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Women fleeing armed conflict: Seeking international protection in the UK

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Introduction

Although the number of armed conflicts in the world has decreased since the beginning of the 1990s, 80-90% of casualties are now civilians and the majority of armed conflicts today are internal (Peace Monitor 2011: 4-5). Armed conflicts are characterised by mass violations of human rights, including unlawful killings, torture and forced displacement. Armed conflicts also have a differential impact on women because women may be specifically targeted and may be at increased risk of sexual violence and human rights violations because of their place and status in society.

The UN Refugee Convention adopted in 1951 and the development of the United Nations High Commissioner for Refugee's (UNHCR) mandate have sought to provide protection to persons fleeing conflict and civil wars (Goodwin-Gill and McAdam 2007: 20-37). The refugee definition adopted in the Refugee Convention is based on the concept of persecution, the grounds of persecution and the lack of protection from a person's own state. This definition is applied in a case by case individual assessment of entitlement to refugee status by national decision making authorities.

The United Nations' Study on Women, Peace and Security published in 2000 concluded that UNHCR policy directives and guidelines on the protection of refugee women has led to a *de facto* expansion of protection for women and girls during times of armed conflict (UN 2000: 47). The veracity of this statement has to be questioned however, in light of recent and extensive research showing that UNHCR Guidelines and other policy documents on gender are rarely implemented in domestic settings, including in the UK (CEAR et al. 2012: 31-34. Crawley and Lester 2004). This chapter considers how the interpretation of the Refugee Convention in United Kingdom (UK) jurisprudence has adapted to the changing nature of armed conflict generally. It also looks at whether the differential impact of armed conflict on women has permeated into asylum decision making, and if so, to what extent a gender perspective has been integrated into jurisprudence relating to women seeking asylum from armed conflict.¹

In September 2012, UNHCR published a study looking at whether the gender differentiated experiences of women and girls fleeing conflict were recognised by decision makers (UNHCR 2012). The rationale for the research was that despite the existence of domestic research into how refugee claims by women and girls were considered by national authorities (CEAR et al. 2012; Crawley and Lester 2004) there was an absence of research concentrating on asylum claims by women and girls specifically fleeing armed conflict (UNHCR 2012: 6). UNHCR recognised however that their study was preliminary in nature (UNHCR 2012: 8). The UNHCR study also spans a number of jurisdictions, including Australia, Canada, New Zealand, the UK and the United States (UNHCR 2012: 7). This chapter considers how

¹ The law considered in this chapter is correct as of 1 August 2013.

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international protection claims of women fleeing armed conflict are determined in the UK. It seeks to fill a gap by focusing exclusively on the practice in the UK and looking at the extent to which decision makers interpret and apply the Refugee Convention and humanitarian protection regime² taking into account a gender analysis of conflict.

Overall, this chapter considers how the UK judiciary has interpreted the Refugee Convention and humanitarian protection provisions in asylum claims from women who have fled armed conflict and whether there are any resulting protection gaps. The chapter starts by considering the differential impact of armed conflict on women and the extent to which this has been recognised by asylum decision makers in the UK. The second part of the chapter assesses the development of jurisprudence relating to asylum seekers who flee civil wars and armed conflict under the Refugee Convention and considers the impact this has had on the protection of women seeking asylum. The chapter proceeds in the third section to consider whether the humanitarian protection provisions in the UK have filled the protection gap identified in the second part of this chapter. More particularly, it considers whether gender may amount to an 'enhanced risk category' under article 15(c) EU Qualification Directive.³ Finally, this chapter examines the relationship between refugee protection and humanitarian protection and considers whether they are effective in protecting women seeking refuge from armed conflict. This chapter is brief but seeks to highlight some of the issues at stake. There is certainly scope for a more detailed analysis. In light of the length of the conflict in Somalia and the resulting amount of litigation there is a specific emphasis on this country in this chapter. The findings of this research however are equally relevant and applicable to women's asylum claims from any country affected by armed conflict.

The chapter concludes that there is a lack of a gender sensitive approach in UK asylum decision making in claims by women who flee armed conflict. There is a failure by decision-making authorities in the UK to recognise that women and men participate in and experience armed conflict differently. In addition, decision makers fail to interpret the Refugee Convention and the humanitarian protection provisions from a gender perspective. This trend is further compounded by decision makers' tendency to categorise asylum claims into narrowly defined categories. This translates into a protection gap for women seeking asylum in the UK having fled conflict in their home country. The position put forward in this chapter is that the gender differentiated impact of armed conflict may lead to the grant of refugee status, either because women are at risk of persecution because of their gender or because they are at risk of gender-specific forms of violence for one of the Refugee Convention grounds. In addition or alternatively, gender should form an 'enhanced risk category' in accordance with the concept of the sliding scale of indiscriminate violence. This chapter thus advocates that decision makers should consider the gendered character of violence against

² Humanitarian Protection is a form of subsidiary protection status in the UK governed by paragraph 339C of the Immigration Rules (HC 395) and transposing article 15(c) of the EU Qualification Directive 2004/83/EC.

³ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. This Directive was later recast as Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). The UK however chose to 'opt-out' of the recast Directive and is consequently not bound by it or subject to its application (Council Directive 2011/95/EU, preamble para. 50).

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women during armed conflict when determining refugee and humanitarian protection claims in the UK.

I. Violence against Women during Armed Conflict

States have agreed numerous declarations on the relationship between violence against women and armed conflict, including UN Security Council Resolution 1325 on the impact of war on women and UN Security Council Resolutions 1820 and 1888 on sexual violence during armed conflict. Thus, it has been acknowledged that violence against women during armed conflict amounts to human rights violations (UN 1993); that women in situations of armed conflict are particularly vulnerable to violence (UNGA 1993); and that women and armed conflict is an area of concern to be addressed by States, the international community and civil society (UN 1995). The number of international resolutions and recommendations concerned with the differential impact of armed conflict on women clearly demonstrates that the international community has accepted as a fact that women increasingly bear the burden of armed conflicts (Gardam and Charlesworth 2000: 148). It is also generally accepted that women experience armed conflict in a different way than men (Gardam and Charlesworth 2000: 150).

