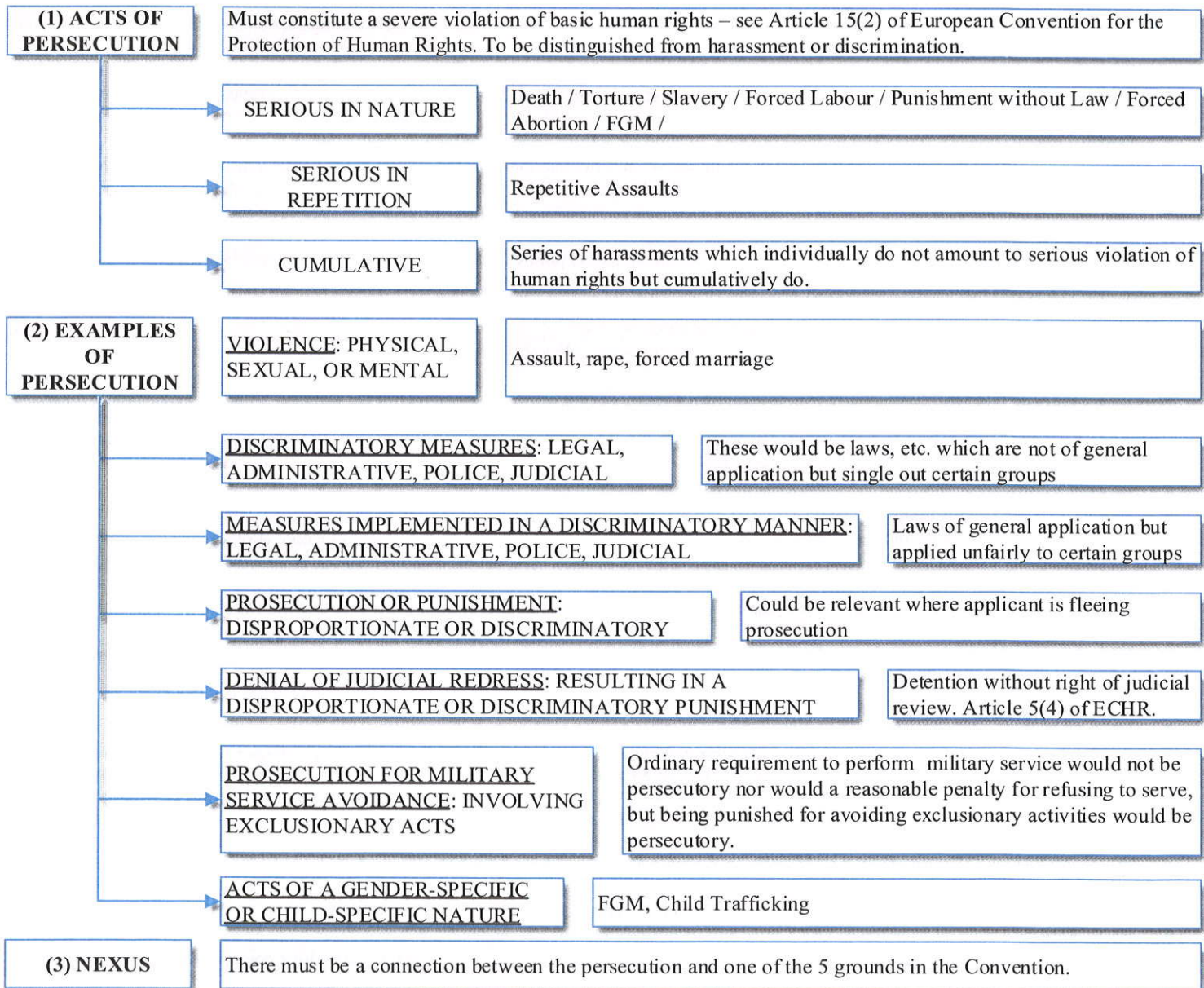# PERSECUTION FLOW CHART
February 2017

Acts of persecution [International Protection Act, 2015]

7. (1) For the purposes of this Act, acts of persecution must be—

    (a) sufficiently serious by their nature or repetition to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or

    (b) an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner as mentioned in *paragraph (a)*.

(2) The following are examples of acts which may amount to acts of persecution for the purposes of *subsection (1)*:

    (a) acts of physical or mental violence, including acts of sexual violence;

    (b) legal, administrative, police or judicial measures, or a combination of these measures, that are in themselves discriminatory or are implemented in a discriminatory manner;

    (c) prosecution or punishment that is disproportionate or discriminatory;

    (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

    (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts of a kind referred to in *section 10(2)*;

    (f) acts of a gender-specific or child-specific nature.

(3) For the purpose of the definition of "refugee" in *section 2*, there must be a connection between the reasons for persecution and the acts of persecution or the absence of protection.

