

**Women in Refugee Law (WiRL) Conference**  
**Tuesday 30 November 2021, 10:00-16:30 (GMT)**

**Biographies of chairs, panellists and contributors**

**Deborah Anker** is Clinical Professor of Law and Founder of the Harvard Law School Immigration and Refugee Clinical Program (HIRC). She has taught law students at Harvard for over 30 years. Author of a leading treatise, *Law of Asylum in the United States*, Anker has co-drafted ground-breaking gender asylum guidelines and amicus curiae briefs. Professor Anker is one of the most widely known asylum scholars and practitioners in the United States; she is cited frequently by international and domestic courts and tribunals, including the United States Supreme Court. Deborah Anker is a pioneer in the development of clinical legal education in the immigration field, training students in direct representation of refugees and creating a foundation for clinics at law schools around the country.

**Younous Arbaoui** is Assistant Professor of Migration Law at Vrije Universiteit Amsterdam. His research interests lie in the field of family-related asylum claims and focus on the dilemma of doing justice, through refugee law, to individual freedoms without jeopardizing family life, and vice versa. His dissertation (2019) presents a critical frame analysis of the Dutch debate on family reunification and asylum claims involving forced marriages. Younous previously worked as Team Leader within the Dutch Regional Refugee Council and he is the founder and volunteer president of the Clinique Juridique Hijra providing legal aid to asylum seekers in Morocco.

**Gabriella Bettiga** is a solicitor in the UK, accredited as an Advanced Caseworker with the Law Society and as Level 3 OISC. She is the Director of MGB Legal, a firm dealing with personal and business migration, and a member of the Tribunal Procedure Committee. Gabriella has been Chair of the Independent Cost and Funding Adjudicators at the Legal Aid Agency for many years. She is a trustee of the Immigration Law Practitioners Association (ILPA) and case note co-editor of the ILPA Journal. She regularly delivers training and writes articles on immigration for national and international publications.

**Heaven Crawley FAcSS** joined Coventry University in September 2014 from where she leads the MIDEQ Hub, which explores relationships between migration, inequality and development in the Global South. Educated at the Universities of Sussex (1989-1994) and Oxford (1995-1999), Heaven has more than 30 years' experience of migration research within government, national and international organisations and academia. Heaven has written and campaigned extensively on gender issues in claims for refugee protection and was a founding member of the Refugee Women's Legal Group (1996-2002). Her first book *Refugees and Gender: Law and Process* (2001) remains a seminal work in this area.

**Moira Dustin** is a tutor and module convenor on 'Gender, sexual identity and age in the refugee context', part of the MA in Refugee Protection and Forced Migration Studies at the School of Advanced Study, University of London. She is Lecturer in the School of Law, Politics and Sociology at the University of Sussex where, from 2016 to 2020, she was the UK lead on the European Research Council project, 'SOGICA - Sexual Orientation and Gender Identity Claims of Asylum: A European human rights challenge'. Moira was also an Advisory Committee member of the Women's Project at Asylum Aid from 2009 to 2019 and previously worked at the Refugee Council in the UK. She is on the Editorial Board of SN Social Sciences.

**Nora Honkala** is a Lecturer in Law at the School of Law, University of Reading. She has also previously worked as a Lecturer in Law at City, University of London, and as a Visiting Lecturer at the Henley Business School. She has published on gender-based persecution claims, particularly involving forced marriage, as well the rights of asylum seeker women and refugees more generally. Nora's research interests lie primarily in the field of gender and law, particularly feminist and socio-legal approaches to international refugee law, human rights law and public international law. Together with Flora Renz (Kent) she convenes the Gender, Sexuality and Law Stream at the UK's Socio-Legal Studies Association.