It is not suggested here that there is a strict dichotomy of the experience of violence between men and women as both are actors and victims during armed conflict. Furthermore, women should not be considered a homogenous group as they may have contradictory interests and priorities (UN 2000: 13). Overall, the effects of armed conflict on women vary widely amongst cultures depending on the role of women in society (Gardam and Charlesworth 2000: 150). In addition, it is important to note that each situation of conflict is different and will affect women and men in different ways (UN 2000: 14). This chapter also does not seek to analyse what type of gender-based violence amounts to persecution in asylum decision making in the UK as this has already been done elsewhere (Querton 2012a: 28-30). This section considers existing literature on the differential impact of armed conflict and whether this has generally been taken into account in the refugee status determination process.

Women may be specifically targeted during armed conflict and are increasingly becoming the target of fighting (ICRC 2001b: 11). The nature of armed conflict and specific targeting of women as a method of warfare increases the risk of harm for women (ICRC 2001a: 54). The International Committee for the Red Cross (ICRC) found that “women may be particularly vulnerable if they are held up as ‘symbolic’ bearers of cultural and ethnic identity and the producers of the future generations of the community. In such situations, women may be vulnerable to attack or threats from their own community for not conforming to this role, e.g. by not wearing a veil or by cutting their hair, or conversely they may be targeted by the enemy in order to destroy or subvert this role” (ICRC 2001b: 11).

In addition, women may be disproportionately at risk of harm during armed conflict because of their status and role in society. The Beijing Platform for Action recognised that although entire communities suffer the consequences of armed conflict, women are particularly

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affected because of their status in society and their sex (UNCSW 1998: §46). Women are at risk of particular threats and risk of harm because of their “culturally assigned roles, such as queuing for food or fetching firewood and water” (ICRC 2001a: 44). The risk to women in armed conflict partially stems from the fact that they are often the ones trying to maintain and provide for the everyday survival of themselves and their families (ICRC 2001b: 12).

The impact of armed conflict on women affects all aspects of their lives and these should all be considered during the refugee status determination process. Women may be particularly at risk of harm during conflict because rape is used to humiliate, shame, degrade and terrify a specific ethnic group and women’s sexuality is used as a reward and support for male military action (Charlesworth and Chinkin 2000: 252-253). Women face particular economic problems by being forced out of their homes, they suffer dire living conditions in the area of displacement and they suffer disproportionately from the lack of support networks in the area of displacement. There is also often an absence of medical services and basic supplies for women and they suffer disproportionately from malnutrition as a result of food shortages. Humanitarian aid is less likely to reach women as men are more likely to be responsible for distribution and humanitarian assistance teams may be male-dominated making it difficult to adequately address women’s problems. After armed conflicts have ended, women are not sufficiently included in conflict resolution and reconstructions efforts and they often miss out on post-conflict compensation schemes (Gardam and Charlesworth 2000: 153-159).

Women are disproportionately exposed to many forms of violence during armed conflict, including trafficking, gender-based violence and sexual violence (ICRC 2001a: 56). Both men and women are affected by rape and sexual violence but it is women and girls who are predominantly affected by rape, forced prostitution and sexual slavery (ICRC 2001a: 51). The types of harm and breach of rights that women experience are often different from those suffered by men during armed conflict. Briefly, it is accepted that women may suffer harm to their personal safety; they may suffer from sexual violence and rape (ICRC 2001a: 43, 51) including during flight, in refugee camps or in exchange for food and shelter or while leaving the home/refugee camp to undertake daily routine activities (Charlesworth and Chinkin 2000: 253, 255).

Jurisprudence by the International Criminal Tribunals provides some insight into how crimes of a sexual nature during conflict have been interpreted as war crimes (*ICTY Furundzija 2000*: §201. ICRC 2001a: 244). In the conflict of the Former Yugoslavia in the 1990s, rape was described by the UN Security Council as “massive, organised and systematic” (Charlesworth and Chinkin 2000: 252). In the *Delalic and Others* case, the International Criminal Tribunal for the Former Yugoslavia (ICTY) stated that “there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law”. The Tribunal considered rape to “constitute a physical invasion of a sexual nature, committed on a person under circumstances that are coercive”. It then stated that whenever rape and other forms of sexual violence meet the conditions for torture, they shall constitute torture, in the same manner as any other acts that meet those criteria (*ICTY Delalic and Others 1998*: §476, 479, 496). Rape and sexual violence during armed conflict should clearly fall within the definition of persecution under the Refugee Convention and the definition of serious harm under the UK’s humanitarian protection provisions.

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The subordinate social and economic position of women in society further exacerbates this trend (Charlesworth and Chinkin 2000: 251). Gender inequalities are magnified during armed conflict making women more vulnerable during times of conflict (Gardam and Charlesworth 2000: 150). The ICRC recognises that women are particularly susceptible to suffering associated with armed conflict particularly when they are already discriminated against outside times of conflict (ICRC 2001b: 11). They continue to suffer from pre-conflict violence but to a larger extent (ICRC 2001a: 51. Charlesworth and Chinkin 2000: 255-256). For example, it has been demonstrated that domestic violence tends to increase during situations of armed conflict (ICRC 2001a: 45).

Women are further disproportionately affected by violence during armed conflict because victims of sexual violence may face subsequent problems including ostracism from their community or retribution, unmarried women may no longer be considered worthy of marriage, married women may be rejected by their husbands and families, and women may be accused of adultery, prostitution or dishonouring the family (ICRC 2001a: 54). This effectively means that harm suffered during times of conflict may lead to different forms of harm after the conflict has resolved or reduced in intensity. This needs to be recognised by asylum decision makers to ensure that women fleeing from armed conflict or former conflict zones are provided with effective protection from persecution.