(1) ACTS OF PERSECUTION	Must constitute a severe violation of basic human rights – see Article 15(2) of European Convention for the Protection of Human Rights. To be distinguished from harassment or discrimination.	
	SERIOUS IN NATURE	Death / Torture / Slavery / Forced Labour / Punishment without Law / Forced Abortion / FGM /
	SERIOUS IN REPETITION	Repetitive Assaults
	CUMULATIVE	Series of harassments which individually do not amount to serious violation of human rights but cumulatively do.
(2) EXAMPLES OF PERSECUTION	VIOLENCE: PHYSICAL, SEXUAL, OR MENTAL	Assault, rape, forced marriage
	DISCRIMINATORY MEASURES: LEGAL, ADMINISTRATIVE, POLICE, JUDICIAL	These would be laws, etc. which are not of general application but single out certain groups
	MEASURES IMPLEMENTED IN A DISCRIMINATORY MANNER: LEGAL, ADMINISTRATIVE, POLICE, JUDICIAL	Laws of general application but applied unfairly to certain groups
	PROSECUTION OR PUNISHMENT: DISPROPORTIONATE OR DISCRIMINATORY	Could be relevant where applicant is fleeing prosecution
	DENIAL OF JUDICIAL REDRESS: RESULTING IN A DISPROPORTIONATE OR DISCRIMINATORY PUNISHMENT	Detention without right of judicial review. Article 5(4) of ECHR.
	PROSECUTION FOR MILITARY SERVICE AVOIDANCE: INVOLVING EXCLUSIONARY ACTS	Ordinary requirement to perform military service would not be persecutory nor would a reasonable penalty for refusing to serve, but being punished for avoiding exclusionary activities would be persecutory.
	ACTS OF A GENDER-SPECIFIC OR CHILD-SPECIFIC NATURE	FGM, Child Trafficking
(3) NEXUS	There must be a connection between the persecution and one of the 5 grounds in the Convention.	

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FREEDOMS

Article 15 – Derogation in time of emergency
2   No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall l made under this provision.

Article 2 – Right to life
1   Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a cou following his conviction of a crime for which this penalty is provided by law.

2   Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more tha absolutely necessary:

    a   in defence of any person from unlawful violence;

    b   in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

    c   in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 – Prohibition of slavery and forced labour
1   No one shall be held in slavery or servitude.

Article 7 – No punishment without law
1   No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under nation or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the tin the criminal offence was committed.

2   This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, wa criminal according to the general principles of law recognised by civilised nations.

Some Canadian Judicial Observations[1]

- Torture, beatings and rape are prime examples of persecution.[54]
- The term "discrimination" is not adequate to describe behaviour which includes acts of violence and death threats.[55]
- Death threats may constitute persecution even if the persons making the threats refrain from carrying them out.[56] Whether death threats do amount to acts of persecution depends upon the personal circumstances of the claimant.[57]
- When imposed for certain offences, the death penalty may not constitute persecution.[58]
- Forced or strongly coerced sterilization constitutes persecution, whether the victim is a woman[59] or a man.[60] Forced abortion also constitutes persecution,[61] as does the forcible insertion of an IUD.[62]
- Female circumcision is a "cruel and barbaric practice", a "horrific torture", and an "atrocious mutilation".[63]
- For "persecution" to exist within the meaning of the definition, it is not necessary for the subject to have been deprived of his freedom.[64]
- The bringing of a trumped-up charge, and interference in the due process of law, may be aspects of persecutory treatment.[67]
- The fact that the claimant, along with all of his or her co-nationals, suffers curtailment of freedom of speech, in and of itself does not amount to persecution.[68]
- Barring one claimant from obtaining citizenship and from taking part in political activities, and barring a second claimant (a citizen) from voting and from otherwise participating in the political process, did not constitute persecution, where the claimants enjoyed numerous other rights.[69]
- Punishment for violation of a law concerning dress may constitute persecution.[70]
- Denial of a right of return may constitute an act of persecution.[71]
- Economic penalties may be an acceptable means of enforcing a state policy,[73] where the claimant is not deprived of his or her right to earn a livelihood.[74]
- Where the state interferes substantially with the claimant's ability to find work, the possibility of the claimant's finding illegal employment is not an acceptable remedy.[75]
- Permanently depriving an educated professional of his or her accustomed occupation and limiting the person to farm and factory work constituted persecution.[76]
- By itself, confiscation of property is not sufficiently grave to constitute persecution.[77]
- Serious economic deprivations may be components of persecution.[78]
- Extortion may be one of the indicia of persecution, depending upon the reason for the extortion and the motivation of the claimant in paying.[79]
- A child who would experience hardships including deprivation of medical care, education opportunities, employment opportunities and food would suffer concerted and severe discrimination, amounting to persecution.[80]
- Education is a basic human right and a nine-year-old claimant who could have avoided persecution only by refusing to go to school was deemed to be a Convention refugee.[81]
- It is not an act of persecution to ban certain groups of children from attending public schools, if they are permitted to have their own schools.[82]
- Forcing a woman into a marriage violates one of her basic human rights.[83]
- An impediment to the claimant's marrying in her homeland did not constitute persecution.[84]
- Legal restrictions allowing certain categories of people to settle only in certain areas did not constitute persecution.[85]
- A law which requires a person to forsake the principles or practices of his or her religion is patently persecutory, so long as the principles or practices in question are not unreasonable.[86] Sanctions such as a short detention, fine or re-education term, which might have been imposed upon the claimant for practising his religion or belonging to a particular religious community, were serious measures of discrimination and constituted persecution.[87]
- Lamentable rough treatment, involving detention and interrogation, in a country that is experiencing serious terrorist activity, does not of itself amount to persecution.[89]
- Minor children who are expected to provide support for other family members, after being smuggled into Canada, are not persecuted by their parents.[90]
- The act of being illegally trafficked is not in itself persecution simply because the claimant is a minor.[91]
- Restrictions by a state on a foreign spouse's entry into its territory that are not made on a discriminatory basis do not constitute persecution.[92]
  - Insults and attacks on a conscientious objector while in prison do not constitute persecution.

[1] http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/RefDef.aspx