**Catriona Jarvis** is a former Judge of the United Kingdom Upper Tribunal (Immigration and Asylum Chamber), who retired toward the end of 2013 with 21 years' experience as a judge in the fields of immigration, asylum and human rights law. She has extensive experience working internationally on refugee rights, especially in relation to women and children, including publications and training work with the United Nations Refugee Agency (UNHCR), the European Council on Refugees and Exiles (ECRE) and other organisations. She is Chair of the Board of Prisoners of Conscience Appeal Fund; a Trustee and former Chair of the Inderpal Rahal Memorial Trust and Chair of the Unaccompanied Migrant Children's Court Steering Group. She has written on a variety of aspects of refugee and human rights law, has been working with non-governmental organisations on Lesbos and, separately, with an academic research project concerning deaths in the course of the migrant journey "Mediterranean Missing", as well as 'Last Rights.'" She is the author of "In Potters' Fields" a viewpoint piece published in November 2015 that seeks to throw light on the matter and calls for action including the development of guiding protocols.

**Sara L McKinnon** is Associate Professor of Rhetoric, Politics and Culture in the Department of Communication Arts at the University of Wisconsin-Madison with affiliations in the Department of Gender and Women's Studies, Latin Americas, Caribbean, and Iberian Studies, and the Human Rights Program. She is the author of *Gendered Asylum: Race and Violence in US Law and Politics* (University of Illinois Press, 2016), which charts the incorporation of gender provisions in US refugee and asylum law within the context of broader national and global politics. Her current work examines US foreign policy rhetorics that frame Mexico as violent. Drawing on archival research and field work, this project examines how violence in Mexico is imagined, what is erased as violence, the material impacts of this discourse, and what this image of the country does for US geopolitical and economic interests.

**Maggy Moyo** is a selfless human rights campaigner. She is passionate about advocating for human rights including the rights of immigrants, migrants, marginalised groups (e.g. LGBT rights) and those of vulnerable women, children, the disabled and the elderly. She fights against social injustice and advocates for equality. She is a trustee at Manchester Rape Crisis. She is currently working for Right to Remain as the Organiser for Manchester for "These Walls Must Fall" (TWMF) campaign, a network of community-based campaigners who are part of a movement to end immigration detention in the UK. Right to Remain is a registered charity which works with communities, groups and organisations across the UK providing information, resources, training and assistance to help people to establish their right to remain and challenges injustice in the immigration and asylum system. Maggy is also an active member of Restoration of Human Rights (ROHR) Zimbabwe and is on the Executive Committee of the North Branch of their UK Chapter.

**Helen O'Nions** is an Associate Professor of law at Nottingham Law School, Nottingham Trent University. She has researched in the fields of international human rights, the Roma and European asylum policy for over twenty years. Helen is the author of *Asylum: A Right Denied*

[Routledge 2014] which explores the future of the Common European Asylum System and its compliance with the right to seek and enjoy asylum under international law. More recently Helen has undertaken empirical work exploring the impact of cuts to legal advice on persons with insecure status in Nottingham and is founder of the Nottingham Immigration Network (that brings organisations together to promote best practice in advice provision).

**Christel Querton** is a Wallscourt Fellow in Law at the University of the West of England (Bristol) and has worked for over ten years in the field of refugee, immigration and human rights law. Her research explores international refugee law, armed conflicts and gender. Christel is a Research Affiliate at the Refugee Law Initiative and sits on the Editorial Board of the Refugee Law Initiative's Working Paper Series. Christel previously practised as an asylum, immigration and human rights barrister and she worked with the Women's Project at Asylum Aid as Legal Policy Officer (2010-2012) and then as Advisory Committee member (2012-2019).

**Kalyango Ronald Sebba** is a lecturer in the School of Women and Gender Studies and the Department of Social Work and Social Administration, Makerere University, Kampala Uganda. His PhD topic is 'Returning home: Gender and Choice among Internally Displaced Persons in Gulu district, Northern Uganda. He teaches courses on women in Conflict and post conflict situations; forced migration; refugee livelihoods and household economy; Migration Health, Gender Based Violence and Children in conflict. Currently he is a co-coordinator on a Certificate course- Migration Health run by the School of Social Sciences Makerere University, Center for health and Migration -University of Vienna and supported by the IOM. He has coordinated two collaborative programs between Makerere University and the University of Oldenburg, Germany that is Implementing Migration Studies (IMMIS) and European Masters in Migration and Inter Cultural Relations (EMMIR). He also served as Senior Education and Training Officer for the Refugee Law Project in Kampala between 2000-2002 where he established a training program on Human Rights and Refugee Law. He has worked as a national consultant for several organisation such as School of Oriental and African Studies, UK; the World Bank, Uganda Bureau of Statistics, FAO, UNFPA, WHO, American Refugee Committee, Regional Centre for Quality of Health Care and Fredrich Ebert Foundation among others. Ronald is a member of several academic associations such as the International Association for the Study of Forced Migration (IASFM) and Council for the Development of Social Research in Africa (CODESRIA), Social Science Research Council among others.

