

UNIVERSITY OF ESSEX
SCHOOL OF LAW

DISSERTATION

LLM/MA IN: LLM International Human Rights and Humanitarian Law

STUDENT'S NAME: Matilda Bryce

SUPERVISORS'S NAME: Geoff Gilbert

DISSERTATION TITLE:

'To what extent does the United Kingdom's law protect women's rights during asylum procedures:
a critical analysis.'

COMMENTS: (PLEASE WRITE BELOW YOUR COMMENTS)

MARK:

SIGNATURE:

DATE:

UNIVERSITY OF ESSEX

SCHOOL OF LAW

LLM in International Human Rights and Humanitarian law

2018-2019

Supervisor: Geoff Gilbert

DISSERTATION

'To what extent does the United Kingdom's law protect women's rights during asylum procedures: a critical analysis.'

Name: Matilda Bryce
Registration Number (optional): **1706271**
Number of Words: 19,629
Date Submitted: 8.10.19

Contents

| | |
|--|--------|
| Chapter 1: The gendered nature of persecution | 5 |
| 1.1 The historical exclusion of women's experiences | 5 |
| 1.2: Research focus | 8 |
| 1.3: Definitions used in this essay | 9 |
| Chapter 2: Rights entitlements for asylum applicants under international and European law | 9 |
| 2.1: Rights derived from the Refugee Convention | 9 |
| 2.2: The Principle of equality and nondiscrimination | 12 |
| 2.3: Economic, social and cultural rights for asylum applicants under international law | 13 |
| 2.4: Gender specific provisions for asylum applicants | 14 |
| 2.5: The Common European Asylum System | 16 |
| 2.5.1: Access to legal assistance during asylum procedures | 17 |
| 2.5.2: Access to material reception conditions during asylum procedures | 19 |
| Chapter 3: Asylum procedures within the United Kingdom: compliance with international and European law | 22 |
| 3.1: Asylum procedures at first instance | 22 |
| 3.2: Legal aid: legislation and barriers in practice | 24 |
| 3.3: The quality of legal advice | 27 |
| 3.4: Barriers to disclosure and the disproportionate impact on women | 28 |
| 3.5: Adherence to international standards | 33 |
| Chapter 4: Reception conditions within the United Kingdom: legislative gaps and barriers to access | 35 |
| 4.1: Asylum support law: Sections 98, 95, and 4 | 35 |
| 4.2: Refusing asylum support: the use of Section 55 legislation | 38 |

| | |
|--|----|
| 4.2.1: Section 55 legislation: compliance with international standards | 42 |
| 4.3: Proving destitution: evidential requirements and barriers to access | 43 |
| 4.3.1: Proving destitution: Section 98 refusals | 44 |
| 4.3.2: Proving destitution: Section 95 evidence requests | 45 |
| 4.4: Asylum support appeals: the legal aid gap | 48 |
| 4.5: Life on asylum support: the adequacy of asylum accommodation | 49 |
| 4.5.1: Life on asylum support: subsistence rates and life below the poverty line | 51 |
| Chapter 5: The failure of legal frameworks to account for women's experiences | 53 |

'To what extent does the United Kingdom's law protect women's rights during asylum procedures: a critical analysis.'

Chapter 1: The gendered experience of persecution

1.1 The historical exclusion of women's experiences

The 1951 Convention Relating to the Status of Refugees (Refugee Convention), much like all of international law, was drafted from a male centric perspective.¹ Allegedly, at the time of drafting, the inclusion of 'sex' as a ground for persecution was raised and rejected on the basis that sex inequality was the concern of national legislation.² Allegedly, the then UN High Commissioner for refugees, Van Heuven, stated that he 'doubted strongly whether there would be any cases of persecution on account of sex.'³ This statement is emblematic of the wider problem within international law, whereby 'the dominant definition of human rights and the mechanisms to enforce them in the world today are ones that pertain primarily to the types of violations that the men who first articulated the concept most feared.'⁴

Although the definition of a refugee within the Refugee Convention does not explicitly exclude women, critical analysis beginning in the 1980s highlights that the definition has been interpreted and applied in a way that marginalises women's experiences of persecution.⁵ One key reason for this marginalisation is the traditional practice of demarcating the public and private spheres within international and national legal frameworks.⁶ For example, the definition of 'agents of persecution', within the meaning of the Refugee Convention, has historically been overwhelmingly interpreted to refer to State actors, at the exclusion of non-state actors.⁷ This has resulted in forms of persecution that disproportionately effect women and take place in private, predominately at the hands of family members, such as female genital

¹ Spijkerboer, *Gender and Refugee Status*, (Ashgate Publishing, 2000) p 1

² *ibid*, p 1

³ *ibid*, p 1

⁴ Bunch, 'Transforming Human Rights from a Feminist Perspective', in J. Peter and A. Wolper (eds), *Women's Rights, Human Rights*, (New York: Routledge 1995) p 13

⁵ Spijkerboer (n 1) p 3

⁶ Freedman, 'Women's right to asylum: protecting the rights of female asylum seekers in Europe?' [2008] *Human Rights Review* 9 (4) p 416

⁷ United Nations Refugee Council (UNHCR), '50th Anniversary The Wall Behind Which Refugees Can Shelter, The 1951 Geneva Convention,' [2001] *Refugees* Volume 2 Number 123, p 18

mutilation, honor killings, forced marriage, and domestic violence, being overlooked or dismissed as irrelevant grounds for refugee status.⁸ Additionally, the demarcation reinforces the gender bias that women are non-political, meaning women's asylum claims on the grounds of political persecution may be more easily dismissed than men's applications.⁹

Over recent decades, the need for a greater focus on women's experiences within asylum procedures has received increased attention. The interpretation of 'agents of persecution' has evolved to include non-state actors in the event that State authorities 'knowingly tolerate, refuse, or are unable, to offer effective protection' from persecution.¹⁰ To facilitate better consideration of women's asylum claims, the UN Refugee Agency (UNHCR) has published gender guidelines, which provide a gender analysis of the Refugee Convention's grounds for persecution and establish procedural best practices for women's claims.¹¹ Although all asylum applicants face protection concerns, the UNHCR Executive Committee has recognised that women face additional barriers owing to 'their gender, their cultural and socio-economic position, and their legal status, which mean they may be less likely than men and boys to be able to exercise their rights.'¹² Differential treatment between men and women in refugee populations may therefore be necessary to ensure 'women can enjoy protection and assistance on an equal basis with men and boys.'¹³

In response to this increased gender awareness, a limited number of State Parties to the Refugee Convention have implemented gender guidelines to ensure that women have equal access to determination procedures, which also account for women's different experiences of persecution.¹⁴ However, national interpretations of gender-based persecution have differed widely, and there is

⁸ Freedman (n 6) p 417

⁹ Freedman (n 6) p 419

¹⁰ UNHCR, 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (December 2011) HCR/1P/4/ENG/REV. 3, p 65

¹¹ See further, UNHCR, 'Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1 A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees' (7 May 2002) HCR/GIP/02/01

¹² Executive Committee of the High Commissioner's Programme (EXCOM), Conclusion on *Women and Girls at Risk* No 105 (LVII) (October 2006) p 3

¹³ *ibid*, p 3

¹⁴ See further, United Kingdom Home Office, 'Gender issues in the asylum claim' Version 3.0 (10 April 2018) and Swedish Migration Agency, 'Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection' (28 March 2001)

evidence of no international conformity.¹⁵ Additionally, when guidelines do exist, there is evidence that they are more 'symbolic in effect than transformative for women.'¹⁶

Regardless of whether a State adopts a gender sensitive approach to asylum procedures, women asylum applicants enter asylum procedures from a position of structural disadvantage to men. This is because gender inequality between men and women is a structural and systemic reality, which persists across all States to varying degrees.¹⁷ The consequences of unequal gendered power dynamics manifest in a multitude of ways, but is most starkly highlighted by the disproportionate risk of violence which women experience. Globally, 137 women are killed by a family member every day ¹⁸ and an estimated 1 in 3 women will experience sexual and/or physical violence in their lifetime.¹⁹ Women also constitute a higher percentage of the world's global poor, being paid 24% less than men and carrying out the majority of unpaid domestic work.²⁰

The level of economic, social, political, and legal disadvantage or marginalisation which women experience is affected by intersecting and co-existing identities. Factors such as a woman's race, ethnicity, sexuality, age, ability, socioeconomic status, or religion will function to increase or decrease her social status and marginalisation within different contexts. This subsequently impacts a woman's ability to access, enjoy, and defend her human rights.²¹ Asylum seeking women risk being exposed to increased intersectional discrimination owing to an irregular legal status, experiences of persecution and trauma, the breakdown of community and familial ties, language and cultural barriers, and financial insecurity.²² These factors can compound to increase the chances of a woman facing exploitation, gender based violence, and poverty.

¹⁵ Freedman (n 6) p 423

¹⁶ Valji, 'Women and the 1951 Refugee Convention: Fifty years of seeking visibility' [2001] *Refuge: Canada's Journal on Refugees* Volume 19 (5), p 1

¹⁷ Charlesworth and Chinkin, *The Boundaries of International Law, A Feminist Analysis* (Manchester University Press 2000) p 4

¹⁸ United Nations Office on Drugs and Crime, *Global Study on Homicide, 'Gender-related Killing of Women and Girls'* (Vienna 2018) p 10

¹⁹ World Health Organisation and others, 'Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence' (2013) p 35

²⁰ United Nations, 'The Millennium Development Goals Report 2015' (2015) p 8 & 32

²¹ Charlesworth and Chinkin (n 17) p 19

²² UN Committee on the Elimination of Discrimination Against Women (CEDAW), 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against *Women*' (16 December 2010) CEDAW/C/GC/28, para 18

Feminist legal theorists argue that international law as it is currently conceived is insufficient to challenge and remedy the subordinate position of women, as the law itself is gendered.²³ This argument acknowledged that human rights treaties were developed and ratified by elite male law makers, to the exclusion of women's perspectives and experiences. The law is therefore not an impartial and neutral structure, immune from patriarchal influence. Rather, male interests and experiences are institutionalized into it.²⁴ Arguably, this inherent male bias makes the law an inadequate mechanism through which to respond to, and remedy, women's human rights issues.²⁵

1.2: Research focus

Against this background, this essay draws on feminist legal theory to critically analyse to what extent the United Kingdom's law protects women asylum applicants' rights during asylum procedures. This question is approached from a narrow focus on two key areas of rights entitlements during asylum procedures: access to legal advice and representation, and access to asylum support. These areas have been chosen for analysis, because without access to these provisions, the ability for an asylum applicant to put forward a strong asylum claim is drastically reduced. Furthermore, when access to these provisions are denied or reduced, people's right to access justice and maintain an adequate standard of living during asylum procedures may be considerably eroded.

This essay acknowledges that the question at hand could be approached from a number of divergent angles, as the experiences and treatment of women asylum applicants within the United Kingdom will be diverse. However, it is not within the remit of this research to focus on other pressing human rights issues, such as detention, access to medical services, and the quality of Home Office decision making.

Of particular note, despite LGBTQI asylum applicants facing some of the worst forms of discrimination during asylum procedures, this essay does not have the capacity to do justice to this topic and has therefore omitted these experiences. Additionally, the experiences of refused asylum applicants who

²³ Charlesworth and Chinkin (n 17) p 18

²⁴ Charlesworth and Chinkin (n 17) p 50

²⁵ Charlesworth and Chinkin (n 17) p 50

cannot return to their country of nationality, but are not eligible for State support, will also not be discussed.

This essay approaches the question through highlighting inconsistencies between the United Kingdom's legislation and international standards, alongside a deeper analysis of the barriers in practice that asylum applicants experience when trying to access these provisions. The disproportionate barriers experienced by women will be highlighted throughout, to present the argument that the law as it is currently conceived is inadequate to appropriately respond to women asylum applicants' needs.

1.3: Definitions used in this essay

The term 'asylum applicant' will be used throughout this essay to identify an individual who is in the process of lodging a claim, or has lodged a claim, for refugee status, as defined by Article 1 of the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and the 1967 Protocol relating to the Status of Refugees, but has not yet received a determination on their claim.²⁶

The rights which asylum applicants within the United Kingdom are entitled to will now be discussed with reference to regional and international law. The legal framework presented is not exhaustive, rather, in the interest of brevity only the most relevant legal entitlements have been outlined.

Chapter 2: Rights entitlements for asylum applicants under international and European law

2.1: Rights derived from the Refugee Convention

The Refugee Convention establishes a framework of rights, which accrue as the level of attachment

²⁶ United Nations General Assembly, Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 United Nations Treaty Series 137 (Refugee Convention) Article 1 and United Nations General Assembly, Protocol Relating to the Status of Refugees (adopted 14 December 1950, entered into force 4 October 1967) 606 United Nations Treaty Series, Article 1

between the asylum applicant and the refuge State develop.²⁷ The United Kingdom is party to both the Refugee Convention and its Protocol, meaning all asylum applicants within the United Kingdom are entitled to the rights contained in the Convention, unless they fall into the exclusion criteria under Article 1(F).

