

Women in Refugee Law Initiative (WiRLI) Roundtable

Tuesday 4 May 2021

Summary Note

This is a summary of key points discussed at the Roundtable and which will be the basis for taking forward the WiRLI initiative.

The Roundtable was informed by a Concept Note circulated in advance of the event.

Conveners' welcome and introduction¹

Christel welcome participants to the Roundtable. She is a Wallscourt Fellow in Law at the University of the West of England and has worked for a number of years on issues concerning refugee women in various roles. Currently her areas of research include refugee women, but also more broadly refugees fleeing armed conflicts. Christel's work included comparative research in the context of the European Union. Previously she was in practice in the area of asylum, immigration and human rights law, and prior to that she worked at Asylum Aid on its Women's Project.

Moira echoed Christel's welcome and introduced herself. She is a lecturer in the School of Law at the University of Sussex, although her background is not law but gender studies and feminist theory. She has also worked with refugee organisations in the UK. Moira recently finished working on a four-year research project about sexual orientation and gender identity-based asylum in Europe (SOGICA).

Christel explained the background to the Women in Refugee Law Initiative. Moira and she decided to set up this Initiative due to a noted decrease in attention to the question of women in refugee law in recent years. This may be partly due to two assumptions. Firstly, that improvements in the protection of refugee women following high-profile cases and the adoption of gender guidelines in numerous jurisdictions mean there is no longer seen to be a pressing need for enquiry in this area. And secondly, there may be a perception that scholarship on this subject is lacking in originality and therefore research projects are no longer seen as priorities for support and funding. These concerns are not new and were highlighted in Efrat, Catherine and Jenni's project and edited book entitled 'Gender in Refugee Law' published in 2014 (which some Roundtable participants contributed to, including Christel).

As a result of these trends, Christel and Moira were concerned there may have been a roll-back on past successes in practice, and a gap in identifying contemporary issues. This is not to suggest that there is no longer any interest and research in this area. Many of those present are continuing to explore and work on issues that concern women seeking asylum, and the hope is that bringing us together will provide some impetus in re-centring the study of refugee women within refugee law and beyond. The aim was to gather scholars, practitioners, policy-makers and women with lived experiences of the asylum process around the table, and Christel and Moira are extremely grateful to those who have responded positively to their invitation.

Christel explained that the purpose of the Roundtable was two-fold: Firstly, to have an open brainstorm for anyone to share what they see as the gaps in protection of refugee women and

¹ Dr Christel Querton Christel.Querton@uwe.ac.uk
<https://people.uwe.ac.uk/Person/ChristelQuerton>

Dr Moira Dustin m.dustin@sussex.ac.uk
<https://profiles.sussex.ac.uk/p400858-moira-dustin>

highlight some of the issues that need wider attention. Hopefully, the Concept Note that was shared provided some food for thought in this respect. Secondly, Christel and Moira will share some ideas about how this initiative might be taken forward and ask participants for their thoughts and ideas as to how it could most effectively achieve its objectives.

Brainstorm regarding gaps in the protection of refugee women and relevant issues.

Following these introductory remarks, participants at the roundtable were invited to introduce themselves and identify the gaps and challenges in relation to the protection and rights of asylum-seeking and refugee women. Points that were made included the following:

Women in Refugee Law:

- It was pointed out that the concerns raised by this initiative are not new but date back at least a decade so it is disappointing to see so little progress in the intervening period.
- In the face of the need to unite against hostile Government proposals, it is hard to be heard as a campaigner who focuses on women's issues.
- The difficulties that NGOs have had in continuing their work in providing direct support to women since the start of the pandemic was pointed out.
- Concerns were felt about the loss of mechanisms in the UK for holding the Government to account in relation to policies and legislation affecting women claiming asylum, visible in the closure of projects supporting women, such as the Asylum Aid Women's Project.
- The vast majority of women supported by refugee women organisations in the UK have survived sexual and gender-based violence, including trafficking and have fled persecution from non-state actors.
- In the US, perhaps in contrast to some other countries, gender and gender-based violence is still driving jurisprudence. The view was expressed that gender issues still had the potential to drive forward refugee protection and advocacy.
- There was recognition of the value and relevance of comparative work on jurisprudence to recentre women in refugee law.
- In terms of comparative research, it was suggested that it is difficult to have a conversation between countries that are applying the same international standards but are applying them with some degree of variation.
- However, it was also felt that there are many similarities in decision-making across countries, particularly between Australia, the US and the UK, for example, *Matter of A-B-* uses language that has been used for many years in Australia.
- Any initiative should endeavour to link up with researchers in countries of the global South.
- In the past couple of years, UNHCR has not commissioned research on the doctrinal aspects of protection of refugee women but welcomes suggestions in this respect.

Asylum Decision Making

- There was discussion of the Convention grounds that are or might be the basis of women's claims including political opinion, and whether it is accepted that women who resist violence are expressing a political opinion in terms of women's rights. The definition of political opinion is important, and one that affects groups other than women.
- The continuing threat of the 'floodgates' argument in preventing the acceptance that women *per se* constitute a Particular Social Group and ensuring violence in the private sphere is accepted in decision-making.
- Decision makers do not always accept that women may be at risk on account of their membership of the Particular Social Group of women rather than because of personal relationships (nexus).