An analysis of UK jurisprudence suggests there is some limited recognition by asylum decision makers of the differential impact of armed conflict on women. For example, in the Court of Appeal, both the Tribunal and the Secretary of State for the Home Department accepted that women in Somalia were and are at an increased risk of harm on account of their gender and noted the prevalence of sexual violence and crime (*HH (Somalia) & Ors v Secretary of State for the Home Department [2010]*: §38). The Immigration Appeal Tribunal (IAT) recognised in the case of *NM and Others* that single women in Somalia face a greater degree of risk of harm than men, including during travel to the area of return. The IAT also found that the degree of severity of ill-treatment was higher for women than men (*NM and Others (Lone women – Ashraf) Somalia CG [2005]*: §118). The Home Office Asylum Instruction on *Gender Issues in the Asylum Claim* states that “in assessing the risk on return, it should be noted that the applicant’s gender can also put her or him at greater risk of persecution, for example the greater risk that women and girls may face of being subjected to sexual or gender-related violence in civil disturbance or armed conflict” (Home Office 2010: 19). Despite these examples demonstrating some understanding of how gender impacts on the level of risk and type of harm suffered during armed conflict, there are still limitations to the manner in which this understanding is translated into the refugee status determination process in the UK.

Some of the Home Office Operational Guidance Notes (OGNs)⁴ contain specific sections on women and gender-related claims for asylum. A closer examination of the categories of women that are recognised by the Home Office as being at risk of persecution or harm on return to their country of origin shows these categories are significantly restrictive (Querton

⁴ Operational Guidance Notes (OGNs) are published by the Home Office on most countries of origin of asylum seekers in the UK. The aim of these policy documents is to provide first instance decision makers with guidance on whether a particular claim may warrant the grant of refugee status, humanitarian protection or discretionary leave to remain and are not legally binding (see Querton 2012a: 50-52). The content and conclusions of the OGNs have been extensively critiqued in various commentaries (Still Human Still Here).

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2012a: 50-52). For example, only women at risk of ‘honour crimes’ are explicitly recognised in Home Office policy on Iraq as a category of asylum seekers who may be awarded refugee status. In the context of Iraqi claims, it has been argued that decision-makers in the UK only recognise as refugees women who chose to exhibit their secularism in the face of growing religious extremism and fail to grant protection to those who fear more ‘general’ threats of rape or trafficking by armed groups. This is explained by a bias towards political forms of harm and ‘public’ life where only those women who oppose or are perceived to oppose the status quo are considered akin to male political opponents (Wankel 2009: 34). In addition, the glaring absence of some groups of women from the OGNs is symptomatic of the manner in which the Home Office considers women’s claims for asylum in the UK. For example, the absence of consideration of the risk to women in the OGN on the Democratic Republic of the Congo is striking despite available evidence that such violence against women is “systematic, widespread and state orchestrated or sanctioned” (SHSH 2012: 29-51).

Despite the UK recognising the differential impact of armed conflict on women in international fora there is a clear failure to translate those declarations into tangible measures in the domestic context of asylum decision-making. Failure to consistently apply a gendered analysis of armed conflict into asylum decision-making has led to a protection gap for women who flee armed conflict and seek asylum in the UK.

II. Refugee Protection

Introduction

Decision making authorities should first consider whether asylum seekers are eligible for refugee status and if they decide against the grant of asylum they must go on to consider asylum seekers’ eligibility for subsidiary forms of protection under the European Convention on Human Rights (ECHR) or the EU Qualification Directive. The rationale is to ensure that those who are at risk of harm on return to their countries of origin are given protection even though they may not be able to show that the risk of harm is for reason of one of the Refugee Convention grounds of race, nationality, religion, membership of a particular social group or political opinion.

This section of the chapter looks at the manner in which the Refugee Convention has been applied to claims made by asylum seekers who come from countries experiencing armed conflict or civil war. More specifically, this section considers the main authority for asylum claims by ‘civil war refugees’ and considers the extent to which this authority has been applied and clarified by other courts and Tribunals in the UK. This section then considers to what extent there has been an appreciation of the gendered nature of conflict and how the jurisprudence impacts on asylum claims lodged by women who flee armed conflict and the resulting protection gaps.

The Decision in Adan

The leading case on how claims by asylum seekers who have fled civil war should be determined under the Refugee Convention is the case of *Adan* which was heard by the House

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of Lords (now the Supreme Court) in 1998 (*Adan, R (on the application of) v Secretary Of State For Department [1999]*). The House of Lords found that Mr Adan who was fleeing clan warfare in Somalia was not a refugee because he did not face any greater danger than the members of his or other clans engaged in the conflict. In this case, the House of Lords developed the concept of ‘differential impact’ which requires that asylum seekers who flee civil war must show that they are at risk of persecution for a Convention reason “over and above the ordinary risks of clan warfare” in order to be recognised as refugees. Their Lordships considered that fearing “the ordinary incidents of civil war” was insufficient to qualify as a refugee. The assumption that persons fleeing armed conflict are not normally considered refugees was based on the UNHCR Handbook (UNHCR 1992: §164). The decision in *Adan* established that if everyone from a region of conflict was at risk of persecution even for a Refugee Convention ground it would be necessary to show a risk over and above other persons sharing the same characteristics. In practice, this decision established a stricter test to qualify as a refugee under the Refugee Convention for asylum seekers who fled situations of armed conflicts. Thus, if asylum seekers came from a region of conflict they had to show a risk of persecution over and above the risks associated with the conflict and that the risk was because of a Refugee Convention ground.

Such an interpretation of the Refugee Convention has been criticised for failing to recognise that war and violence are often the means by which persecutors seek to harm or eradicate entire population groups based on their ethnicity or religious beliefs for example (UNHCR 2011b: 18-19). The decision in *Adan* has been widely criticised, both by academics (Kagan and Johnson 2002: 248) and judicial authorities from other countries. Australia and New Zealand for example expressly rejected the decision as wrong in law because it required an unjustified additional level of differentiation only because asylum seekers were fleeing from countries experiencing armed conflict. It has been argued that the concept of ‘differential risk/impact’ relied on by Lord Lloyd in *Adan* may have been a misreading of the academic literature on the subject (Goodwin-Gill and McAdam 2007: 128). The decision in *Adan* is in stark contrast to the 2001 EU Directive on Temporary Protection which recognises that among “persons who have fled areas of armed conflict or endemic violence” there are some that may fall within the scope of the Refugee Convention (2001/55/EC article 2(c)).⁵

An interpretation of the UNHCR Handbook and the House of Lords’ decision in *Adan* that is consistent with the object and purpose of the Refugee Convention is that asylum seekers cannot qualify as refugees merely because they flee from a situation of conflict. Indeed they must still satisfy decision makers that they fear persecution for reasons of one of the Convention grounds, namely race, nationality, political opinion, religion and particular social group. UNHCR itself has sought to distance itself from a strict reading of the UNHCR Handbook and has expressly stated that under the Refugee Convention, there is no requirement that asylum seekers fleeing situations of armed conflict suffer a form or degree of harm that is different to others with the same profile (UNHCR 2011b: 16).