An immediate obligation, which States owe to asylum applicants once they are within a State Party's jurisdiction, is the principle of non-refoulment.²⁸ Formal State recognition of refugee status is not a prerequisite for non-refoulment, meaning asylum applicants who have not yet had their legal status determined are still protected.²⁹ Additional rights, including the right to nondiscrimination,³⁰ movable and immovable property,³¹ elementary³² and secondary education,³³ and access to the courts also apply at this stage.³⁴ Access to the courts, elementary education, and religious practice must be ensured on the same basis as treatment of nationals.

When physical presence within a State Party's territory is established, additional rights including freedom of religion,³⁵ the right to identity papers,³⁶ and the right to only necessary restrictions of movement apply.³⁷ Additionally, State Parties are prohibited from penalising asylum applicants for illegal entry or presence.³⁸ This is based on the recognition that the process of seeking asylum may involve the breaching of a refuge State's immigration laws.³⁹

A third level of rights accrue once the asylum applicant is deemed lawfully present within a State Party's territory.⁴⁰ This includes the right to engage in self-employment based on treatment which is as

²⁷ Hathaway, 'The Structure of Entitlement Under the Refugee Convention' (Cambridge University Press 2005) p 154

²⁸ Refugee Convention (n 26) Article 33 (1)

²⁹ Executive Committee of the High Commissioner's Programme, *Non-Refoulement No. 6 (XXVIII)* - 1977 (12 October 1977)

³⁰ Refugee Convention (n 26) Article 3

³¹ Refugee Convention (n 26) Article 13

³² Refugee Convention (n 26) Article 22 (1)

³³ Refugee Convention (n 26) Article 22 (2)

³⁴ Refugee convention (n 26) Article 16

³⁵ Refugee Convention (n 26) Article 4

³⁶ Refugee Convention (n 26) Article 27

³⁷ Refugee Convention (n 26) Article 31 (2)

³⁸ Refugee Convention (n 26) Article 31 (1)

³⁹ Refugee Convention (n 26) Preamble 3

⁴⁰ UNHCR, 'A guide to international refugee protection and building state asylum systems, A Handbook for Parliamentarians No 27' (2017) p 203

favorable, and not less favorable, than that awarded to foreigners generally.⁴¹ The ability to choose a place of residence and move freely within a State Party's territory should also be awarded on the same basis of treatment applied to foreigners generally.⁴² Lawful presence is not defined by the Convention, but can be conceived as existing once an asylum applicant has fulfilled the administrative requirements for lodging an application for international protection.⁴³ Notably this is the position adopted by the UNHCR.⁴⁴

The Convention extends a fourth level of rights once an asylum applicant is deemed lawfully staying. This includes the right to association,⁴⁵ wage-earning employment,⁴⁶ liberal professions,⁴⁷ housing,⁴⁸ public relief and social security,⁴⁹ and travel documents.⁵⁰ Lawful stay is similarly not defined by the Convention, but has been established by UNHCR to constitute a 'permitted, regularized stay of some duration.'⁵¹ In practical terms, 'evidence of permanent, indefinite, unrestricted or other residence status, recognition as a refugee, issues of a travel document, [or] grant of a re-entry visa will raise a strong presumption that the refugee should be considered as lawfully staying.'⁵²

Final rights are awarded to refugees who are habitually resident within a refuge State. This includes the entitlement to have the same access to legal assistance and payment of security costs in court proceedings⁵³ and artistic rights,⁵⁴ as nationals.

In order to access international protection and enjoy the rights established by the Refugee Convention, applicants must have access to fair and efficient status determination procedures. The Refugee

⁴¹ Refugee Convention (n 26) Article 18

⁴² Refugee Convention (n 26) Article 26

⁴³ Hathaway (n 27) p 154

⁴⁴ Refugee Convention (n 26) p 180

⁴⁵ UNHCR, 'Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems,' Global Consultations on International Protection Third Meeting, UN Doc. EC/GC/01/17 (4 September 2001) p 3

⁴⁶ Refugee Convention (n 26) Article 15

⁴⁷ Refugee Convention (n 26) Article 17

⁴⁸ Refugee Convention (n 26) Article 19

⁴⁹ Refugee Convention (n 26) Article 21

⁵⁰ Refugee Convention (n 26) Article 23 & 24

⁵¹ Refugee Convention (n 26) Article 28

⁵² UNHCR, "Lawfully Staying" - A Note on Interpretation (3 May 1988) p 11

⁵³ Goodwin-Gill and McAdam, *The Refugee in International Law* (Third edition Oxford University Press 2007) p 526

⁵⁴ Refugee Convention (n 26) Article 16 (2)

⁵⁵ Refugee Convention (n 26) Article 14

Convention does not stipulate the procedures that should be implemented by a State to establish refugee status. However, the Executive Committee has recommended a number of procedural guarantees, which should be implemented by States to ensure a number of essential guarantees for applicants. These include: the establishment of a designated authority to examine applications, protection from refoulment by border officials, access to interpreters and UNHCR officials, information for applicants regarding how to engage with procedures, the right of applicants to appeal a negative status decision to a relevant authority, and the right to remain in the refuge State whilst an application is pending.⁵⁵

2.2: The Principle of equality and nondiscrimination

Asylum applicants within the United Kingdom also benefit from international and regional human rights standards, which the United Kingdom is legally bound to through treaty law and customary international law. The provision of equality of rights between everyone within a State Party's jurisdiction without discrimination is a foundation principle of human rights law.⁵⁶ Regarding the rights contained in the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee (HR) has stated:

"The rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirements of non-discrimination in respect of the rights guaranteed in the Convention, as provided for in Article 2 thereof."⁵⁷

However, the principle of non-discrimination and equality 'does not mean identical treatment in every

⁵⁵ Executive Committee of the High Commissioner's Programme, *Determination of Refugee Status No. 8 (XXVIII)* – 1977 (12 October 1977) para (a)(ii) – (vii)

⁵⁶ Office of the United Nations High Commissioner for Human Rights, 'The Rights of Non-Citizens' (United Nations Publication 2006) p 7

⁵⁷ Human Rights Committee, 'CCPR General Comment No 15: The position of aliens under the Covenant' Adopted at the Twenty-seventh session of the Human Rights Committee (11 April 1986) UN Doc HRI/GEN/1/Rev.1 at 18, para 2

instance.⁵⁸ Rather, differential treatment will not be discriminatory if it is 'reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Convention.'⁵⁹ This provision has implications for the treatment of asylum applicants, as it allows State Parties to the ICCPR to treat citizens and non-citizens differently within reason. However, the European Court of Human Rights (ECtHR) has taken the position that 'very weighty reasons would have to be put forward before the Court could regard a difference of treatment exclusively on the grounds of nationality as compatible with the Convention.'⁶⁰

2.3: Economic, social and cultural rights for asylum applicants under international law

The rights contained in The International Covenant of Economic, Social and Cultural Rights (ICESCR)⁶¹ and developed by the Committee on Economic, Social and Cultural Rights (CESCR), are of particular relevance to the establishment of adequate material reception conditions for asylum applicants.

Under Article 2, State Parties are obliged to 'take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised.'⁶² Following ratification, steps should be taken 'within a reasonably short time after the Covenant's entry into force,' and 'should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the covenant.'⁶³ Measures which are deliberate and retrogressive must be taken with 'careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.'⁶⁴

⁵⁸ Human Rights Committee, 'CCPR General Comment No 18: Non-discrimination' adopted at the Thirty-seventh Session of the Human Rights Committee, (10 November 1989) UN Doc HRI/GEN/1/Rev.9 (Vol. I) p 13

⁵⁹ *ibid*, p 13

⁶⁰ *Gaygusuz v. Austria, Case No 39/1995/545/631, European Court of Human Rights (23 May 1996)* para 42

⁶¹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) United Nations Treaty Series, Vol 993 (ICESCR)

⁶² *ibid*, Article 2

⁶³ Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No 3: The Nature of States Parties Obligations (Art. 2, Para. 1, of the Covenant)' adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights (14 December 1990) UN Doc E/1991/23, para 2

⁶⁴ *Ibid*, p 9

Although the CESCR grants States a margin of appreciation in the process of determining how to progressively realise Convention rights, the obligation to respect, protect, and fulfill rights in a non-discriminatory manner is an immediate obligation.⁶⁵ In the case of rights for non-citizens, the CESCR has established that any ‘distinction, exclusion, restriction or preference, or other differential treatment’ which is not ‘in accordance with the law, pursue a legitimate aim and remain proportionate to the aim pursued’ will constitute unlawful discrimination.⁶⁶ Regular legal status in a country of refuge is therefore not a legitimate prerequisite for the extension of Convention rights.⁶⁷

The CESCR has established ‘that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party’⁶⁸ and is applicable to all persons within a State Party’s effective control.⁶⁹ The rights to adequate food and water, essential healthcare, basic housing, and education provisions have been emphasized as core obligations by the CESCR, which are applicable to all citizens and non-citizens.⁷⁰ These core obligations are non-derogable, thereby applying in conflict and natural disaster contexts.⁷¹

2.4: Gender specific provisions for asylum applicants

For women asylum applicants, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides an additional framework of human rights protection, which can be used to respond to gaps in legal protection for women. The treaty applies to all women within a State Party’s jurisdiction without discrimination.⁷²

The definition of discrimination in the CEDAW recognises that gender discrimination manifests in equality of results, as well as equality of opportunity:

⁶⁵ ICESCR (n 61) Article 2(2), and CESCR, ‘Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights’ Statement by the CESCR (13 March 2017) UN Doc E/C.12/2017/1, para 5

⁶⁶ *ibid* (CESCR) para 5

⁶⁷ *ibid* (CESCR) para 6

⁶⁸ CESCR (n 63) para 10

⁶⁹ CESCR (n 65) para 9

⁷⁰ CESCR (n 63) para 10

⁷¹ CESCR (n 65) para 10

⁷² Edwards, ‘Displacement, Statelessness, and Questions of Gender Equality and the Convention of All Forms of Discrimination Against Women’ Background paper prepared for a joint United Nations High Commissioner for Refugees and the UN Committee on the Elimination of Discrimination against Women seminar (1 July 2009) p 26

'Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'⁷³

This creates a legal obligation on States to only secure formal equality before the law between men and women and to prohibit laws, policies, and social practices, which function to unintentionally or indirectly discriminate against women.⁷⁴ The realization of substantive equality hinges on State Parties' ability to remedy unequal gendered power dynamics and provide women with equal access to opportunities, which functions to create practical change for women.⁷⁵

Article 4(1) provides for States to equalise gendered power dynamics through the implementation of temporary special measures based on differential treatment between men and women in certain contexts.⁷⁶ This treatment should be designed to counteract male privileges, which continue to be perpetuated in society. This provision has been strengthened by the Committee:

'It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as social and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.'⁷⁷

Additionally, the Committee recognises that gender discrimination is not a collective experience, which affects all women equally. Rather, it is an intersectional issue, which can be exacerbated by multiple forms of identity and may require specific temporary measures.⁷⁸ Asylum seeking women face

⁷³ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (Adopted 18 December 1979, entered into force 3 September 1981) United Nations Treaty Series, vol. 1249 (CEDAW) Article 1

⁷⁴ Saksena, 'CEDAW: Mandate for Substantive Equality' [2007] Indian Journal of Gender Studies 14:3, p 483

⁷⁵ Facio and Morgan, 'Equity or Equality for Women? Understanding CEDAW'S Equality Principles' [2009] IRAW Asia Pacific occasional paper series Vol 14, p 1146

⁷⁶ CEDAW (n 73) Article 4(1) & 4(2)

⁷⁷ CEDAW, 'General Recommendation No 25 on article 4, paragraph 1' Adopted at the Thirtieth Session of the Committee on the Elimination of Discrimination against Women (2004) para 8

⁷⁸ *ibid*, p 12

additional hurdles to accessing their rights in comparison to other women owing to their legal status, socio-economic situation, cultural and religious differences, and experiences of trauma.⁷⁹ These factors can cause intersecting forms of discrimination, which function to expose and increase asylum seeking women's vulnerability to violence, exploitation, destitution, and poverty.

The Committee has recognised that gender based violence is a pervasive form of discrimination, which disproportionately affects women and requires State action, regardless of whether the perpetrator of the violence was a State or non-State actor.⁸⁰ It is therefore crucial that States design and implement gender sensitive asylum determination procedures and reception facilities, which account for women's experiences. Failure to do so risks reinforcing gender discrimination rather than protecting asylum seeking women's rights.