**Janna Wessels** is Assistant Professor of Migration Law at Vrije Universiteit Amsterdam. Her research investigates the link between human rights and migration law from the perspective of feminist/queer theory as well as critical legal theory approaches. Her monograph 'The Concealment Controversy – Sexual Orientation, Discretion Reasoning and the Scope of Refugee Protection' (CUP 2021) interrogates the refugee definition from a queer perspective. She previously worked as Research Associate for an Australian Research Council funded international comparative project on Gender-related harms in Refugee law, based at University of Technology Sydney (UTS), Australia and University of British Columbia, Canada.

**Olajumoke Yacob-Haliso** is Professor of Political Science at Babcock University in Nigeria. She specialises in international relations, with a research focus on African refugee women, peace and conflict, gender and politics in Africa, and the comparative politics of African states more broadly. Olajumoke's articles have appeared in African Affairs, the Journal of Peacebuilding and Development and she is co-editor of the Palgrave Handbook of African Women's Studies (2021). She is currently co-chair of the Feminist Theory and Gender Studies (FTGS) Section of the International Studies Association.

## Panellist abstracts

### 10:30-12:00 Panel 1: Protection and Credibility

#### **Proving the impossible: navigating the intersection of scepticism, gender blindness and ethnocentricity in the asylum tribunal – Helen O’Nions**

Asylum determination in the UK is situated within a broader culture of disbelief and hostility.<sup>1</sup> Adopting a critical legal studies position, this article will suggest that the intersection of scepticism with ethnocentric and gender-blind expectations of behaviour impacts on the reasoning of the asylum judge, to the particular detriment of women asylum seekers.

Analysis of the reasoning in first-tier decisions suggests that ethnocentric assumptions predicated on ‘common sense’ can influence and dictate judicial outcomes. Rather than viewing these complicated truths holistically and empathetically, judges exhibit a tendency to isolate specific events from their context. A transposition of liberal socio-cultural expectations to women asylum applicants from culturally conservative and patriarchal societies can result in outcomes that reproduce the flaws characterising initial decision-making. The opportunity for an appellant to understand and rebut these assumptions is seldom available.

The analysis is informed by the experiences of fourteen women whose asylum appeals were rejected by the first-tier tribunal. Whilst it is reasonable to expect that refused appellants would be disappointed by the outcome, the most commonly expressed response was one of confusion. Appellants thought their hearing had gone well only to find their testimony roundly rejected for reasons which included minor inconsistencies, evidential gaps and, most significantly, their failure to behave ‘rationally’. Appellants could not recall being asked about these determinative issues in their hearing. Thus, they were deprived of an opportunity to explain their behaviour.

It is further suggested that the absence of gender guidelines, coupled with limited judicial training, leaves a vacuum in which iterations of ethnocentric ‘common-sense’ and unrealistic, gendered expectations take root. Appellants are thus deemed deceitful when unable to satisfy a seemingly impossible burden of proof.

#### **The notion of ‘protection’ in gender-related asylum claims: game-changing developments at the European Courts? – Janna Wessels and Younous Arbaoui**

In gender-related asylum claims where harm arises from non-state actors, it must be established whether the claimant can find protection in their country of origin. The criteria for the assessment of availability and effectiveness of protection are, however, obscure and have been addressed very differently in different jurisdictions.<sup>2</sup> Two recent judgments of the European Courts appear to be game-changers in that regard.