Adan Applied

⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

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Despite the decision in *Adan* being criticised by other jurisdictions, the decision was followed in a number of instances in the UK. The Court of Appeal first followed the decision in *Adan* in the case of *Kibiti* (*Kibiti v Secretary of State for the Home Department* [2000]). Mr Kibiti came from the Congo and the Court considered the relationship between the presence of a civil war in the country of origin and protection under the Refugee Convention. The Court of Appeal reiterated the guidance set out by the House of Lords in *Adan* that “in a civil war situation, a person can only claim the protection of the Convention if he has a fear of persecution over and above that attaching to his involvement in, or with, the civil war and, further, that that persecution is for a Convention reason”. Paradoxically, Mr Kibiti sought to argue against the finding of the Tribunal that the Congo was in a state of civil war so that he would not need to satisfy the stricter test from *Adan* (*Kibiti v Secretary of State for the Home Department* [2000]: §27). Applying the decision in *Adan*, the Court of Appeal concluded that despite the fact that the civil war in Congo was fought along ethnic lines, Mr Kibiti was not entitled to refugee protection because any “incident was an incident of a civil war” (*Kibiti v Secretary of State for the Home Department* [2000]: §34) and Mr Kibiti “had not established a risk to him over and above that incumbent upon the presence of the civil war” (*Kibiti v Secretary of State for the Home Department* [2000]: §36).

In 2005, the Immigration Appeal Tribunal (IAT) also applied the decision in *Adan* when considering whether any returnees and specifically any female returnees from the UK to Somalia would be at risk of harm. The IAT concluded that Somalia was in a situation of armed conflict and that therefore a differential impact had to be shown over and above the risk of harm relating to the conflict. Despite finding that women faced a greater risk of harm and a higher severity of ill-treatment, the Tribunal concluded that being a single woman returnee was not of itself a sufficient differentiator (*NM and Others (Lone women – Ashraf) Somalia CG* [2005]: §125).

The Court of Appeal in the case of *HH (Somalia)* reviewed the jurisprudence relating to risk on return to Somalia. In this case, the Court applied *Adan* by requiring that HH show an individual threat in the form of a differential impact. More precisely, the Court asked itself the question whether HH could show some threat particular to her over and above that to which the whole population of the area was exposed (*HH (Somalia) & Ors v Secretary of State for the Home Department* [2010]: §27). The Tribunal in the initial appeal had concluded that “on the evidence, being a woman, without more, is not a sufficient differentiator” and had followed the approach of the IAT in *NM and Others*. Although the appeal was only heard on submissions relating to HH’s entitlement to subsidiary protection and not whether she was entitled to refugee protection, the Court said that a woman from a minority clan with no home area where she could call for protection from a majority clan or who was forced to move for security purposes through checkpoints or who would end up living in an a camp or roadside shelter would be reasonably likely to satisfy the requirement of the Refugee Convention. As HH was found to be from a majority clan however, her claim for humanitarian protection failed.

Clarification of the Decision in Adan

In 2008, the Tribunal considered that clarification of the decision in *Adan* was needed, as there had been extensive criticism of the decision within and outside the UK. The Tribunal has now clarified that the terminology of ‘civil war’ adopted in *Adan* is equivalent to that of

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‘internal armed conflict’ adopted in article 15(c) Qualification Directive. Furthermore, although Mr Adan came from Somalia at a time when there was no government or quasi-government structure, the Tribunal has clarified that the guidance in *Adan* is not limited to armed conflicts where there are no governments (*AM & AM (armed conflict: risk categories) Somalia CG [2008]*: §69).

The Tribunal also clarified that the decision in *Adan* is not authority for the proposition that there can be no persecution in situations of armed conflict solely because those affected are equally at risk. Indeed “it is not necessary for a claimant to show that he is more at risk than anyone else in his group, if the group as a whole is subject to oppression”. So if there is group persecution, it is wrong in law to require a person to show harm “over and above” that which each member of the group faces collectively (*AM & AM (armed conflict: risk categories) Somalia CG [2008]*: §72). Most importantly, the Tribunal made it clear that the decision of the House of Lords in *Adan* did not *per se* negate Refugee Convention claims made by those fleeing armed conflict (*AM & AM (armed conflict: risk categories) Somalia CG [2008]*: § 77). As a result of this Tribunal determination, Home Office policy has been amended. The OGN on Somalia which previously stated that asylum seekers had to be able to show fear of persecution for a Refugee Convention ground over and above the ordinary risks of clan warfare (UNHCR 2011b: 18) no longer contains this requirement (Home Office 2012).

Another positive development is the requirement for decision-makers to consider risk *en route* to the proposed area of safety. The Court of Appeal in *HH (Somalia)* concluded that as long as the conditions in Somalia are those found in *AM & AM*, only those Somalis who can get without undue risk to a place of safety or who have access to protection against the endemic dangers can safely be returned (*HH (Somalia) & Ors v Secretary of State for the Home Department [2010]*: §46). Risk *en route* to a proposed area of safety has an important gender dimension (Bennett 2008). This element of risk on return may have a differential impact on women and should be considered in decision making and in future research.

Conclusion

Nevertheless, the limited positive advances relating to understandings of how women may experience armed conflict differently have been set back by flawed concepts of who may be able to provide protection from persecution. For example, even though the Court of Appeal has accepted that women are at higher risk of harm than men in Somalia, this is limited by the finding that majority clan members and some minority clan members may be protected by their own clan or by a clan patron. Women who are from majority clans or those who claim they are from minority clans but are disbelieved by decision-makers are expected to seek protection from members of their clan. In *AM & AM*, the Tribunal did not agree with the Appellants’ submissions that clans or sub-clans had ceased to be the primary entity to which persons in Somalia turned to for protection. Thus, the judiciary in the UK has accepted that women in Somalia are at an increased risk of harm both in terms of occurrence and impact but that most can find protection from persecution and are therefore not entitled to refugee protection.