Within the European regional system, The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, obligates State Parties to 'prevent, prosecute, and eliminate violence against women and domestic violence.'⁸¹ The Convention is prolific for women with an irregular immigration status, as discrimination on the basis of migrant, refugee, or other status is explicitly prohibited.⁸² The United Kingdom has been signatory to the Convention since 2012, but to date has not ratified the Convention, despite reports that it is progressing towards ratification.⁸³

2.5: The Common European Asylum System

Within the European Union, the asylum determination procedures and material reception conditions that asylum applicants are entitled to access are regulated by The Common European Asylum System (CEAS).⁸⁴ Despite being 'based on the full and inclusive application of the Refugee Convention,'⁸⁵ the

⁷⁹ Edwards (n 72) 35

⁸⁰ CEDAW, General Recommendation No. 19: Violence Against Women, Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women (1992) para 9

⁸¹ Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence (11 May 2011) Article 1 (a)

⁸² *ibid*, Article 4 (3)

⁸³ See further, Home Office, 'Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2018 Report on Progress' (October 2018)

⁸⁴ European Asylum Support Office (EASO), 'An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis' (August 2016) p 13

⁸⁵ European Council, Presidency Conclusions, Tampere European Council 15 and 16 October 1999 (15 October 1999) SN 200/99, Brussels, p 13

CEAS has a wider scope, as it aims to regulate all aspects of the asylum process.⁸⁶

This discussion is limited to an analysis of the provisions relating to applicants' access to legal advice and representation during asylum determination procedures, and access to reception conditions, as established by the 2005 Asylum Procedures Directive (EU APD)⁸⁷ and the 2003 Reception Conditions Directive (EU RCD).⁸⁸

Both Directives were recast⁸⁹ in 2013, during the second stage of CEAS, with the aim of 'establishing a common area of protection and solidarity based on a common procedure and a uniform status for those granted international protection' based on 'high protection standards.'⁹⁰ The United Kingdom has opted out of both recast Directives, but remains legally bound to the original EU RCD and EU APD.⁹¹ Key differences between the original and recast Directives will now be analysed.

2.5.1: Access to legal assistance during asylum procedures

The EU APD aims to 'establish minimum standards on procedures in Member States for granting and withdrawing refugee status.'⁹² Member States must guarantee that applicants are informed of their rights and obligations during determination procedures, and are able to submit their case with the assistance of an interpreter.⁹³

⁸⁶ EASO (n 84) p 14

⁸⁷ European Union, Council of the European Union, Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (2 January 2006) OJ L 326; 13 December 2005 (Procedure Directive)

⁸⁸ European Union, Council of the European Union, Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States (6 February 2003) OJ L. 31/18 (Reception Conditions Directive)

⁸⁹ European Union, Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast 29 June 2013) OJ L. 180/96, and European Union, Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast 29 June 2013) OJ L. 180/60

⁹⁰ European Union, Council of the European Union, The Stockholm Programme - An Open and Secure Europe Serving and Protecting the Citizens (2 December 2009) 17024/09, p 32

⁹¹ Mr Robert Goodwill (The Minister of State for Immigration), European Union opt-in decision: Asylum Measures: Written Statement – HLWS376, (19 December 2016) accessed here < <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-16/HWS374/>>

⁹² Procedure Directive (n 87) Article 1

⁹³ Procedure Directive (n 87) Article 10 (1) (a) & (b)

Competent authorities must make determination decisions following a personal interview with the applicant.⁹⁴ Interviews should ensure conditions that enable applicants to 'present the grounds for their applications in a comprehensive manner.'⁹⁵ Interviewers must have the competency to 'account for the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability,' and interpreters must ensure 'appropriate communication.'⁹⁶

The EU APD does not provide for free legal advice and representation for applicants during first instance procedures, merely a right to consult with a legal advisor at the expense of the applicant.⁹⁷ Following a negative decision, an applicant has a right to free legal assistance and/or representation on request.⁹⁸ This provision can only be provided by legal advisors designated under national law,⁹⁹ and is limited to initial appeals and hearings, not onward proceedings.¹⁰⁰ Additionally, only applicants with insufficient resources and cases that are 'likely to succeed' may be provided with free legal assistance at an appeal or review.¹⁰¹ The extent of free legal assistance may be limited through the application of monetary and/or time limits on the service.¹⁰² However, any restriction on free legal assistance must not be arbitrary.¹⁰³

Under the recast EU APD, Member States are required to ensure that, 'on request, applicants are provided with legal and procedural information free of charge, including, at the least, information on the procedure in the light of the applicant's particular circumstances' during procedures at first instance.¹⁰⁴ Additionally, following a negative decision at first instance, applicants should be provided with information clarifying the decision and an explanation as to how to challenge it. Member States may choose to provide free legal assistance and/or representation during first instance procedures, but this is not a legal obligation.¹⁰⁵ The recast EU APD maintains that free legal assistance and representation

⁹⁴ Procedure Directive (n 87) Article 12 (1). Notably, under certain circumstances an omission of a personal interview is appropriate, see further articles 12 (2), (a), (b), (c) & (3)

⁹⁵ Procedure Directive (n 87) Article 13 (3)

⁹⁶ Procedure Directive (n 87) Article 13 (3) (a) & (b)

⁹⁷ Procedure Directive (n 87) Article 15 (1)

⁹⁸ Procedure Directive (n 87) Article 15 (2)

⁹⁹ Procedure Directive (n 87) Article (15) (3) (c)

¹⁰⁰ Procedure Directive (n 87) Article (15) (a)

¹⁰¹ Procedure Directive (n 87) Article 15 (3) (b) & (d)

¹⁰² Procedure Directive (n 87) Article 15 (5) (a)

¹⁰³ Procedure Directive (n 87) Article 15 (4)

¹⁰⁴ Recast Procedure Directive (n 89) Article 19 (1)

¹⁰⁵ Recast Procedure Directive (n 89) Article 20 (2)

must only be ensured at first instance appeals. At a minimum this must include, ‘the preparation of the required procedural documents and participation in the hearing before a court or tribunals.’¹⁰⁶ The same eligibility restrictions for free legal assistance under the 2005 EU APD are also reaffirmed by the recast EU APD.¹⁰⁷

2.5.2: Access to material reception conditions during asylum procedures

The EU RCD and the recast EU RCD establish the material reception conditions that Member States must ensure for applicants of international protection, during all stages of asylum procedures.

Material reception conditions are defined as ‘housing, food and clothing, provided in kind, or as financial allowances or in vouchers and a daily expenses allowance.’¹⁰⁸ These conditions should be provided at a standard that ensures a dignified standard of living for applicants.¹⁰⁹

However, these reception conditions are not owed to every applicant. Rather, the provision is conditional on an applicant having insufficient means to secure a ‘standard of living adequate for their health and to enable their subsistence.’¹¹⁰ For applicants who qualify, housing should be provided in the form of ‘private houses, flats, hotels or other premises,’ which protects family life, and allows the opportunity for applicants to communication with ‘relatives, legal advisors, UNHCR, and NGOs’.¹¹¹ Transfers between different housing facilities should only be conducted when necessary and attention should be paid to the prevention of assault within facilities.¹¹²

The recast EU RCD adds that Member States ‘shall take into consideration gender and age-specific concerns and the situation of vulnerable persons’ within housing provisions.¹¹³ These provisions are indicative of a greater focus on assessing vulnerable people and providing for special reception

¹⁰⁶ Recast Procedure Directive (n 89) Article 20 (1)

¹⁰⁷ Recast Procedure Directive (n 89) Article 20 (3) & Article 21 (1) – (5)

¹⁰⁸ Reception Conditions Directive (n 88) Article 2 (j)

¹⁰⁹ Reception Conditions Directive (n 88) Preamble (11)

¹¹⁰ Reception Conditions Directive (n 88) Article 13 (3)

¹¹¹ Reception Conditions Directive (n 88) Article 14 (1) (c) & Article 14 (2) (a) – (b)

¹¹² Reception Conditions Directive (n 88) Article 14 (4) and 2 (c)

¹¹³ Reception Conditions Directive (n 88) Article 18 (3)

needs.¹¹⁴ The definition of vulnerable persons is limited to: ‘minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.’¹¹⁵

The 2003 EU RCD offers scarce guidance on the appropriate level of financial support that States should provide.¹¹⁶ The recast EU RCD establishes that levels of support should be:

‘Determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals.’ However, ‘Member States may grant less favorable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.’¹¹⁷

Under specific conditions, reception conditions can be reduced, withdrawn, or refused for applicants. This decision should be made ‘individually, objectively, and impartially,’ with consideration for the ‘particular situation of the personal concerned’ and the principle of proportionality.¹¹⁸ Grounds for reduction or withdrawal include: when an applicant abandons the housing facility provided by the State without notifying the relevant authority or asking permission;¹¹⁹ when an applicant fails to comply with asylum procedures, such as reporting duties and attending interviews in a reasonable amount of time;¹²⁰ if a subsequent application is made;¹²¹ and, if it transpires that an application has concealed financial resources.¹²² Additionally, Member States may refuse reception conditions if an application ‘has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival.’¹²³

¹¹⁴ Reception Conditions Directive recast (n 89) Article 22

¹¹⁵ Reception Conditions Directive recast (n 89) Article 21

¹¹⁶ Reception Conditions Directive (n 88) Article 13 (5)

¹¹⁷ Reception Conditions Directive recast (n 89) Article 17 (5)

¹¹⁸ Reception Conditions Directive (n 88) Article 16 (4)

¹¹⁹ Reception Conditions Directive (n 88) Article 16 (1)(A)

¹²⁰ Reception Conditions Directive (n 88) Article 16 (1) (a)

¹²¹ Reception Conditions Directive (n 88) Article 16 (1) (a)

¹²² Reception Conditions Directive (n 88) Article 16 (1)(b)

¹²³ Reception Conditions Directive (n 88) Article 16 (2)

This provision is moderated by the recast EU RCD, as Member States may no longer refuse reception conditions under these circumstances, but instead may reduce them.¹²⁴ This moderation of language is consistent with the recast EU RCD's extension of greater protection to applicants. Notably, the withdrawal of reception conditions becomes subject to 'exceptional and duly justified cases,'¹²⁵ and decisions by Member States must, 'under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants' is reaffirmed.¹²⁶

In the case of a reduction or refusal of reception conditions, applicants have a right to an appeal or a judicial review of their case.¹²⁷ In terms of access to legal assistance for appeals, the EU RCD provides that Member States may establish procedures under national law.¹²⁸ The recast EU RCD develops this provision, through creating a right of applicants to request free legal assistance and representation for an appeal or judicial review. At a minimum, 'this shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.'¹²⁹

To qualify for free legal assistance, applicants must 'lack sufficient resources.'¹³⁰ Secondly, support will be refused if a competent authority establishes that the case has 'no tangible prospect of success.'¹³¹ In this circumstance, Member States remain under an obligation to ensure that 'legal assistance and representation is not arbitrarily restricted and the applicant's effective access to justice is not hindered.'¹³² Member States may also limit the provision through the imposition of 'monetary and/or time limits.'¹³³

The EU RCD and the recast EU RCD do not provide for applicants to automatically access paid employment in a Member State. The EU RCD enables Member States to determine the time frame in

¹²⁴ Reception Conditions Directive recast (n 89) Article 20 (2)

¹²⁵ Reception Conditions Directive recast (n 89) Article 20 (1)

¹²⁶ Reception Conditions Directive recast (n 89) Article 20 (5)

¹²⁷ Reception Conditions Directive (n 88) Article 21

¹²⁸ Reception Conditions Directive (n 88) Article 21 (2)

¹²⁹ Reception Conditions Directive recast (n 89) Article 26 (2)

¹³⁰ Reception Conditions Directive recast (n 89) Article 26 (3)(a)

¹³¹ Reception Conditions Directive recast (n 89) article 26 (3) (b)

¹³² Reception Conditions Directive recast (n 89) Article 26 (3) (b)

¹³³ Reception Conditions Directive recast (n 89) Article 26 (4) (a)

which an applicant can enter paid employment.¹³⁴ The recast EU RCD lowers this time frame, allowing for an application to have access to paid employment no later than 9 months after lodging their claim, on the basis that a decision at first instance has not been made.¹³⁵

Through not creating a right to immediate access to the labour market, or mainstream welfare benefits within a State of refuge, the EU RCD leaves asylum applicants with insufficient means entirely dependent on State support to cover their essential living needs. In the case *MSS v Belgium and Greece*,¹³⁶ the failure to provide adequate reception conditions, which caused total destitution for an asylum applicant, was found to amount to a breach of the European Convention on Human Rights prohibition of inhumane and degrading treatment (Article 3).¹³⁷ To avoid a breach of Article 3, it is therefore vital that EU Member States ensure that asylum applicants have access to reception conditions that meet a core standard of adequacy, as defined by the EU RCD.

These international and European Union standards provide a framework of rights, which asylum applicants in the United Kingdom are entitled to. The extent to which these rights are accessible in practice for women asylum applicants during asylum procedures will now be explored, with reference to access to legal aid and asylum support.