- Concerns were expressed about the standard of proof that is applied in cases of trafficking – evidentiary requirements and the ‘balance of probabilities’ standard.
- Research suggests that decision-makers fail to recognise the different dimensions of women’s experiences – for example, whether claims made by lesbian women focus on sexuality to the detriment of recognising sexual violence.
- Gender stereotypes, including those based on vulnerability and victimhood, are still embedded in legal reasoning in the European Court of Human Rights, and sometimes appear to be taken from domestic courts’ reasoning. While the European Court of Human Rights does not adjudicate on the Refugee Convention, its approaches have an influence on European States, and vice versa.
- Anecdotally, it was suggested that there is a strong trend to refuse women claiming asylum on the ground of private violence at the hands of non-state actors in the UK.
- There is a lack of understanding about the notion of available protection in the country of origin in relation to women’s experiences.
- The internal flight alternative needs to be considered in relation to women, where the decision is based not on the persecution experienced but on whether they would be able to escape it on return or whether there is a male protector.
- There may be a gap in relation to research on first instance decision making: a lot of gender decisions fail on credibility and it is at the lower levels that this framing happens with fewer opportunities to challenge negative credibility assessments at higher levels.
- It was pointed out that what happens at the point of entry needs to be considered – and that appellate cases do not tell the whole story in relation to refugee women’s experiences.
- It is important to look at how UNHCR is able to implement and make good on its own guidelines in terms of its Refugee Status Determination role.
- There is a need for research that addresses the intersections of sexism and racism in asylum decision-making.

Country of Origin Information (COI)

- The failure to apply a gender-focussed approach to COI is a problem to address.
- There is in general a lack of information about women’s human rights violations in COI reports, including to determine the availability of State protection.
- There is a gap in relation to the understanding of the enormity of obstacles that single women can face if returned to their countries of origin, including, for example, in relation to access to land.
- There is a lack of understanding of intersectionality in COI, for example, in considering disability, the experiences of children and young people in themselves let alone in conjunction with gender.
- There is scarce information on women’s rights, let alone on the intersection of issues, in COI available to the European Court of Human Rights, meaning that assessments tend to be superficial and the court may find that particular women can be sent back because the general human rights conditions are seen as acceptable.
- The omission of violation of women’s rights – including reproductive rights – in US State Department reports during the Trump administration is likely to be redressed under Biden. However, there is less information on societal and family violence and thus non-state actors of persecution in the reports.

Asylum Process

- Access to childcare during the standard interview, so the child does not need to be in the room, when mothers are disclosing their experiences is still relevant as a concern.
- The specific needs of women during the appeals process have still not been met, including childcare provision to ensure women do not have to disclose their experiences in front of their children.

- Research on asylum appeals in the UK found that female appellants were less likely to be given helpful explanations and guidance from immigration judges.
- Women may be separated from their children as a result of not having the right support in place from social services when claiming asylum and when recognised as refugees.
- The needs of refugee or asylum-seeking women – particularly those who are alone – outside the asylum system – eg in accessing social services and in the courts, need to be addressed. For example, there is no data about refugee cases in the family courts.

At the End of the Asylum Process

- There are needs in relation to family reunification and the difficulties women in the UK have in being reunited with their children once they have been granted refugee status for various reasons, including those relating to cases of adoption and non-biological children.
- Returns may be an under-researched area: what happens when somebody's application is rejected, and they have to go back to their country of origin?

Proposals for taking WiRLI forward

Moira outlined the initial ideas that she and Christel have for next steps in the WiRLI initiative:

- A conference or seminar in the autumn, probably in November or December, where those interested would be able to present papers exploring issues talked about at the Roundtable or new issues. This would be with a view to producing a special issue of an academic journal based on some of the conference/seminar papers.
- Christel's university – [the University of the West of England](#) – has offered to host a web page for the initiative, where WiRLI members or associates could provide their biographical details and research interests, share information about events, new publications etc.
- The initiative might develop a resource bank or bibliography of research, scholarship and other materials relating to refugee women and women claiming asylum as a resource for academics, practitioners and activists.
- To encourage wider conversation and involve people from different sectors and countries, an email group or mailing list could be set up to connect people with an interest in issues relating to refugee women.

Participants were positive about these options with additional suggestions including:

- Exploring the use of Slack as an alternative to Listserv to facilitate conversations in sub-groups on sub-topics such as COI or returns.
- Using an event as an opportunity for people to expand on the areas that they are working on in more detail, learn from one another and find ways to work together more productively.
- Linking up either institutionally or with individuals in other country contexts in the global South, and doing so more proactively to encourage joint research.

Concluding remarks

Christel outlined next steps for this initiative: an (anonymised) summary note of the Roundtable will be circulated by early June summarising the main issues and overlapping concerns that were raised in discussion. This will be used as a reference document moving forward. Shortly after that Christel and Moira will be in touch with participants with suggestions for activities, including a seminar/conference in the Autumn.

In closing, Christel and Moira thanked all participants for their contributions and for the interest they have shown in this initiative.