This conclusion is problematic in several respects, particularly in relation to the assessment of credibility, non-state actors of protection and the nature of gender-based violence itself. Firstly, it has been shown that decision-makers repeatedly disbelieve women seeking asylum

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(Asylum Aid 2011: 51-59). This would make it more likely that decision-makers would conclude that Somali women came from a majority clan with the automatic assumption that their clan would protect them.

Secondly, there is an issue with the extent to which non-state actors can be effective agents of protection (ECRE 2010: pp. 7-9). Somalia may potentially be a different terrain altogether due to the absence of a functioning state structure but simultaneously this is a likely feature of countries where armed conflicts arise. Although the recast Qualification Directive now requires that protection be effective and durable, the UK has not signed up to it and the fact that non-state actors cannot be held accountable limits the scope of the amendments in the recast Directive. Thus the link between non-state actors of protection and protection gaps for women who flee armed conflict should not be over-looked and should be considered for future areas of research.

Thirdly, the presumption that protection from harm is to be found within Somali women's own clan ignores the nature of gender-based violence, which may equally originate from women's own families and communities as from opposing clans or factions during armed conflict (Querton 2012a: 27-32). As seen above women are not only at a differential risk of harm from opposing factions during armed conflict but are also at risk of harm such as domestic violence, forced marriage and FGM which are already present during times of peace but exacerbated during conflict. These types of harm take place within the community and the family. Therefore to conclude that the differential impact of armed conflict on women in Somalia is addressed by the protection of their own clan entirely fails to take into account the specificities of violence against women.

Despite some limited recognition of the gendered impact of armed conflict there is still a significant failure to take this into account in the assessment of all elements of the refugee definition. Despite accepting that women in Somalia are at a higher risk of harm and risk some more severe forms of harm, this is not considered sufficient in itself for the grant of refugee protection. Some advances therefore in UK decision-makers' understanding of gender in the context of armed conflict fail to effectively bridge existing protection gaps for women seeking asylum from armed conflict.

III. Subsidiary Protection

Introduction

This section considers the interpretation of article 15(c) Qualification Directive in UK jurisprudence and assesses the extent to which article 15(c) has been interpreted in a manner that takes account of the differential impact of armed conflict on women. It does not include an analysis of article 3 ECHR although this is certainly an area of research that merits further consideration, in particular in light of the European Court of Human Rights' decision in *N v Sweden* (Application Number 23505/09).

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Article 15(c) Qualification Directive established a new protection category for asylum seekers who do not qualify as refugees but who can show substantial grounds for believing that if returned to their country of origin they would face a real risk of suffering serious harm. Article 15(c) has been transposed into UK legislation in paragraph 339C of the Immigration Rules (HC 395) and results in the grant of humanitarian protection. Serious harm is defined in the Immigration Rules as including “serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict” (Immigration Rules (HC 395): §339C). The provisions of the Qualification Directive have been described as “poorly drafted, hastily adopted and decontextualised subsidiary protection” (McAdam 2010: 4). The drafting history of the Qualification Directive is demonstrative of the manner in which EU Member States purposefully attempt to confine the categories of persons to whom international protection should be extended (McAdam 2010: 4).

To be granted humanitarian protection under article 15(c) asylum seekers must show that there are substantial grounds for believing that they would face a real risk of a serious and individual threat to their life or person by reason of indiscriminate violence in situations of international or internal armed conflict. The manner in which the scope of article 15(c) has been interpreted in the UK has limited its potential for the protection of those who flee armed conflicts. While interpreting article 15(c), decision makers have reverted back to principles that apply under the Refugee Convention, namely that asylum seekers must show that they are at risk of harm because of distinguishing characteristics. This has led the Court of Appeal to conclude that some cases may either fail or succeed both under the Refugee Convention and article 15(c) (*HH (Somalia) & Ors v Secretary of State for the Home Department [2010]*). Consequently, the distinction between refugee and humanitarian protection has become increasingly blurred.

An important gap in article 15(c) is that it applies to times of armed conflict only. As described above, the effects of armed conflict on women can be long-lasting and continue long after conflicts have ended or reduced in intensity. This significantly reduces the protection available to women who have fled armed conflict under article 15(c).

In the UK it is now established that the term “international or internal armed conflict” should be given an autonomous meaning separate from international humanitarian law (*QD (Iraq) v Secretary of State for the Home Department [2009]*: §18, 34-36). The decision has been subject to criticism by some members of the judiciary (Storey 2011) whereas the decision to assess the existence of an international or internal armed conflict from a human rights perspective has been welcomed by others (McAdam 2010: 9). Jurisprudence in the UK has established that there is an internal armed conflict in Iraq (*HM and others (Article 15(c)) Iraq CG [2012]*), Afghanistan (*AK (Article 15(c)) Afghanistan CG [2012]*) and central and southern Somalia, including Mogadishu (*AM & AM (armed conflict: risk categories) Somalia CG [2008]*). However, as will be seen below humanitarian protection is rarely granted as decision makers consider the level of indiscriminate violence to be insufficient thereby resulting in protection gaps for asylum seekers who flee armed conflict and who are refused asylum.

Focusing on the risk to fundamental human rights occasioned by indiscriminate violence during armed conflict is also more encompassing of a gender-based approach. International humanitarian law is more static than human rights law and has not developed in parallel with

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understandings of violence against women and gender roles from a human rights perspective. As the overall object and purpose of the Qualification Directive is the protection of individuals from indiscriminate violence framed in the context of international refugee and human rights law, the focus should remain on the protection needs of asylum seekers in response to the human rights violations from which they are at risk (McAdam 2010: 11).