Chapter 3: Asylum procedures within the United Kingdom: compliance with international and European law

3.1: Asylum procedures at first instance

Within the United Kingdom, applications for asylum must be lodged at a port of entry or at the Asylum Screening Unit in Croydon (ASU).¹³⁸ Following the lodging of an application, all asylum applicants

¹³⁴ Reception Conditions Directive (n 88) Article 11

¹³⁵ Reception Conditions Directive recast (n 89) Article 15

¹³⁶ *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights (21 January 2011)

¹³⁷ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (4 November 1950) ETS 5, Article 3

¹³⁸ United Kingdom Home Office, 'Home Office, Asylum Screening and Routing version 3.0' (26 July 2019) p 24 accessed here <
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821131/screening-and-routing-v3.0-ext.pdf>

attend a screening interview where personal details and biometric data will be taken.¹³⁹ Asylum applicants must phone to arrange an appointment for a screening interview at the ASU.¹⁴⁰ Asylum Applicants should be provided with a 'point of claim' leaflet, which explains asylum procedures, access to asylum support, and legal assistance provisions.¹⁴¹ Home Office staff should make a safeguarding referral if there are indicators that an applicant is a victim of trafficking, modern slavery, or sexual violence at the screening interview.¹⁴²

Following this interview, asylum applicants will be invited to attend a substantive interview where they can present their claim in full to a caseworker who is responsible for making the determination decision.¹⁴³ Second substantive interviews are rarely offered, so it is crucial that evidence which substantiates an applicant's claim is provided at this interview.¹⁴⁴

Following a negative decision at first instance, asylum applicants have an automatic right to appeal to the First-Tier Tribunal (Immigration and Asylum).¹⁴⁵ Completed appeal forms and any additional evidence must be sent to the Tribunal within 14 days following a negative decision. Late appeals may be submitted to the Tribunal with an explanation, but the Tribunal may refuse to hear the appeal.¹⁴⁶ Onward appeals are granted on a permission-only basis. Under certain circumstances an asylum applicant may submit a fresh claim if they have exhausted their appeal rights.¹⁴⁷

Until May 2019, the Home Office had a six-month target in which it aimed to determine 98% of 'straightforward' asylum cases. This target has now been abandoned, with the Home Office stating that

¹³⁹ *ibid*, p 13

¹⁴⁰ *ibid*, p 24

¹⁴¹ United Kingdom Home Office, 'United Kingdom Visas and Immigration, Information About Your Asylum Application' (1 April 2016) accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/513585/Point_of_Claim_English_20160401.pdf>

¹⁴² Home office, 'Asylum Screening' (n 138) p 13

¹⁴³ United Kingdom Home Office, 'Home Office, Asylum Interviews, Version 7.0' (5 June 2019) p 6 accessed here <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf>

¹⁴⁴ Querton, 'I Feel Like, as a Woman, I'm Not Welcome: A gender analysis of United Kingdom asylum law, policy and practice' (London: Asylum Aid 2012) p 60 accessed here < https://d1r349398pb5ky.cloudfront.net/wp-content/uploads/2019/05/ifeelasawoman_report_web_.pdf>

¹⁴⁵ Gov.UK, 'Appeal against a visa or immigration decision' accessed here < <https://www.gov.uk/immigration-asylum-tribunal/print>>

¹⁴⁶ Gov.UK, 'Appeal against a visa or immigration decision' accessed here < <https://www.gov.uk/immigration-asylum-tribunal/print>>

¹⁴⁷ Gov.UK, 'Submit new evidence to support your asylum claim' accessed here < <https://www.gov.uk/submit-new-evidence-asylum-claim>>

it is focusing on 'cases with acute vulnerability and those in receipt of the greatest level of support.'¹⁴⁸

The shift away from the six month target has been heavily criticized by human rights advocates, who have expressed concern that asylum applicants will spend longer having their claims determined, with detrimental effects for their wellbeing.¹⁴⁹

3.2: Legal aid: legislation and barriers in practice

Under United Kingdom law, civil legal aid is available for eligible asylum applicants at each stage of their asylum claim.¹⁵⁰ This includes legal advice and assistance prior to a substantive asylum interview, and legal representation at the appeals stage.¹⁵¹ However, in order to be eligible for legal aid, asylum applicants must pass a means and merits based test.¹⁵² The provision of legal aid assistance for asylum applicants at first instance procedures goes beyond the United Kingdom's obligations under the original EU APD.¹⁵³

Only qualified solicitors, barristers, or caseworkers registered with the Office of the Immigration Services Commissioner (OISC) may provide asylum or immigration advice.¹⁵⁴ Consulting with a legal advisor prior to a substantive interview is crucial to ensuring asylum applicants understand asylum procedures and are prepared to put forward the strongest case possible. For many asylum applicants, accessing legal advice under legal aid provisions will be their only opportunity to receive professional help with their asylum claim, as they may have insufficient funds to afford a private legal advisor.

¹⁴⁸ Alison and Taylor, 'Home Office abandons six-month target for asylum claim decisions' (The Guardian May 2019) accessed here <<https://www.theguardian.com/uk-news/2019/may/07/home-office-abandons-six-month-target-for-asylum-claim-decisions>>

¹⁴⁹ Johnstone, 'Home Office scraps six-month target for asylum decisions' (Civil Service World May 2019) accessed here <<https://www.civilserviceworld.com/articles/news/home-office-scraps-six-month-target-asylum-decisions>>

¹⁵⁰ United Kingdom Statutory Instruments, Legal Aid, Sentencing and Punishment of Offenders Act 2012, United Kingdom: Parliament, House of Commons Library, (1 May 2012) schedule 1, part 1, para 30 (LASPO)

¹⁵¹ Ministry of Justice and Legal Aid Agency, 'User Guide to Legal Aid Statistics England and Wales' (June 2019) p 7 accessed here <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834474/user-guide-legal-aid-statistics-apr-jun-2019.pdf>

¹⁵² See further, United Kingdom Statutory Instruments, The Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016 No 781, and United Kingdom Statutory Instruments, The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, Part 2, Determinations in respect of an individual's financial resources

¹⁵³ Procedure Directive (n 87) Article 15

¹⁵⁴ United Kingdom Statutory Instruments, Immigration and Asylum Act 1999 (11 November 1999) Section 84

However, evidence shows that asylum applicants face significant barriers when trying to secure legal advice under legal aid provisions, prior to substantive interviews.¹⁵⁵ Reports of asylum applicants feeling unprepared for their substantive interview and being unaware of their rights during procedures are not uncommon.¹⁵⁶

One key reason why barriers exist is owing to changes to the legal aid system under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).¹⁵⁷ Implemented as part of the coalition Conservative and Liberal Democrat government's austerity agenda, LASPO cut legal aid from areas including private family law, employment law, non-asylum immigration law, welfare benefit issues, and several housing and debt cases.¹⁵⁸ The Law Society reports that the changes have had a 'corrosive impact on access to justice,' even for those whose cases are still eligible as, 'availability of legal aid is drying up, resulting in legal aid deserts where advice is either non-existent or minimal.'¹⁵⁹ Despite asylum cases remaining within the remit of legal aid, Wilding argues that, based on extensive research over a three year period, 'there is already a market failure in immigration and asylum legal aid, both in terms of geographical availability of services and the ability to ensure adequate quality.'¹⁶⁰

Legal advisors who take on legal aid asylum cases are paid through the Graduated Fee Scheme (GFS) for their work.¹⁶¹ Under the GFS, legal advisors are not paid on an hourly basis for the duration of time spent on a case, rather, are paid for 'units' of work.¹⁶² The duration and complexity of asylum cases tends to be more significant for an advisor than other non-asylum immigration cases. This means an advisor will need to cross-subsidize asylum cases with other immigration cases to ensure financial sustainability.¹⁶³ The Legal Service Commission explains that, 'fixed and graduated fees revolve around the concept of 'swings and roundabouts' – that is, a case that is more expensive than the standard fee

¹⁵⁵ See further, Wilding, 'Droughts and Deserts: A Study of Legal Aid Market Failure' (University of Brighton 2019) accessed here < <https://www.thejusticegap.com/droughts-and-deserts-a-study-of-market-failure-in-the-provision-of-legal-aid/>>

¹⁵⁶ Refugee Action, 'Waiting in the Dark: How the asylum system dehumanizes, disempowers and damages' (May 2018) p 17 accessed here < <https://www.refugee-action.org.uk/wp-content/uploads/2018/05/Waiting-in-the-Dark-A4-16-May-2018.pdf>>

¹⁵⁷ LASPO (n150)

¹⁵⁸ The Law Society, 'Access Denied? LASPO four years on: A Law Society review' (June 2017) p 6 accessed here < <https://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/>>

¹⁵⁹ *ibid*, p 2

¹⁶⁰ Wilding (n 155) p 3

¹⁶¹ United Kingdom Statutory Instrument, The Civil Legal Aid (Remunerations) Regulations 2013 (No 422), Schedule One, Part 1, Civil Standard and Graduated Fees, Table 4 (a): Immigration and Asylum Standard Fees

¹⁶² *ibid*, Table 4(a)

¹⁶³ Wilding (n 155) p 2

to a firm will be balanced, in the long run, by one that is cheaper.¹⁶⁴ Through removing non-asylum immigration cases from the remit of legal aid, LASPO impacted the ability for firms to cross subsidize cases.¹⁶⁵ In order to avoid making a financial loss on asylum cases, not-for-profit providers must fundraise through grants, and solicitors or barristers must subsidize their work through more profitable areas of law.¹⁶⁶

This has resulted in many providers having to drastically reduce their capacity to take on new asylum cases, creating advice droughts.¹⁶⁷ Therefore, despite a legal provider having unused legal aid contracts for new asylum cases, known as New Matter Starts (NMS), they may be financially unable to take on new asylum clients. The extent of this problem was highlighted by Wilding's research, as none of the not-for-profit legal providers who took part in the research had used all of their NMS contracts, yet all reported turning new clients away.¹⁶⁸

For some legal providers, asylum GFS cases are no longer viable. Since 2005, Refugee Action reports a 56% decline in total immigration and asylum legal aid providers, with 64% of not-for-profit providers closing.¹⁶⁹ The situation is exacerbated by the Home Office's policy of dispersing asylum applicants who qualify for asylum support housing, outside of London and the South East of England.¹⁷⁰ In 2018, 21 counties in England and Wales, with over 100 dispersed asylum applicants, did not have a single asylum legal aid provider.¹⁷¹ Through failing to match legal aid provision to the dispersal scheme, asylum applicants are left in legal aid deserts where they will potentially have to travel significant distances to find a legal advisor elsewhere.¹⁷² This is an unrealistic expectation for those surviving on asylum support subsistence payments, as the cost of travel is not factored into weekly subsistence

¹⁶⁴ The Legal Services Commission and the Department for Constitutional Affairs, 'Legal Aid Reform: The Way Ahead' (November 2006) p 8 accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272392/6993.pdf>

¹⁶⁵ Refugee Action, 'Tipping the Scales: Access to Justice in the Asylum System' (July 2018) p 6 accessed here < <https://www.refugee-action.org.uk/wp-content/uploads/2018/07/Access-to-Justice-July-18-1.pdf>>

¹⁶⁶ Wilding (n 155) p 2

¹⁶⁷ Wilding (n 155) p 39

¹⁶⁸ Wilding (n 155) p 39

¹⁶⁹ Refugee Action, 'Tipping the Scales' (n 165) p 6

¹⁷⁰ United Kingdom Home Office, 'Allocation of Accommodation Policy, Version 5.0' (7 March 2019) p 4 accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597382/Allocation-Of-Accommodation-v5_0.pdf>

¹⁷¹ Refugee Action, 'Tipping the Scales' (n 165) p 13

¹⁷² Refugee Action, 'Tipping the Scales' (n 165) p 12

rates.¹⁷³

The difficulty in finding a legal advisor in this context is exacerbated by the fact that asylum applicants may be informed of their substantive interview date only 7 days beforehand.¹⁷⁴ Many applicants will have no previous experience of legal procedures and a limited working knowledge of the English language. Additionally, their living situation will often be precarious, either relying on friends or relatives to accommodate them or being housed in dispersal accommodation. These circumstances can be incredibly stressful and anxiety inducing, particularly for asylum applicants who are coping with trauma and other mental health issues, and those with families. Finding a legal advisor in a short timeframe when in these circumstances will be unrealistic for many applicants, particularly for those with complex needs.¹⁷⁵

For asylum applicants based in an advice drought or desert, it may be impossible to find a legal advisor without a referral by a specialist refugee charity or organisation. However, based on interviews with 92 frontline organisations, Refugee Action reports that 87% of respondents stated it is 'more difficult' to make a referral to an immigration solicitor than six years ago. 76% of the same respondents reported that they find it either 'quite or very difficult' to make a referral in their area.¹⁷⁶ This suggests that even when asylum applicants can access the assistance of a specialist organisation, there is little guarantee that a referral to a legal advisor will be successful.