In *B and C* (2020)<sup>3</sup>, the European Court of Human Rights (ECtHR) held that the immigration authorities must *proprio motu* verify the availability of state protection against ill-treatment by non-State actors. This judgment draws on the non-gender related case of *J.K. and others* (2016)<sup>4</sup>

---

<sup>1</sup> Anderson, J, Hollaus, J, Lindsay, A and Williamson, C *The Culture Of Disbelief An Ethnographic Approach To Understanding An Under-Theorised Concept In The UK Asylum System* 2014 Refugee Studies Centre, Oxford

<sup>2</sup> Arbaoui 2019, Wessels 2019.

<sup>3</sup> ECtHR, *B and C v. Switzerland* (2020).

<sup>4</sup> ECtHR, *J.K. and others v. Sweden* (2016).

and stands in stark contrast to previous ECtHR's jurisprudence in gender-related cases where the availability and effectiveness of state protection was not a separate part of the ECtHR's assessment.

In a parallel development, the Court of Justice of the European Union (CJEU) held in *OA* (2021)<sup>5</sup> that 'private actors' cannot be considered as 'actors of protection'. Following the judgment in *Salahadin Abdullah and others* (2010)<sup>6</sup>, this is only the second CJEU judgment on this question and provides important clarification in light of widespread contrary practice in EU Member States.

These developments appear to address the structural and much-criticised gaps regarding the notion of 'protection' in gender-related asylum jurisprudence. This paper assesses these judgments in the light of previous jurisprudence in order to establish whether they indeed have the potential of being game-changers for gender-based asylum claims. In doing so, it draws out the notion of protection that emerges from the jurisprudence of each Court, compares their approaches and identifies possible conflicts between them.

### **Non-State Actors of Protection in Refugee Law and the Sliding Scale of Protection for Refugee Women – Christel Querton**

The notion of non-state actors as agents of protection in international refugee law is a relatively recent concept. The codification of the principle in the EU Qualification Directive prompted debates regarding its legitimacy and many considered it an unwarranted expansion of the traditional understanding of protection in refugee law. Although there have been discussions of whether refusing refugee protection on the basis that protection is available from non-state actors in the country of origin is in accordance with international refugee law, and if so on the basis of what characteristics (O'Sullivan, Hathaway, Storey), this article undertakes a feminist enquiry into the development and application of the principle and assesses its impact on the protection of refugee women in Europe.

The article argues that although the gradual recognition of non-State actors as agents of persecution was hailed as a success in ensuring better protection for refugee women at risk of harm from their community or family, the concomitant development of the concept of non-state actors as agents of protection has had a detrimental impact on the protection of refugee women in Europe. More specifically, the paper identifies a sliding scale of protection in the practice of different institutions, including Governments, the European Court of Human Rights, and the United Nations High Commissioner for Refugees. Although the practice has gone largely unnoticed, it has resulted in an untenable narrowing of the category of women at risk to one of 'lone' women.

The article rejects the notion that non-State actors, such as male family members and undefined social networks, have the necessary qualities to provide accessible and effective protection to women and suggests that the expectation that women seeking asylum return to seek protection from those actors amounts to a requirement of taking avoiding action and, in itself, a breach of their human rights.

---

<sup>5</sup> CJEU, *Secretary of State for the Home Department vs. OA* (2021).

<sup>6</sup> CJEU, *Salahadin Abdullah and others v. Germany* (2010).

## **13:00-14:30 Panel 2: Politicising Women's Claims**

### **'An Unhappy Interlude'- Trivialisation and Privatisation of Forced Marriage in Asylum Seeker Women's Cases in the UK – Nora Honkala**