Indiscriminate Violence

The difficulty and inherent contradiction in establishing a claim for protection which is both based on an “individual threat” and “by reason of indiscriminate violence” led to a referral for a preliminary ruling to the Court of Justice of the European Union (CJEU). The CJEU found that there was no requirement to show that one was specifically targeted by reasons of personal characteristics and that a serious and individual threat can exceptionally be established where the degree of indiscriminate violence characterising the armed conflict is so high that anyone would be at risk of a threat solely because of their presence in the country (*Elgafaji (Justice and Home Affairs) [2009]*: §45).

UNHCR considers that a more thorough analysis of the socio-economic-political context may show that violence which at first may appear indiscriminate does in fact include numerous events of specific targeting of particular individuals or groups. In armed conflicts persons may be targeted for racial, ethnic, religious or political reasons, because they are perceived as opposing one faction or simply because they act as an obstacle by their mere presence. Violence is rarely without underlying motivation or purpose (UNHCR 2011a: 5).

One of the main problems with the concepts adopted in the Qualification Directive and as developed by the CJEU and the UK judiciary is the complete absence of a gender perspective in the notion of indiscriminate violence. Decision makers should consider whether violence against women, generally, but more particularly during armed conflict can ever be indiscriminate. As has been shown in the first section of this chapter, women are at risk of violence precisely because they are women and targeted for this reason during armed conflict. They also experience particular forms of gender-specific harm which is exacerbated during times of conflict.

Recital 26 in the preamble of the Qualification Directive notes that “risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm” and is reminiscent of the decision by the House of Lords in *Adan* and paragraph 164 of the UNHCR Handbook. This recital has complicated decision makers’ understanding of article 15(c) although the CJEU has noted the recital did not invalidate its interpretation of article 15(c) (*Elgafaji (Justice and Home Affairs) [2009]*: §36). The CJEU interpreted recital 26 to mean that there were exceptional situations characterised by “such a high degree of risk that substantial grounds would be shown for believing that that person would be subject individually to the risk in question” (*Elgafaji (Justice and Home Affairs) [2009]*: §37).

A comparative study of the application of article 15(c) in some EU member states showed that an extremely high threshold of indiscriminate violence was needed in the UK before article 15(c) was deemed to be applicable (UNHCR 2011b: 32). For example, the Tribunal has found that the degrees of indiscriminate violence characterising the armed conflicts in Afghanistan

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and Iraq are not of such a high level that it can be shown any civilian is at risk of a threat solely because of their presence in the territory (*HM and others (Article 15(c)) Iraq CG [2012]*; *AK (Article 15(c)) Afghanistan CG [2012]*).

‘Enhanced Risk Categories’

The CJEU developed the concept of a sliding scale of indiscriminate violence. Thus the more one can show that “he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection” (*Elgafaji (Justice and Home Affairs) [2009]*: §39). The Asylum and Immigration Tribunal has followed the CJEU’s approach to the “moving standard in the required level of indiscriminate violence” “when a person is at a higher degree of risk” (*GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009]*:§74).

Requiring such an exceptionally high level of indiscriminate violence before the provision of article 15(c) takes effect effectively results in a significant protection gap for asylum seekers who flee armed conflict. They must then revert back to demonstrating distinguishing characteristics to qualify under article 15(c) in accordance with the concept of the sliding scale of indiscriminate violence. If such a claim is successful however it is highly likely that the claim would also be successful under the Refugee Convention.

UK jurisprudence on the sliding scale of indiscriminate violence has developed the concept of ‘enhanced risk categories’. In other words, if asylum seekers who flee armed conflicts but do not qualify as refugees can show personal characteristics that would result in a higher degree of risk, a lesser degree of generalised violence need to be shown to qualify for humanitarian protection. For example, the Tribunal has found that if asylum seekers in Afghanistan are teachers, local government officers, government officials, or disabled people they fall within an ‘enhanced risk category’ resulting in a lesser degree of generalised violence needed to benefit from the grant of humanitarian protection (*GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009]*: §134). The Tribunal made a distinction between those asylum seekers whose characteristics place them at higher risk of being targeted through indiscriminate violence (teachers) and those who because of their characteristics are more likely to be harmed (disabled people). This chapter has briefly considered how women may be specifically targeted during armed conflict because of their status in society and may be at a disproportionate risk of gender-based violence during times of conflict because of the particular tasks they undertake based on their role in society. Thus, gender is both a characteristic that leads to particular targeting and increases the risk of harm during armed conflict.

The CJEU also said that a serious indication of a real risk would lower the threshold of indiscriminate violence necessary for eligibility for subsidiary protection (*Elgafaji (Justice and Home Affairs) [2009]*: §40).⁶ Therefore, when objective country information demonstrates that women are disproportionately at risk of violence in the context of armed

⁶ See for example article 4(4) Qualification Directive which stipulates that “the fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated”.

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conflict, or there is evidence that women are being specifically targeted, the level of indiscriminate violence need not be as high. There is ample evidence already and recognition by the international community of the differential impact of armed conflict on women as set out above. No jurisprudence in the UK however has ever considered the application of the sliding scale of indiscriminate violence under article 15(c) on this basis.

Measuring the Level of Indiscriminate Violence

The CJEU in *Elgafaji* did not set out specific criteria to assess the exceptional circumstances whereby a situation of indiscriminate violence would be such to justify the grant of subsidiary protection under article 15(c). The UNHCR has suggested a number of such factors including “the general situation in the country, the number of casualties, the question of whether the conflict is countrywide or limited to a specific region, and the applicant’s personal background” (UNHCR 2008: 7).

Academics in the UK have noted that the rate of battle casualties is insufficient to assess the level of indiscriminate violence and have suggested other factors to be considered such as civilian casualties, population displacement and state failure (Lambert and Farrell 2010). More broadly, they have suggested that the phrase “indiscriminate violence must include an assessment of indirect threats on the basis of respect for human dignity” (Lambert and Farrell 2010: 273). UNHCR’s opinion is that all sources of violence must be taken into account, including those directly emanating from the conflict and those resulting from the breakdown of law and order (Lambert and Farrell 2010: 267). The Court of Appeal in *HH (Somalia)* accepted that “indiscriminate violence” was not limited to violence from combatants taking part in the armed conflict and that the provision could be met where arson, robbery and rape perpetrated by non-combatants arose from a breakdown in law and order. This is a welcome development which reflects a more gender-sensitive understanding of the nature and consequences of armed conflict.