3.3: The quality of legal advice

The impact of LAPSO on the legal aid market results in asylum applicants having little choice over who their legal advisor is, and the quality of their work. Within the legal sector, the quality of asylum and immigration advice varies widely. Research commissioned by the Solicitors Regulation Authority establishes that out of 45 case reviews, 11 cases had evidence of extremely poor legal practice and

¹⁷³ United Kingdom Home Office, 'Report on Review of Cash Allowance Paid to Asylum Seekers: 2017' (January 2018) p 10 accessed here < <https://www.statewatch.org/news/2018/jan/uk-ho-report-review-cash-allowances-asylum-seekers-2017.pdf>>

¹⁷⁴ Refugee Action, 'Waiting in the Dark' (n 156) p 17

¹⁷⁵ For an overview of the challenges asylum seekers experience in the UK, particularly with access to services, see further: Aspinall and Watters, 'Refugee and asylum seekers, A review from an equality and human rights perspective,' Equality and Human Rights Commission, Research Report 51 (University of Kent 2010)

¹⁷⁶ Refugee Action, 'Tipping the Scales' (n 165) p 9

advice, and a further 9 had evidence of a combination of good and bad, or absent practice.¹⁷⁷ The GFS scheme affects the quality of advice provided to asylum applicants, as advisors are financially incentivised to cap the amount of time spent working on a case to ensure it does not surpass the fixed fee.¹⁷⁸ Refugee Action asserts that the GFS scheme 'is arguably a major factor in undermining good quality legal advice.'¹⁷⁹

Capping the amount of time spent on a case is not an unreasonable practice; as legal advisors should be paid in full for the hours spent working on a case. It is also not representative of practice by all legal advisors within the industry.¹⁸⁰ However, concerns that advisors have inadequate time to 'frontload' asylum cases prior to an asylum applicant's substantive interview, with detrimental consequences for the case, have been raised by professionals in the sector.¹⁸¹ The Joint Committee on Human Rights reports that, 'since April 2004 there had been a maximum legal aid entitlement of five hours for the time allowed to prepare an initial application to the Home Office.'¹⁸² Notably, this allowance does not provide for a legal advisor to attend the substantive interview with the asylum applicant. This is insufficient time in which to research country specific information, collect supportive evidence including expert reports, and build a strong understanding of the reasons for the asylum claim.¹⁸³ Several frontline asylum support organisations report collecting their own evidence for asylum applicant's cases, because this task is too time consuming for legal advisors working under fixed fees.¹⁸⁴

3.4: Barriers to disclosure and the disproportionate impact on women

The context of legal aid drought, deserts, and the GFS scheme functions to disincentivise some legal advisors from taking on the most complex and time consuming asylum cases, particularly at the appeals

¹⁷⁷ Solicitors Regulation Authority and Legal Ombudsman, Quality of Legal Services for Asylum Seekers (January 2016) p 37 accessed here < <https://www.sra.org.uk/globalassets/documents/sra/research/asylum-report.pdf?version=4a1ab3>>

¹⁷⁸ Wilding (n 155) p 37

¹⁷⁹ Refugee Action, 'Tipping the Scales' (n 165) p 5

¹⁸⁰ For evidence of good legal practice, see further: Solicitors Regulation Authority and Legal Ombudsman (n 177) p 38 - 43

¹⁸¹ See further, Select Committee on Home Affairs, Written Evidence, 'Memorandum submitted by the Law Society' (July 2004) accessed here

<<https://publications.parliament.uk/pa/cm200304/cmselect/cmhaff/109/109we08.htm>>

¹⁸² Joint Committee on Human Rights: 'The Treatment of Asylum Seekers,' Tenth Report of Session 2006-2007 Volume 1 – Report and Formal Minutes (30 March 2007) para 100 accessed here < <https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>>

¹⁸³ Solicitors Regulation Authority (n 177) p 47

¹⁸⁴ Refugee Action, 'Tipping the Scales' (165) p 10

stage.¹⁸⁵ Arguably, this disproportionately effects women who may have asylum claims based on gender-related persecution, which are frequently more complex and time consuming than traditional asylum claims.¹⁸⁶ For example, the persecution in these cases is often perpetuated by non-state actors, requiring an assessment of whether State protection is adequate and accessible. This assessment will require finding detailed country of origin information which includes an assessment of the human rights situation for women in difficult to monitor areas, such as the home. Additionally, in cases relating to FGM, domestic violence, sexual violence, and torture, expert medical evidence reports will also need to be obtained.¹⁸⁷

Regardless of the complexity of a woman's case, women enter asylum procedures from a position of structural economic, social and political disadvantage in comparison to their male counterparts. Globally, women are subordinate decision makers, being underrepresented in public positions of power, and being subjected to unequal patriarchal power dynamics within the home.¹⁸⁸ Additionally, women on average obtain lower degrees of education, are paid less, and carry the burden of unpaid care for children and the elderly.¹⁸⁹ This position of inequality will impact on women's ability to navigate asylum procedures to varying degrees, as they may be particularly unfamiliar with legal processes, face significant language barriers, and find interacting with male authoritative figures culturally unacceptable. Women from rural backgrounds and those with low levels of education have been identified as facing 'particularly acute' barriers during asylum procedures by legal advisors.¹⁹⁰

One significant way in which the legal aid system and asylum procedures disproportionately impact women is through barriers to disclosure. Although all asylum applicants may find disclosing details of persecution to legal advisors and Home Office caseworkers difficult, women who have experienced

¹⁸⁵ Clayton and Others, 'Through Her Eyes: Enabling women's best evidence in United Kingdom asylum appeals' (November 2017) p 17 accessed here < https://www.nuffieldfoundation.org/sites/default/files/files/Through-Her-Eyes_Full-Report_Nov17.pdf>

¹⁸⁶ Asylum Aid, 'Unsustainable: the quality of initial decision-making in women's asylum claims' (January 2011) p 66 accessed here < <https://www.refworld.org/docid/4d3435d12.html>>

¹⁸⁷ *ibid*, p 66

¹⁸⁸ The World Economic Forum estimates that at current rates of progress it will take another 107 years to close the political gender gap, see further: World Economic Forum, *The Global Gender Gap Report 2018* (2018) p 15 accessed here < http://www3.weforum.org/docs/WEF_GGGR_2018.pdf>

¹⁸⁹ For an assessment of the global situation of women's unpaid work, see further: UN Women, 'Progress of the World's Women 2019-2020: Families in a Changing World' (2019) p 143 accessed here < <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/progress-of-the-worlds-women-2019-2020-en.pdf?la=en&vs=3512>>

¹⁹⁰ Clayton and Others (n 185) p 42

specific forms of gendered persecution such as FGM, domestic violence, and forced marriage are disproportionately affected.¹⁹¹ Survivors of sexual violence are uniquely disadvantaged, as a fear of social exclusion and the experience of 'dissociative experiences, flashbacks and avoidance behaviors,' may inhibit disclosure.¹⁹²

Barriers to disclosure are multifaceted, but are related to the sociocultural stigma of women survivors of violence, ongoing trauma, male familial control, the nature of violence, fear of government officials, and the failure of asylum procedures to adequately account for women's experiences.¹⁹³ The different ways in which experiences of torture impact men and women during asylum procedures has been observed by Dr Hinchelwood, during a UN Expert Group Meeting on Gender based Persecution:

'The first and foremost preoccupation [of victims of torture] is with their asylum claim. There is a noticeable difference between men and women in the manifestation of this anxiety, with exceptions of course. Men are often much more vocal and active in their anxiety, they change solicitors, seek letters, reports; ask to be brought forward in the queue. They cannot settle. Most women I have seen [over nine years of therapeutic work with survivors of torture] have just melted into the background after their arrival, especially if they have no children, or have left their children behind. They are frequently "befriended" by a lawyer who does nothing, and they stay in the room allocated to them for weeks, months on end, just putting time and distance between themselves and their shame.'¹⁹⁴

Bearing these gendered barriers in mind, women are at an additional disadvantage to male applicants if they are given inadequate time to prepare their asylum case with a legal advisor prior to their substantive interview. Many asylum applicants may not realize that the types of gendered harm they have suffered is relevant to their asylum claim.¹⁹⁵ It is therefore crucial that women have an opportunity to build trust and communication with their legal advisor, which facilitates the disclosure of details of

¹⁹¹ Refugee Action, 'Tipping the Scales' (n 165) p 6

¹⁹² Bogner and others, 'Impact of Sexual Violence on Disclosure during Home Office Interviews' The British Journal of Psychiatry, Volume 191, (2007) p 78

¹⁹³ Clayton and others, (n 185) p 42

¹⁹⁴ Hinchelwood, "Medical Foundation for the Care of Victims of Torture" Cited in, United Kingdom, Asylum and Immigration Tribunal / Immigration Appellate Authority, 'Immigration Appellate Authority (UK): Asylum Gender Guidelines' (1 November 2000) p 44 accessed here < <http://refugeestudies.org/UNHCR/64%20-%20Asylum%20Gender%20Guidelines.pdf>>

¹⁹⁵ Querton (n 144) p 41

their persecution.¹⁹⁶ Only with the full facts of a case can an advisor prepare an asylum applicant to present a strong claim at the substantive interview.

This is particularly important when the inherent barriers to disclosure that are built into asylum procedures are considered. Despite Home Office guidelines recognising that an environment which facilitates early disclosures should be facilitated,¹⁹⁷ women asylum applicants report being unable to disclose sensitive information at both the screening and substantive interview.¹⁹⁸ At the screening interview women have stated they were unable to share personal details owing to the lack of privacy at the ASU.¹⁹⁹ This raises the question as to whether it is practically possible for Home Office staff to identify vulnerable applicants and safeguarding concerns, which require immediate attention at this stage. Additional barriers include a lack of childcare provision at the center, the cost of travel to the ASU, and the phone booking system may inhibit women's ability to disclose relevant information. The phone booking system is particularly inaccessible for women who have been trafficked, or those living in situations of domestic violence.²⁰⁰ The line of questioning taken by Home Office caseworkers at the substantive interview can act as a barrier to disclosure in itself. Based on research into women's experiences of asylum procedures, Action Aid reports that respondents found the substantive interview to be 'the most traumatic element' of procedures.²⁰¹ One legal representative observes that the design of asylum procedures function to obstruct women's disclosure:

'This system is meant to encourage people to tell their story but it does the opposite...The experience of disclosing horrific things at every stage is wrong. The tribunal; the Home Office interview rooms with the chairs chained to the floor; the policies; the style of the whole thing. It's not the right environment to ask someone to make a disclosure...there needs to be more support for women who have been raped.'²⁰²

¹⁹⁶ Refugee Action, 'Tipping the Scales' (n 165) p 6

¹⁹⁷ United Kingdom Home Office, 'Gender issues in the asylum claim, Version 3.0' (10 April 2018) p 31 accessed here<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699703/gender-issues-in-the-asylum-claim-v3.pdf>

¹⁹⁸ Querton (n 144) p 60

¹⁹⁹ Querton (n 144) p 57

²⁰⁰ Querton (n 144) p 56

²⁰¹ Querton (n 144) p 60

²⁰² Clayton and others (n 185) p 42

If women are unable to present the full facts of their case at the substantive interview there is a risk that the credibility of their claim will be incorrectly assessed, resulting in a negative decision.²⁰³ Evidence of pervasive disbelief in women's testimonies by Home Office decision makers compounds this issue.²⁰⁴ Additionally, failure to disclose key information at first instance has been seen to adversely impact women's success in appeals if new information is shared, despite this contradicting guidelines.²⁰⁵

For women who decide to appeal a decision, additional barriers to accessing justice arise, as the fixed fee scheme disincentivises advisors from taking on appeal cases, which require demanding additional work.²⁰⁶ Based on interviews with 42 organisations, Refugee Action found that 36% of respondents reported being able to refer asylum applicants to legal advisors 'most of the time' prior to their substantive interview. However, this figure dropped to 15% and 16% when referrals for appeals and fresh asylum claims were attempted.²⁰⁷

For women with complex gender-related cases, the risk of losing legal representation at this stage is increased, as it may be determined that their case will not pass the merits test.²⁰⁸ However, if a case has received limited, or no, quality legal analysis at an earlier stage, the merits of the case may be overlooked.²⁰⁹ Based on interviews with immigration law experts, Clayton assert that 'women's cases were often capable of succeeding, if proper investigative work was done and evidence collected.'²¹⁰ If legal representation cannot be secured prior to an appeal, asylum applicants will have to attend the appeal unrepresented. The ability for an asylum applicant to present the strongest case possible in these circumstances is doubtful, as it is likely that they will be ill prepared to deal with cross examination from a Home Office caseworker.

3.5: Adherence to international standards

²⁰³ Asylum Aid (n 186) p 18

²⁰⁴ The issue of poor home office decision-making on women's cases at first instance is not within the research capacity of this discussion. For a thorough exploration of the topic see further: Asylum Aid, *Unsustainable: 'The Quality of Initial Decision-Making in Women's Asylum Claims'* at (n 186)

²⁰⁵ Asylum Aid (n 186) p 66

²⁰⁶ Clayton and others (n 185) p 17

²⁰⁷ Refugee Action, *'Tipping the Scales'* (n 165) p 10

²⁰⁸ Clayton and others (n 185) p 17

²⁰⁹ Clayton and others (n 185) p 49

²¹⁰ Clayton and others (n 185) p 49

The right of asylum applicants to have access to courts is a fundamental provision in international and regional refugee and human rights frameworks. The central importance of this right is apparent through the Refugee Convention providing that access should be granted at the first and lowest stage of attachment between the asylum seeker and the refuge State.²¹¹ The Human Rights Committee has found that the ICCPR provision that ‘all persons shall be equal before the courts and tribunals’²¹² includes, ‘the notion of equality before the courts and tribunals encompasses the very access to the courts.’²¹³ It continues by stating that ‘a situation in which an individual attempts to seize the competent jurisdictions of his/her grievances are systematically frustrated runs counter to the guarantees’ of Article 14 (1).²¹⁴

At the European level, the Charter of Fundamental Rights of the European Union recognises the right to an effective remedy and fair trial, which includes the right to legal aid ‘for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.’²¹⁵ The EU APD establishes that asylum applicants have a right to an effective remedy before a court or tribunal, in the event of a decision on their application.²¹⁶ Within United Kingdom legislation, the provision of legal aid for those with insufficient means is recognised as a vital component in the right to a fair trial under the United Kingdom Human Rights Act.²¹⁷

Despite the United Kingdom extending the provision of legal aid beyond that which was originally established by the EU APD, it is apparent that there are significant barriers in practice, which prevent asylum applicants from accessing the justice system. Regardless of legislative provisions, if asylum applicants cannot access legal assistance in practice, which results in people attending appeals unrepresented, the right to access the courts and the right to an effective remedy is arguably undermined. This raises the question as to whether the United Kingdom is fulfilling its international and

²¹¹ Refugee Convention (n 26) Article 16 (1)

²¹² UN General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976,) United Nations, Treaty Series, Vol. 99, Article 14 (1)

²¹³ *Angel N. Oló Bahamonde v. Equatorial Guinea* (Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 [1993]) para 9.4

²¹⁴ *ibid*, para 9.4

²¹⁵ ECHR (n 137) Article 47

²¹⁶ Procedure Directive (n 87) Article 39

²¹⁷ United Kingdom Statutory Instrument: Human Rights Act 1998 [United Kingdom of Great Britain and Northern Ireland] (9 November 1998)

regional human rights obligations for asylum applicants.

