.



Role card for N.

You have 30 minutes to discuss the case and prepare your opening statement, which needs to prove that the deportation of N. to Afghanistan would result into a violation of article 3.

N's claim is that:

She faces a real risk of being persecuted or even sentenced to death as she has been separated from her husband and is now involved with another man

She risks being subjected to inhuman and degrading treatment as her family has disowned her, and she has no social network or male protection in Afghanistan

She believes that both her family and her husband's family will have been informed about her attempt to divorce her husband

She is not able to divorce her husband in Afghanistan as she needs two witnesses to support her claim. Even so, she is still at risk of inhumane and degrading treatment.

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Role card for the Swedish Government

You have 30 minutes to discuss the case and to prepare your opening statement, which needs to prove that the deportation of N. to Afghanistan would not result into a violation of article 3.

You are claiming that:

While international reports confirm the very difficult conditions for women in Afghanistan, the situation in Kabul is slightly better, compared to the rest of the country.

The applicant did not provide sufficient proof that she is at real and concrete risk of being subjected to ill treatment, either by the government and/or at the hands of private individuals.

N's general credibility is in question, as her story was vague and lacked detail, particularly with respect to her extramarital affair. There is no indication that this affair is known to the Afghan authorities, or to her and her husband's family.

Legally, she is still married, and there is no indication that the Afghan authorities or the families are aware of her attempt to get a divorce in Sweden. It is still possible, under certain circumstances (e.g. if her husband is ill and that it endangered the wife) for her to divorce in Afghanistan.

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Role card for UNHCR Experts

You represent the UN Refugee Agency and your role is to provide the judges with an expert opinion on conditions facing asylum seekers from Afghanistan, particularly women. You have 30 minutes to prepare a 5 minutes input on the main points relevant to the case. You should not take the side of either of the parties but should be ready to provide an objective and expert opinion for the court.

The UNHCR is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It aims to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, with the option of returning home voluntarily, integrating locally, or resettling in a third country.

Additional information

From the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers* (July 2009)

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