The nature and extent of violence against women during armed conflict are also factors that decision makers should take into account to measure the level of indiscriminate violence as violence against women has been recognised as a violation of women’s dignity. Taking these factors into account would be a first step in integrating a gender perspective in the interpretation and application of article 15(c) and reflect the UK’s recognition of the differential impact of armed conflict on women in international fora.

Conclusion

The issues raised in the second section of this chapter in relation to the assessment of credibility, non-state actors of protection and the nature of gender-based violence itself in the context of international protection claims under the Refugee Convention are equally applicable to claims under article 15(c). The Court of Appeal in the case of *HH (Somalia)* concluded that although HH was at risk of serious harm because she was a woman her claim under article 15(c) should fail because as a woman from a majority clan she would be able to find protection from her own clan (*HH (Somalia) & Ors v Secretary of State for the Home Department [2010]*).

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The judiciary in the UK recognises that asylum seekers falling within 'enhanced risk categories' under article 15(c) may be recognised as refugees rather than granted humanitarian protection (*HH (Somalia) & Ors v Secretary of State for the Home Department [2010]*: §29. *GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009]*: §134). Indeed it is likely that those who may be at higher risk of indiscriminate violence because of distinguishing characteristics and thereby eligible for humanitarian protection also meet the Refugee Convention definition including that the risk of persecution is on account of one of the Refugee Convention grounds. As a result article 15(c) has had very little impact on the protection of asylum seekers fleeing armed conflict in the UK (UNHCR 2011b: 26, 56), partly because of the extremely high threshold of indiscriminate violence required before a person without distinguishing characteristics would be at risk and partly because asylum seekers who fall into an 'enhanced risk category' stand a fair chance to be recognised as refugees under the Refugee Convention. UNHCR suggests that this narrow application of article 15(c) is due to a fear of *prima facie* group recognition leading to opening the 'floodgates' of asylum seekers (UNHCR 2011b: 30).

This section has highlighted the inherent contradiction of the notion of indiscriminate violence, in particular in the context of armed conflict when considered from a gender perspective. This section has suggested how gender may be a personal characteristic relevant to the concept of the sliding scale of indiscriminate violence and that women may amount to an 'enhanced risk category'. A more inclusive interpretation of article 15(c) is necessary to address the protection gaps for women asylum seekers who may not qualify as refugees because of the failure by the judiciary to consistently recognise the differential impact of armed conflict on women and who are unable to return to their country of origin because of the situation of armed conflict.

Conclusion

The nature of conflicts in the world today has changed since the drafting of the Refugee Convention in the middle of the twentieth century. Civilians now bear the burden of casualties and most conflicts in the world are internal conflicts. This chapter has sought to consider the extent to which jurisprudence in the UK has interpreted the Refugee Convention and article 15(c) Qualification Directive in a purposeful manner to take account of the changing nature of conflict and the differential impact of armed conflict on women.

This chapter has set out that women are differentially affected by armed conflict as a result of their gender and their status in society. This makes them both a target of violence and more vulnerable to harm. Women are also disproportionately affected by certain forms of violence such as rape and sexual violence. The consequences of this violence often continue to affect women when conflicts end or reduce in intensity and may result in different types of violence in times of peace. The experiences of women in post-conflict societies are different from men as the effects of armed conflict are long lasting (Gardam and Charlesworth 2000: 160) and the risk of harm does not necessarily end with the end of the conflict. In light of this, limiting the applicability of article 15(c) during times of armed conflict may not address the real international protection needs of women who have experienced armed conflict.

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Jurisprudence and policy documents in the UK show that there is some limited awareness and acceptance of the differential impact of armed conflict on women. However, the practical effect of this on the protection of women fleeing armed conflict is negated by the failure to integrate a gender sensitive approach into every aspect of asylum decision making. Refugee status for example, is denied to some Somali women on the basis that they can seek protection from their clans even though they may also be at risk of harm from their own communities. In addition, there has been no consideration of whether gender may amount to an 'enhanced risk category' under the provisions of article 15(c) Qualification Directive thereby requiring a lesser degree of indiscriminate violence.

Jurisprudence in the UK and Home Office policy have also led to a 'categorisation' of asylum seekers into carefully defined categories that deserve the grant of refugee protection or humanitarian protection. This 'categorisation' is motivated by a fear that an inclusive interpretation of the Refugee Convention and article 15(c) will result in increased recognition rates in the UK. This chapter has suggested that the reluctance by decision makers to grant refugee status or humanitarian protection to asylum seekers fleeing armed conflict is due to a fear of opening the 'floodgates'. An analogy can be drawn with the reticent manner in which the Tribunal and the Home Office interpret the Refugee Convention ground of particular social group in cases where women are at risk of persecution precisely because they are women (Querton 2012b). However, not all members of a group are necessarily at risk and the individual case-by-case assessment of asylum claims in the UK would invalidate any such concerns.

There can be no justifications for limiting an inclusive and gender-sensitive interpretation of the Refugee Convention and humanitarian protection provisions. Whether in times of conflict or of peace, decision makers have failed to understand and explore the impact of armed conflict on women seeking asylum in the UK. This exclusionary practice and lack of an integrated gender perspective into asylum decision making has led to a protection gap in the UK for women asylum seekers fleeing armed conflict.