Through implementing the fixed fee scheme and LASPO in a gender-neutral way, the United Kingdom government has failed to account for how these policies will interact with structural inequality to disproportionately affected women. Arguably, this is inconsistent with the United Kingdom's obligations under the CEDAW Convention, which requires States to ensure that legislation and policy does not indirectly discriminate against women.²¹⁸

One significant consequence of inadequate legal advice at first instance is the lengthening of time spent in asylum procedures if an asylum applicant who receives a negative decision at first instance goes on to appeal the decision or submit a fresh claim. Between 2010 and 2018, the number of asylum applications waiting determination for longer than six month increased from approximately five thousand to ten thousand.²¹⁹ Over the last eighteen months, the increasing 'backlog' of asylum cases waiting determination by the Home Office has becoming increasingly visible, as the number of applicants waiting longer than six months for a decision increased by 58% between June 2018 and June 2019.²²⁰ For asylum applicants who lodge an appeal or submit new submissions for a fresh claim, this situation is exacerbated, as the process of securing legal representation and waiting for a decision can be extended over many years.²²¹

Delays to Home Office decision making has significant consequences for the wellbeing of asylum applicants, as people are left in a state of legal limbo for the duration of time spent in procedures, unable to access mainstream benefits or engage in paid employment. For asylum applicants with insufficient means to cover their basic living needs during this period, government provided asylum support will have to be relied upon.

The barriers asylum applicants experience when trying to access asylum support will now be explored,

²¹⁸ CEDAW, General Recommendation No 28: On The Core Obligations of States Parties under Article 2 (2010) para 9

²¹⁹ Sturge, 'Asylum Statistics Briefing Paper, Number SN01403' (House of Commons Library March 2019) p 13

²²⁰ Bulman, "Asylum waiting times at record high as thousands 'left in limbo'" (The Independent, 22 August 2019) accessed here < <https://www.independent.co.uk/news/uk/home-news/asylum-seekers-waiting-times-home-office-immigration-a9075256.html>>

²²¹ Refugee Action, 'Waiting in the Dark' (n 156) p 3

with reference to the adequacy of these provisions to provide for minimum ICESCR rights.

Chapter 4: Reception conditions within the United Kingdom: legislative gaps and barriers to access

4.1: Asylum support law: Sections 98, 95, and 4

Prior to the 1993 Asylum and Immigration Appeals Act, asylum applicants within the United Kingdom could access mainstream welfare benefits and local authority social housing.²²² These entitlements were reduced under the 1993 Act, as asylum applicants became entitled to only 90% of citizens' benefit rates, and the right to social housing was removed.²²³ Income support rates were further reduced to 70% of citizens' rates under the 1996 Immigration and Asylum Act.²²⁴ This period of legislative change was cemented by the 1999 Immigration and Asylum Act, which abolished asylum applicants' access to mainstream benefits and established a separate system of support for asylum applicants under the National Asylum Support Service (NASS).²²⁵

In parallel to these changes in welfare entitlements, legislative changes have also been used to reduce the rights of asylum applicants to engage in paid employment. Prior to the 2003 Act, asylum applicants who had waited longer than six months for a decision at first instance on their claim could apply for permission to work.²²⁶ The 2003 Act revoked this entitlement in all but 'exceptional circumstances,' for which no policy was implemented.²²⁷ Following the introduction of the 2003 EU RCD, a new statutory rule was introduced, which allows asylum applicants to apply for permission to work in cases where they have been waiting for 12 months for a decision on their initial claim.²²⁸ However, the accessibility of this provision is limited, as only those paid positions which are included on the shortage occupations

²²² Parker, 'Falling Behind: The Decline of the Rights of Asylum Seekers in the United Kingdom and Its Impact on Their Day-to-day Lives' [September 2015] E Sharp Issue 25:1, p 84

²²³ *ibid*, p 84

²²⁴ *ibid*, p 84

²²⁵ United Kingdom Statutory Instrument, Immigration and Asylum Act 1999 (n 154) Sections 95, 98, and 115

²²⁶ Refugee Action, Life the Ban Coalition, 'Why People Seeking Asylum Should Have the Right to Work' (October 2018) p 6 accessed here < <https://www.refugee-action.org.uk/wp-content/uploads/2018/10/Lift-the-Ban-report.pdf>>

²²⁷ *ibid*, p 6

²²⁸ United Kingdom, Immigration Rules part 11 B Asylum, Right to request permission to take up employment 360 (Published 25 February 2016) accessed here < <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11b>>

list are available to asylum applicants.²²⁹ The use of the shortage occupation list has been widely condemned as banning the majority of asylum applicants in the United Kingdom from paid employment, as the positions available are extremely restrictive.²³⁰ Additionally, the Refugee Convention's provision of a right to self-employment, once an asylum applicant's legal presence has been established, is absent from both United Kingdom domestic and EU law. The consequence of omitting this right and restricting access to the labour market is to place asylum applicants in a position of total reliance on State support to meet their essential living needs.

Under asylum support law, accommodation and subsistence support is available under three separate sections, which correspond to different stages of asylum procedures for applicants. To qualify for any type of asylum support, asylum applicants must prove they meet the destitution definition, meaning they 'do not have adequate accommodation or the means of obtain it,' or if they have adequate accommodation, they 'cannot meet their other essential living needs.'²³¹

Temporary support for asylum applicants who have lodged their asylum claim at the ASU or port of entry and appear to be destitute is available under Section 98 (S98).²³² S98 support is provided in the form of initial accommodation, which is normally a full-board Home Office hostel, or a self-catered facility, with cash provisions for food expenses.²³³ Asylum applicants are expected to access this support as an emergency provision on a temporary basis whilst they wait for a decision on their Section 95 support application.²³⁴ There is no right to appeal a negative S98 decision, but asylum applicants may reapply.

Section 95 (S95) is the principle form of asylum support, which is available for asylum applicants and their dependents whilst the Home Office is determining their asylum claim.²³⁵ S95 is provided in the form of accommodation and subsistence payments, or subsistence-only cash support. Accommodation is provided on a dispersal basis, whereby asylum applicants are moved to properties across the United

²²⁹ *ibid*, Section 360 (i)

²³⁰ Refugee Action, 'Lift the Ban' (n 226) p 4

²³¹ Immigration and Asylum Act 1999 (n 154) Section 95 (3)(A) and (B)

²³² *ibid*, Section 98

²³³ ASAP, 'Section 98 Support Factsheet 17' p 1 accessed here <
http://www.asaproject.org/uploads/Factsheet_17_-_s98_Support_March_2019.pdf>

²³⁴ *ibid*, p 1

²³⁵ Immigration and Asylum Act 1999 (n 154) Section 95

Kingdom on a no choice basis.²³⁶ Subsistence payments are provided at a fixed rate of £37.75 per person per week.²³⁷ To qualify for S95, asylum applicants must be destitute, or likely to become destitute in the next 14 days.²³⁸ If an asylum applicant has received a negative decision at first instance, and all appeal decisions have been determined, they will no longer qualify for S95. Support will cease after 21 days of a decision being made by the Home Office. However, if a dependent child lives in the household of the refused applicant, S95 support will continue until the child reaches 18.²³⁹ A refused asylum applicant may qualify for support under Section 4 if they meet specific criteria.²⁴⁰

Following the introduction of the 2003 EU RCD, the provision of asylum support to destitute asylum applicants and their dependents under S95 was established as a statutory duty under Regulation 5 of the Asylum Seekers Reception Regulations.²⁴¹ The EU RCD creates a legal obligation on the United Kingdom government to ensure that material reception conditions provide a dignified standard of living, which is based on respect for human dignity as established by the EU Charter.²⁴²

However, extensive evidence suggests that the United Kingdom government is failing to adequately fulfill this duty for a significant number of asylum applicants living on asylum support. Rather than providing a crucial safety net for asylum applicants while they navigate asylum procedures, the current system leaves people vulnerable to destitution, poverty, exploitation, and mental health issues.²⁴³

The reasons for this are multifaceted and result from the effects of legislation, evidential barriers to providing destitution, and the inadequate standard of asylum support provided. These areas will now

²³⁶ United Kingdom Home Office, 'Allocation of accommodation policy, Version 5.0' (March 2017) p 4 accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597382/Allocation-Of-Accommodation-v5_0.pdf>

²³⁷ United Kingdom, The Asylum Support (Amendment) Regulations 2018, No 30, Kind and level of support for essential living needs: Section 2

²³⁸ United Kingdom, The Asylum Support Regulations 2000, No 704, Determining whether persons are destitute, Period within which applicants must be likely to become destitute: Section 7

²³⁹ ASAP, 'Section 95 Support Factsheet 1' p 2 accessed here < http://www.asaproject.org/uploads/Factsheet_1_-_section_95.pdf>

²⁴⁰ For details of the criteria refused asylum applicants must meet to qualify for section 4 support see further: Asylum Support Appeals Project, 'Section 4 Support, Factsheet 2' access here < http://www.asaproject.org/uploads/Factsheet_2_-_Section_4_support.pdf>

²⁴¹ United Kingdom, The Asylum Seekers (Reception Conditions) Regulations 2005 No 7, Regulation 5: Asylum Support under Section 95 or 98 of the 1999 Act

²⁴² Reception Conditions Directive (n 88) Preamble

²⁴³ Refugee Action, 'Slipping Through the Cracks: How Britain's asylum support system fails the most vulnerable' (July 2017) accessed here < <https://www.refugee-action.org.uk/wp-content/uploads/2017/07/Slipping-through-the-cracks-final4-A4.pdf>> p 1

be analysed.

4.2: Refusing asylum support: the use of Section 55 legislation

Coming into effect in 2002, the Nationality, Immigration and Asylum Act empowered the Secretary of State to refuse all asylum support to an asylum applicant if they had not 'made their claim as soon as reasonably possible.'²⁴⁴ Exceptions to this provision can be made if necessary to avoid a violation of an individual's Convention rights under the Human Rights Act.²⁴⁵ Despite the government's assurances that this power would be used with caution, its initial use was extensive, with 9,415 applications being denied in 2003.²⁴⁶ In October 2003, 800 S55 cases were being judicially reviewed in the High Court, constituting one quarter of all judicial reviews,²⁴⁷ suggesting that the quality of Home Office decision making was often legally dubious.

The government initially interpreted the 'as soon as reasonably possible' test to mean that an asylum application should be made immediately at the point of entry into the United Kingdom. This interpretation was amended in December 2003 to allow asylum applicants a 72-hour window to apply.²⁴⁸ S55 decisions cannot be appealed by an asylum applicant, but a reconsideration can be lodged on the basis of the decision being unlawful, new evidence being obtained, or a change in circumstances.²⁴⁹ Barriers to lodging a reconsideration will be considerable without access to an asylum support legal advisor.