This article examines asylum-seeking women's appeals involving forced marriage at the Upper Tribunal (Immigration and Asylum Chamber) and its predecessors in the UK over the past 15 years. Since the 1980s, significant developments have occurred in the field of gender and asylum. Feminist academics and activists have long critiqued the gender bias inherent in international law and promoted a gender-sensitive interpretation of the Refugee Convention. Through the pronouncements of the UNHCR, its Guidelines and the development of national gender guidelines, including in the UK, it is now clear 'on paper' that forced marriage can amount to serious harm. Nevertheless, in practice, many women who claim asylum on the basis of forced marriage struggle to have their claims understood as ones involving serious harm within the meaning of the Refugee Convention. A systematic study of the discourse surrounding this type of gender-based persecution is provided. The discussion brings to the fore two prevalent themes. First, the Tribunal often risks conflating arranged and forced marriage, which limits the issue to the 'private' sphere rather than recognising it as a matter of gender-based persecution. Second, it is shown that there is a prevalence of the use of euphemisms. This has the effect of trivialising the harm of forced marriage.

Drawing on feminist and post-colonial scholarship, the article argues that underlying both of these themes are ethnocentric views of 'culture' as well as constraining views of gendered harm as 'private', which culminate in and perpetuate gendered and racialised stereotypes of women seeking asylum. By exploring the ways in which gendered harm is approached by adjudicators we can better understand the intersectionalities, such as between gender and race, inherent in such cases and appreciate the resistance to equitable change in the implementation of refugee law to women's asylum claims.

### **Engendering Decolonisation of the Study of African Refugee Women – Olajumoke Yacob-Haliso**

Relatively sparse recent scholarship has sought to deconstruct, decentre, and decolonise Refugee Studies. Decolonisation is aimed at identifying the ways and means Refugee Studies has been dominated by western colonial politics, research practices, methodologies, and epistemologies of the global North; showing the impact of these on what we know and believe about global South realities, and alternative paths for research. In this paper, I seek to extend this discourse to knowledge production on African refugee women, drawing together, perhaps for the first time, an interdisciplinary corpus including insights from Refugee Studies, African Studies, African Gender/ Feminist Studies and International Relations. I argue for the application of lessons learnt from efforts at decolonising African Studies broadly, African Women's Studies specifically, and for measures to address these issues. This will be achieved at four levels. First, I analyse the coloniality of approaches to African refugee management and refugee research from a critical historical perspective. Second, I deliberately impose the analytical framework for decolonisation of African women's studies, to analysis of the causes, protection problems and solutions for African refugee women. African gender and women's studies, which emerged from the late twentieth-century, has consistently spotlighted and resisted the patriarchal, imperialistic global structures that have shaped African women's lives in multiplex and intersectional ways, but this approach has not been hitherto fully applied to studies of African

refugee women specifically. Third, I proceed to map the impact of these trends on knowledge production about African refugee women, and fourth, propose alternative paths for scholars, policymakers and humanitarian actors in this domain of activity.

### **The personal is political: lesbian and bisexual women's asylum claims in the UK – Moira Dustin**

This article argues that lesbian and bisexual women claiming asylum in the UK have not benefitted sufficiently from the insights of feminist scholars and activists, and that this is because their claims tend to be seen largely through the lens of sexual orientation rather than gender. The article builds on interviews with asylum claimants and stakeholders since 2016 to extend familiar debates about gender-based violence and women's asylum in a new direction. One strand of feminist discourse, dating back to the 1970s, identifies violence as both a cause and consequence of women's oppression, using 'the personal is political' paradigm to show that the harms experienced in the private sphere are a human rights violation. Feminist refugee scholarship applies this to international refugee law, which has historically concerned itself with persecution by agents of the state in a public context, in part by harnessing international human rights law. This article takes these insights one step further, applying them to the experiences of lesbian and bisexual women claiming asylum in the UK and who have experienced gender-based violence. It finds that if a woman's claim is presented as based on sexual orientation, that triggers a determination process almost entirely focused on the claimant's credibility as lesbian or bisexual. The claim is then often rejected because of minor inconsistencies, while the violence that caused the woman to seek protection is overlooked. The article goes on to consider whether the default application of the Particular Social Group Refugee Convention ground to these claims encourages a silo-based and victim-focused approach by advocates and decision-makers. It concludes by considering whether making greater use of the political opinion ground offers more opportunities for rights-based protection for all women seeking protection.