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Bibliography

Asylum Aid (2011), *Unsustainable: The quality of initial decision making in women's asylum claims*

Bennett, C. (2008), *Relocation, Relocation: The impact of internal relocation on women asylum seekers*, London: Asylum Aid

CEAR et al. (2012), *Gender-related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU member states*

Charlesworth, H. and Chinkin, C. (2000), *The Boundaries of International Law: A Feminist Analysis*, Manchester: Manchester University Press

Crawley, H. and Lester T. (2004), *Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe*, UNHCR

Durieux, J. F. (2008), *Salah Sheekh is a Refugee: New Insight into Primary and Subsidiary Forms of Protection*, Refugee Studies Centre, Working Paper Series No. 49

European Council for Refugees and Exiles (ECRE) (2010), *Comments on the European Commission Proposal to recast the Qualification Directive*

Gardam, J. and Charlesworth, H. (2000), 'Protection of Women in Armed Conflict', *Human Rights Quarterly*, 22: 148-166

Goodwin-Gill, G. S. and McAdam, J. (2007), *The Refugee in International Law*, Oxford: Oxford University Press, Third Edition

Home Office (May 2013), *Immigration Statistics: January to March 2013*

International Committee for the Red Cross (ICRC) (2001a), *Women Facing War: ICRC study on the impact of armed conflict on women*

International Committee for the Red Cross (ICRC) (2001b), *Women Facing War: ICRC study on the impact of armed conflict on women: Executive Summary*

Kagan, M. and Johnson, W. P. (2002), 'Persecution in the Fog of War: The House of Lords' Decision in *Adan*', *Michigan Journal of International Law*, Vol. 23: 247-264

Lambert, H. and Farrell, T. (2010), 'The Changing Character of Armed Conflict and the Implications for Refugee Protection Jurisprudence', *International Journal of Refugee Law*, Vol. 22, No. 2: 237-273

This is an Accepted Manuscript of a book chapter published by Routledge Press in *Gender in Refugee Law: From the Margins to the Centre* in 2014, available online:

<https://www.routledge.com/Gender-in-Refugee-Law-From-the-Margins-to-the-Centre/Arbel-Dauvergne-Millbank/p/book/9781138670419>

McAdam, J. (2010), *Individual Risk, Armed Conflict and the Standard of Proof in Complementary Protection Claims in the European Union*, Centre for European Studies, ANU

Peace Monitor (2011), 'Trends in Armed Conflicts Today', *Changing Perspectives*, Swedish Peace and Arbitration Society: 4-5

Querton, C. (2012a), *"I feel Like as a Woman I'm not Welcome": A Gender Analysis of UK Asylum Law, Policy and Practice*, London: Asylum Aid

Querton, C (2012b), *The Interpretation of the Convention Ground of 'Membership of a Particular Social Group' in the Context of Gender-related Claims for Asylum: A Critical Analysis of the Tribunal's approach in the UK*, Refugee Law Initiative, Working Paper Number 3

Still Human Still Here (2012), *A Commentary on the May 2012 Democratic Republic of Congo Operational Guidance Note*

Storey, H. (2011), *Armed conflict and refugee law: Are the courts getting it right?* Paper delivered in a personal capacity at the International Refugee Law, 2nd Series, London.

United Kingdom Home Office (2010), *Asylum Instruction on Gender Issues in the Asylum Claim*

United Kingdom Home Office (2012), *Somalia Operational Guidance Note*, v. 23.00

United Kingdom Home Office (May 2012), *Democratic Republic of the Congo Operational Guidance Note*, v. 10.0

United Nations (2000), *Women, Peace and Security*, study submitted by the Secretary-General pursuant to Security Council Resolution 1325

United Nations (1993), World Conference on Human Rights, Vienna

United Nations (1995), Fourth World Conference on Women, Beijing

United Nations Commission on the Status of Women (UNCSW) (March 1998), report to the Secretary-General, Forty-second session

United Nations General Assembly (UNGA) (1993), Declaration on the Elimination of Violence against Women

United Nations High Commissioner for Refugees (UNHCR) (1992), Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva: UNHCR, HCR/IP/4/Eng/REV.1

United Nations High Commissioner for Refugees (UNHCR) (2007), *Asylum in the European Union: A study of the implementation of the Qualification Directive*

This is an Accepted Manuscript of a book chapter published by Routledge Press in *Gender in Refugee Law: From the Margins to the Centre* in 2014, available online:

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United Nations High Commissioner for Refugees (UNHCR) (2008), *Statement on Subsidiary Protection under the EC Qualification Directive for People Threatened by Indiscriminate Violence*

United Nations High Commissioner for Refugees (UNHCR) (2011a), *Protection Gaps in Europe? Persons Fleeing the Indiscriminate Effects of Generalised Violence*, Brussels

United Nations High Commissioner for Refugees (UNHCR) (2011b), *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, Geneva: UNHCR

United Nations High Commissioner for Refugees (UNHCR) (2012), *Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention*, Geneva: Division of International Protection, PPLA/2012/06

Wankel, M. (2009), 'Obscuring the Realities of Gender-Based Violence: European Policies on Iraqi Asylum Claims', *Surfacing*, Vol. 2, No. 1: 18-39.

Legislation

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

United Kingdom Immigration Rules (HC 395)

Case Law

Adan, R (on the application of) v Secretary Of State For Department [1999] EWCA Civ 1948 (23 July 1999)

AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163(IAC)

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091

Delalic and Others (Judgment), ICTY 16 November 1998

Elgafaji (Justice and Home Affairs) [2009] EUECJ C-465/07 (17 February 2009)

Furundzija (Appeal), ICTY 21 July 2000

GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044

This is an Accepted Manuscript of a book chapter published by Routledge Press in *Gender in Refugee Law: From the Margins to the Centre* in 2014, available online:

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HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022

HH (Somalia) & Ors v Secretary of State for the Home Department [2010] EWCA Civ 426 (23 April 2010)

HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC)

Horvath v. Secretary of State For The Home Department [2000] UKHL 37 (6 July 2000)

Hoxha & Anor v Secretary of State for the Home Department [2005] UKHL 19 (10 March 2005)

KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 00023

Kibiti v Secretary of State for the Home Department [2000] EWCA Civ 3022 (21 July 2000)

Minister for Immigration and Multicultural Affairs v Ibrahim, High Court of Australia, 26 October 2000, [2001] I.N.L.R. 228

MK (documents – relocation) Iraq CG [2012] UKUT 00126 (IAC)

N v Sweden, Application Number 23505/09, 20 July 2010

NM and Others (Lone women – Ashraf) Somalia CG [2005] UKIAT 00076

QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 (24 June 2009)

Refugee Appeal (No. 71462/99) Refugee Status Appeals Authority of New Zealand, 27 September 1999, [2002] I.N.L.R. 311