In 2004, the Refugee Council conducted extensive research with 132 frontline organisations to monitor the impact that S55 has had on asylum applicants.²⁵⁰ Reports of asylum applicants sleeping rough, living in unsanitary and overcrowded conditions, and experiencing extended periods of hunger as a result of the legislation were widespread. Additionally, asylum applicants with serious safeguarding

²⁴⁴ United Kingdom Statutory Instrument, Nationality, Immigration and Asylum Act 2002, Part 3: Section 55, (1)

²⁴⁵ *ibid*, Part 3: Section 55, (5)(A)

²⁴⁶ Joint Committee on Human Rights (n 182) para 89

²⁴⁷ *ibid*, para 89

²⁴⁸ *ibid*, para 89

²⁴⁹ United Kingdom Visas & Immigration, 'Section 55 Guidance' p 10 accessed here <

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431346/Section_55_v12.pdf>

²⁵⁰ See further, Refugee Council, 'Hungry & Homeless: the impact of the withdrawal of state support on asylum seekers' (April 2004) accessed here <https://www.refugeecouncil.org.uk/latest/news/1018_new_report_shows_government_policy_leaving_asylum_seekers_hungry_and_homeless/>

concerns were not exempt from the policy, as reports were made of trafficked women and survivors of SGBV being left street homeless.²⁵¹ These circumstances contributed to a situation of widespread deteriorating mental and physical health, as asylum applicants with no address faced barriers to visiting a doctor.²⁵²

Despite the 72-hour grace period, 73% of organisations reported that asylum applicants were often denied support under S55 even if they claimed asylum within a few days of entering the United Kingdom. In extreme cases, those who had claimed asylum within a few hours were denied on the basis that they had no evidence of when they arrived.²⁵³

The human rights implications of S55 were addressed by the House of Lords in the case *Limbuela and others*,²⁵⁴ in which three male applicants challenged the Home Secretary's decision to refuse them asylum support. The Law Lords found that the threshold for what constitutes cruel and inhumane or degrading treatment within the meaning of Article 3 ECHR will be met when:

'If there were persuasive evidence that a late applicant was obliged to sleep in the street, save perhaps for a short and foreseeable finite period, or was seriously hungry, or unable to satisfy the most basic requirements of hygiene, the threshold would, in the ordinary way, be crossed.'²⁵⁵

Following this judgment, the Home Office no longer exercises a policy of refusing both subsistence and accommodation support claims under S55. Rather, S55 will be used to refuse S95 subsistence-only claims for asylum applicants who have alternative forms of accommodation.²⁵⁶ Home Office guidance outlines that this decision is based on the premise that:

'If a person applies for subsistence only support it is less likely that support is necessary to avoid a breach of Convention rights. This is because an applicant who applies for subsistence only either has

²⁵¹ *ibid*, p 18

²⁵² *ibid*, p 7

²⁵³ *ibid*, p 16

²⁵⁴ *Secretary of State for the Home Department v. Wayoka Limbuela, Binyam Tefera Tesema and Yusif Adam*, [2004] EWCA Civ 540, United Kingdom: Court of Appeal (England and Wales) (21 May 2004)

²⁵⁵ *ibid*, para 9

²⁵⁶ Joint Committee on Human Rights (n 182) para 91

or does not need accommodation and, therefore, shelter and access to sanitary facilities.²⁵⁷

However, accommodation alone is not enough to prevent asylum applicant's human rights being infringed, as the United Kingdom is under a legal obligation to ensure that asylum applicants have access to minimum levels of each right contained in the ICESCR.²⁵⁸ The Asylum Support Programme Inter-Agency Partnership (IAP) refutes the assertion that subsistence-only rejections make rights violations less likely for asylum applicants:

'Agencies still consider that the denial of support under Section 55 to those who apply for subsistence only support potentially breaches an applicant's rights under both Article 3 of the ECHR and Articles 9 and 11 of the ICESCR.'²⁵⁹

Research published by Refugee Action in 2017 establishes that S55 refusals were continuing to be 'invoked frequently' with significant human rights implications for asylum applicants.²⁶⁰ Significantly, the 'as soon as reasonably possible' test continues to be applied in a hostile manner, as asylum applicants without evidence of their arrival are regularly rejected support under S55.²⁶¹

This policy fails to account for the methods used by some asylum applicants when crossing an international border and the delays to an application this may practically cause. People who are smuggled into the United Kingdom are often abandoned by their agent once they have crossed the border, with no money and means of reaching the Croydon or Leeds ASU.²⁶² The limited number of ASUs throughout the United Kingdom, and the short opening hours at Croydon and Leeds (9am-1pm working days), creates a barrier to lodging an asylum claim quickly and exacerbate destitution.²⁶³

For trafficking victims, this situation is intensified, as it is unrealistic to expect a trafficked individual to

²⁵⁷ Section 55 guidance (n 249) p 11

²⁵⁸ CESCR, GC 3 (n 63) para 10

²⁵⁹ Joint Committee on Human Rights, 'The Treatment of Asylum Seekers, Tenth Report of Session 2006- 2007, Volume I – Report and formal minutes' (March 2007) Written Evidence: Memorandum from the Inter Agency Partnership, (2007) para 18 accessed here <<https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81we74.htm>>

²⁶⁰ Refugee Action, 'Slipping Through the Cracks' (n 243) p 22

²⁶¹ Refugee Action, 'Slipping Through the Cracks' (n 243) p 22

²⁶² Joint Committee on Human Rights (n 182) para 79

²⁶³ Joint Committee on Human Rights, Memorandum from the Inter Agency Partnership (n 259) para 10

claim asylum within 72 hours of reaching the United Kingdom. However, the S55 guidance does not outline any exceptions for asylum applicants who have been trafficked, or those with other serious vulnerabilities.²⁶⁴ This is a deeply gendered policy decision, which does not account for women's experiences. Not only are women disproportionately victims of trafficking, but they face additional barriers to disclosing sensitive information at the ASU.²⁶⁵ Asylum applicants may therefore have good reasons for not claiming asylum as soon as reasonably possible, but it may be very difficult to articulate these reasons during an application for asylum support.

Delays to receiving S95 support in subsistence-only applications are common, with it taking 3 months on average for financial assistance to be received following an application.²⁶⁶ Refugee Action asserts that S55 decisions are a key factor in these delays, as it can take many weeks or months for an asylum applicant to have their case determined through an interview.²⁶⁷ During this time, asylum applicants and their dependents are extremely vulnerable to poverty and destitution, as they have no financial support and must rely on informal networks to accommodate them. Hosts are typically distant family members, acquaintances or strangers, who do not necessarily have the financial means to support asylum applicants.²⁶⁸ In the absence of a host, asylum applicants may be left street homeless if asylum support is denied.

The expectation that asylum applicants can rely on informal support networks, which are characterized by 'uncertainty and inconsistency'²⁶⁹ for the duration of time spent in asylum procedures is an unsustainable and irresponsible policy. The Citizens Advice state that 'it is clearly unacceptable that vulnerable individuals should have to rely on other, equally vulnerable individuals, to the obvious hardship of all concerned.'²⁷⁰ Precarious living conditions can create unequal power dynamics within a

²⁶⁴ See further, Section 55 guidance (n 249)

²⁶⁵ For a discussion of trafficking and modern slavery in the United Kingdom see further: Rights of Women, 'Trafficking and Modern Slavery' (September 2017) accessed here < https://rightsofwomen.org.uk/wp-content/uploads/2014/09/ROW_Trafficking-A4-DIGITAL-V2.pdf>

²⁶⁶ Refugee Action, 'Slipping Through the Cracks' (n 243) p 21

²⁶⁷ Refugee Action, 'Slipping Through the Cracks' (n 243) p 22

²⁶⁸ British Red Cross, 'Poor Health, No Wealth, No Home: A Case Study of Destitution' (2015) p 19 accessed here < <https://reliefweb.int/report/united-kingdom-great-britain-and-northern-ireland/poor-health-no-wealth-no-home-case-study>>

²⁶⁹ *ibid*, p 19

²⁷⁰ Joint Committee on Human Rights, 'The Treatment of Asylum Seekers, Tenth Report of Session 2006- 2007, Volume I – Report and formal minutes' (March 2007) Written evidence: Memorandum from Citizens Advice (2007) para 7, accessed here < <https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81we36.htm>>

house, which leave asylum applicants vulnerable to exploitation in return for free accommodation. This situation disproportionately affects women, who are at greater risk of being sexually exploited, particularly in light of the growing phenomena of 'sex for rent' demands from rogue landlords.²⁷¹

4.2.1: Section 55 legislation: compliance with international standards

The compatibility of S55 legislation with the United Kingdom's international and regional legal obligations is a multifaceted issue. From the perspective of international law, the Refugee Convention does not provide for conditions in which the rights of asylum applicants and refugees can be withdrawn. Rather, asylum applicants are entitled to a spectrum of rights entitlements, which build as their attachment to the refuge State develops. It is therefore highly dubious that legislation that functions to enforce destitution is compliant with the humanitarian objectives of the Refugee Convention.

Under the recast EU RCD, Member States are no longer entitled to withdraw asylum support, but may rather reduce it in cases where an application did not lodge their claim 'as soon as reasonably practicable.'²⁷² However, the United Kingdom remains legally bound only to the original EU RCD, which allows for reception conditions to be refused, thereby making S55 legislation compatible with the United Kingdom's obligations under the CEAS. However, there is a strong argument that it is implausible that the EU RCD's provision to withdraw asylum support can be easily reconciled with its provision to provide a dignified standard of living for asylum applicants.

Additionally, it can be argued that S55 refusals are incompatible with the United Kingdom's human rights obligations under the ICESCR and CEDAW. It is incumbent upon the United Kingdom to ensure that asylum applicants have an 'adequate standard of living, which includes adequate food, clothing and housing.'²⁷³ Yet, the consequence of withdrawing financial assistance without a right to appeal, combined with the extremely limited right to work, leaves asylum applicants extremely vulnerable to street homelessness and food poverty. In specific cases, this treatment risks exposing asylum

²⁷¹ Reehal and others, *Seeking Asylum: 'Women's experiences of home office decision making, destitution and mental health issues'* (February 2019) p 31 accessed here

<http://refugeerights.org.uk/wpcontent/uploads/2019/02/RRE_SeekingAsylum.pdf>

²⁷² Reception Conditions Directive recast (n 89) Article 20 (2)

²⁷³ CESCR, General Comment No 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) 13 December 1991, E/1992/23, para 1

applicants to Article 3 ECHR violations. This risk will hinge on an asylum applicant's personal circumstances, such as their age, gender, ability, and whether they are supporting dependents. The gender-neutral application of S55 legislation fails to account for the additional barriers which women may face when trying to claim asylum as quickly as possible. Additionally, the disproportionate risk of violence and exploitation which women are exposed to as a consequence of being denied asylum support is not highlighted once in S55 guidance for caseworkers.²⁷⁴

4.3: Proving destitution: evidential requirements and barriers to access

To qualify for asylum support, asylum applicants must meet the legal definition of destitution within the 1999 Immigration Act:

'A person is destitute if: (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.'²⁷⁵

Irrespective of whether an asylum applicant has some form of accommodation, an assessment of the adequacy of accommodation must be conducted. This assessment must account for a number of criteria including, 'whether the accommodation is affordable' and whether it is probable that the person's continued occupation in the accommodation will lead to domestic violence towards the applicant and their dependents.'²⁷⁶

Additionally, the ability for an asylum applicant to meet their essential living needs must be established. However, a definition of 'essential living needs' exists in neither United Kingdom legislation nor regulation. The Asylum Support Appeals Projects (ASAP) asserts that essential needs should include, at a minimum, 'an individual's ability to feed themselves (and dependents) and to obtain essential goods

²⁷⁴ See further, Section 55 guidance (n 249)

²⁷⁵ Immigration and Asylum Act 1999 (n 154) Section 95 (3)(A) & (B)

²⁷⁶ The Asylum Support Regulations 2000 (n 238) Articles (3) (A) – (G)

such as sanitary products and clothing.²⁷⁷ This position is consistent with Article 11 of the ICESCR, which outlines that an adequate standard of living consists of 'adequate food, clothing and housing and the continuous improvement of living conditions.'²⁷⁸

However, research produced by Refugee Action and the ASAP highlights that destitute asylum applicants are incorrectly denied asylum support at unnecessarily high rates.²⁷⁹ Incorrect refusals are primarily the result of an overly restrictive or incorrect application of the destitution test by caseworkers. The consequences of refusals and delays can be severe, as vulnerable asylum applicants and their dependents can be pushed into desperate and undignified living conditions as a means of survival.

4.3.1: Proving destitution: Section 98 refusals

Although the destitution test for S98 and S95 cases are the same, the evidential requirements for S98 are lower, with support being granted for those who it 'appears *may* be destitute.'²⁸⁰ The threshold is lowered because S98 initial accommodation is designed to be immediately accessible for asylum applicants who would otherwise be destitute.²⁸¹ The policy of determining all S98 applications received before 3pm on the same day reaffirms the emergency nature of this support.²⁸² Yet, evidence of high incorrect initial refusals is stark. Based on a sample of 88 applications that Refugee Action had established were all eligible for S98 support, only 43 cases were initially granted support by the Home Office.²⁸³ Refugee Action supported 36 applicants to reapply, upon which 92% of the initial decisions were overturned.²⁸⁴ In the majority of these cases there had been no change in circumstances for the asylum applicant. This suggests that Home Office caseworkers are taking an exceedingly narrow approach to determining S98 applications, which is unnecessarily restrictive and undermines the very

²⁷⁷ ASAP, 'Not Destitute Enough: A report documenting UKBA's failure to apply the correct legal definition of destitution in asylum support decisions' (December 2008) p 7 accessed here <https://www.asaproject.org/uploads/not_destitute_enough.pdf>

²⁷⁸ ICESCR (n 61) Article 11

²⁷⁹ See further, Refugee Action, *Slipping Through the Cracks* (n 243) and ASAP, *Destitution: Unchecked, Unbalanced*, Home Office Decision Making on Asylum Support (September 2015) accessed here <<https://www.asaproject.org/uploads/Destitution-Unchecked-Unbalanced-August-2015.pdf>>

²⁸⁰ Immigration and Asylum Act 1999 (n 154) Section 98

²⁸¹ Refugee Action, 'Slipping Through the Cracks' (n 243) p 7

²⁸² United Kingdom Visas & Immigration, Asylum Support: Policy Bulletins Instruction V 7.0, p 2 accessed here <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817696/asylum-support-policy-bulletins-v8.0.pdf>

²⁸³ Refugee Action, 'Slipping Through the Cracks' (n 243) p 11

²⁸⁴ Refugee Action, 'Slipping Through the Cracks' (n 243) p 12

purpose of S98.

The process of reapplying can take a number of days, as asylum applicants will often need to access support from specialist agencies to increase their chances of receiving a positive decision.²⁸⁵ This results in destitute asylum applicants being left vulnerable to imminent street homelessness until their case can be reexamined. This is an avoidable situation, which not only causes unnecessary suffering for eligible asylum applicants, but is also inconsistent with the United Kingdom's statutory duty to prevent asylum applicants becoming destitute.

4.3.2 Proving destitution: Section 95 evidence requests

Onerous requests for additional evidence in S95 cases pose an additional and considerable barrier to asylum applicants receiving the support they are eligible for. To apply for S95, applicants must fill in a 35-page document with personal and financial information.²⁸⁶ Home Office caseworkers may then request additional evidence to prove destitution, prior to a decision being made. ASAP assert that additional evidence requests can be beneficial for asylum applicants, owing to a lack of insufficient evidence of destitution being a primary reason for S95 refusals.²⁸⁷

However, Refugee Action reports that additional evidence requests often contradict or disregard information that was previously provided by an asylum applicant.²⁸⁸ For example, asylum applicants have been asked to supply P45 forms despite stating they have never worked in the United Kingdom, and provide British bank statements despite never stating that they had opened a British bank account.²⁸⁹ Additionally, ASAP has observed a consistent failure by some caseworkers to adequately assess all additional evidence following a request, resulting in incorrect decisions still being made.²⁹⁰

²⁸⁵ ASAP, 'Section 98' (n 233) p 3

²⁸⁶ See further, United Kingdom Home Office, Asylum Support Application Form (ASF1) (4 January 2013) accessed here < <https://www.gov.uk/government/publications/application-for-asylum-support-form-asf1> >

²⁸⁷ ASAP, 'UKBA Decision Making Audit, One Year on, Still No Credibility' (May 2013) p 7 accessed here < <https://www.asaproject.org/uploads/ASAP-Audit-on-decision-making-2013.pdf> >

²⁸⁸ *ibid*, p 7

²⁸⁹ Refugee Action, 'Slipping Through the Cracks' (n 243) p 24

²⁹⁰ For a list of research reports produced by the Asylum Support Appeals Project which monitor the incorrect assessment of additional evidence by Home Office caseworkers in asylum support decision see further: ASAP, 'A decade of disbelieving destitution: Research findings on Home Office refusals or accommodation and support based on not believing an asylum seeker is destitute' (2015) accessed here < <https://www.asaproject.org/uploads/ASAP-Summary-A-Decade-of-disbelieving-destitution-Oct-2015.pdf> >

The use of additional evidence requests, and the incorrect handling of information, shows a lack of concern for the consequences of delays to S95 decisions.

In some cases, there is evidence that caseworkers are making legally unfounded evidence requests for the purpose of determining destitution. When assessing whether privately rented accommodation is adequate, ASAP reports that caseworkers have been employing the concept of intentional homelessness.²⁹¹ This means an asylum applicant will lose their right to S95 support if it is determined they intentionally left their accommodation. Based on this legal concept, asylum applicants who are in rent arrears have been denied S95 support on the basis that they have not yet been officially evicted from privately rented accommodation by bailiffs, and are therefore not destitute.²⁹² Although relevant in homelessness law, this argument has no legislative basis in asylum support law.²⁹³ Rather, when assessing the adequacy of existing accommodation for the destitution test, caseworkers are required to determine whether the accommodation is affordable, amongst additional criteria.²⁹⁴ Through requiring asylum applicants to provide evidence of eviction or formal court proceedings against them, the threshold of proving adequate accommodation is drastically increased. This can result in families continuing to stay in inadequate accommodation, which often falls into disrepair once they are in rent arrears, out of fear of being accused of becoming intentionally homeless.²⁹⁵

Requests for evidence of formal eviction proceedings against asylum applicants have also been made by the Home Office in cases where asylum applicants are living in informal accommodation.²⁹⁶ This evidential requirement fails to acknowledge that asylum applicants are often living in precarious conditions where they rely on multiple hosts to accommodate them. For women, these evidential requirements may be particularly hard to meet. The Refugee Council reports that for women living in situations of domestic violence or exploitation, it is impossible to obtain a notice of eviction.²⁹⁷ Rather, perpetrators of gender based violence will frequently prevent women from leaving through violent and

²⁹¹ ASAP, 'Asylum Support Bulletin December 2015' p 2 accessed here < <http://www.asaproject.org/uploads/Bulletin-No.-1-Jan-2016.pdf>>

²⁹² *ibid*, p 2

²⁹³ For the legal definition of intentional homelessness see further: United Kingdom Statutory Instruments, Housing Act 1996, c52, Part VII, Duties to persons becoming homeless intentionally, section 190

²⁹⁴ The Asylum Support Regulations 2000 (n 238) Regulation 8 (b)

²⁹⁵ Refugee Action, 'Slipping Through the Cracks' (n 243) p 15

²⁹⁶ Refugee Action, 'Slipping Through the Cracks' (n 243) p 15

²⁹⁷ Baillot and Connelly, 'Women Seeking Asylum: Safe From Violence in the UK?' (June 2018) p 33 accessed here < http://www.asaproject.org/uploads/Safe_from_violence_in_the_UK._ASAP-RC_report_.pdf>

coercive behavior which is designed to isolate and control. Frontline organisations report that evidential requests pose a considerable barrier to women continuing with an S95 application and escaping violent circumstances.²⁹⁸

In cases where continual additional evidence requests are made, asylum applicants often receive a Section 57 refusal on their application.²⁹⁹ S57 gives the Secretary of State the power to refuse asylum support when they 'are not satisfied that the information provided is complete or accurate or that the applicant is cooperating with enquiries.'³⁰⁰ However, understanding and meeting additional evidence requests can be extremely difficult.

For asylum applicants with complex cases, such as trafficking victims, additional barriers to providing evidence of destitution may make them more vulnerable to receiving an S57 decision. In one case example, ASAP observed that a woman was refused asylum support on the basis that she was in possession of money that belonged to traffickers. However, the woman was not able to use the money to support herself out of fear of the traffickers.³⁰¹ The refusal of trafficking victims because they couldn't provide a list of previous addresses and valid ID has also been observed.³⁰²

The inflexible approach the Home Office has taken in these cases is representative of an inability to accommodate vulnerable asylum applicant's circumstances in a humane manner. This approach has significant consequences for women, who are at a disproportionate risk of being unable to meet high evidential requirements owing to experiences of trafficking, domestic violence, or sexual exploitation. The failure of the Home Office to acknowledge that women face additional barriers when accessing asylum support is apparent through the Asylum Support Instructions taking a gender blind approach to decision making.³⁰³ Through not outlining gender specific considerations, which caseworkers should take into account when accessing destitution, the structural disadvantage which women asylum

²⁹⁸ *ibid*, 33

²⁹⁹ Refugee Action, 'Slipping Through the Cracks' (n 243) p 25

³⁰⁰ Nationality, Immigration and Asylum Act 2002 (n 244) Section 57

³⁰¹ ASAP, 'Barriers to Support Appeals for Asylum Seeking Women' (September 2011) p 6 accessed here < <https://www.asaproject.org/uploads/barrierstoappeals.pdf>>

³⁰² Refugee Action, 'Slipping Through the Cracks' (n 243) p 26

³⁰³ See further, United Kingdom Visas & Immigration, 'Asylum Support: Policy Bulletins Instructions' (September 2014) accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817696/asylum-support-policy-bulletins-v8.0.pdf>

applicants experience is overlooked.

4.4: Asylum support appeals: the legal aid gap

The challenges to receiving asylum support are exacerbated by the fact that legal aid is not available for S95 appeals. The decision by the United Kingdom government to not provide legal aid funding for asylum support appeals is consistent with EU RCD, but not the recast EU RCD.³⁰⁴ Through not providing legal aid, third sector organisations must defend asylum applicants' access to justice in an area of law, which has direct consequences for asylum applicants' minimum ICESCR rights.

Currently, ASAP is the only organisation in the United Kingdom who provides free of charge legal representation to asylum applicants for appeals at the First Tier asylum support Tribunal. For those who are unrepresented, the experience of attending the tribunal alone can be incredibly traumatic, as asylum applicants report fearful of the process.³⁰⁵

The percentage of represented cases which are overturned at the tribunal remain consistently high. During the first quarter of 2019, 71% of the cases that ASAP represented were overturned at appeal.³⁰⁶ This statistic is in line with ASAP's annual average, with 69% of represented cases in 2017-2018 were overturned.³⁰⁷ These statistics strongly suggest that the quality of initial decision-making on S95 cases is extremely poor.

The extent of barriers faced by asylum applicants when trying to access asylum support highlights severe operational inefficiencies within Home Office decision making and legislative gaps. The persistent nature of these barriers suggest that the current asylum system is inadequate to meet the United Kingdom's legal obligations under the EU RCD to ensure minimum standards of reception conditions. Arguably, clear deficiencies within the asylum support system show a lack of concern within

³⁰⁴ Reception Conditions Directive (n 88) Article 26 (2) &, Reception Conditions Directive recast (n 89) Article 26 (3)(a)

³⁰⁵ ASAP, 'Barriers to Support' (n 301) p 6

³⁰⁶ ASAP, 'Quarterly monitoring report January – March 2019' (March 2019) p 1 accessed here <
https://www.asaproject.org/uploads/Quarterly_Monitoring_Report_Q4_2018-2019_2.pdf>

³⁰⁷ ASAP, 'Annual Report 2017/2018' (March 2018) p 3 accessed here <
http://www.asaproject.org/uploads/ASAP_Annual_Report_2017-2018_FINAL_lo_res.pdf>

the Home Office for the consequences of delayed support for asylum applicants and their dependents. The decision to not provide legal aid for asylum support appeals strengthens this argument.

4.5: Life on asylum support: the adequacy of asylum accommodation

The failure of asylum support law and policy to account for women's needs during the application and decision-making process continues to be a problem once women are recipients of S98 and S95 support. For women receiving S95 support, the impact of being moved into dispersal housing in an unknown area of the United Kingdom can be particularly severe, as important social support networks are lost.³⁰⁸ For those with children, and especially single mothers, this loss of social support can be particularly challenging, as a lack of childcare remains a significant barrier to women accessing services. For SGBV survivors, dispersal can create a barrier to finding specialist medical services which are culturally sensitive and equipped to deal with complex needs, such as cases of FGM.³⁰⁹ This may affect a woman's ability to disclose details of abuse, if she cannot build a rapport with a trusted medical professional. Frequent moves within accommodation facilities and dispersal regions may also affect asylum applicants' ability to engage well with asylum procedures, as it may be impossible to maintain relationships with legal advisors.³¹⁰

Within initial accommodation (IA), communal spaces are typically mixed sex and dominated by men, with only a limited number of women-only spaces existing in some facilities.³¹¹ There is currently no policy in place to ensure that women survivors of SGBV, or single mothers, are accommodated separately from men. This causes great distress, with women reporting they are too fearful to leave their room or use the bathroom or kitchen.³¹² This fear is not unfounded, with research commissioned by the Refugee Council highlighting that 29% of 159 respondents reporting incidents of abuse within

³⁰⁸ Baillot and Connelly (n 297) 16

³⁰⁹ Refugee Council, 'Vulnerable Women's Project: Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence Literature Review' (February 2009) p 51 accessed here < <https://www.bl.uk/collection-items/vulnerable-womens-project-refugee-and-asylum-seeking-women-affected-by-rape-or-sexual-violence-literature-review>>

³¹⁰ Baillot and Connelly (n 297) p 16

³¹¹ Home Affairs Committee, 'Twelfth report of Session 2016-17, Asylum accommodation,' HC 637, Published Written Evidence, Refugee Council (ACC0033), (January 2017) para 5

³¹² Home Affairs Committee, 'Twelfth report of Session 2016-17, Asylum accommodation,' HC 637, Published Written Evidence, Helen Bamber Foundation' (ACC0021), (January 2017) para 1

asylum accommodation where the perpetrator was another resident.³¹³ The Helen Barber Foundation has found that IA is often unsafe for vulnerable women with histories of SGBV and trafficking, as women are housed in buildings that are well known to traffickers, with no apparent safety measures in place.³¹⁴ For women with children, IA may lack child appropriate amenities and local authorities are not always informed that children will be residing on the premises, giving rise to safeguarding concerns.³¹⁵ This is a woefully inadequate and inappropriate situation, which fails to account for basic safeguarding concerns and women's right to security.

Despite IA not being suitable or designed for long-term use, the average length of stay is now 37 days.³¹⁶ For the duration of this time, asylum applicants and their dependents will be provided with daily meals but no cash to cover essential living needs. Asylum applicants are therefore reliant on support from third sector organisations to provide for all other essential living needs. Access to these services will vary across the country and be dependent on the ability for an asylum applicant to travel and engage with service providers.

Inadequate living conditions within asylum accommodation pose another significant issue. In 2017, the Home Affairs Committee conducted an inquiry into the standard of asylum accommodation provided through Serco and G4S contracts.³¹⁷ Significant failings were raised, as the Committee reported that conditions within some asylum accommodation are 'a disgrace and it is shameful that some very vulnerable people have been placed in such conditions.'³¹⁸ Of particular concern were high incidents of vermin and bed bug infestations, which contractors failed to respond to in a timely manner following complaints from residents.³¹⁹ Properties were found to be in a state of disrepair in a number of cases, with asbestos, damp, and mold present. The provision of furniture, equipment, and facilities to an adequate standard was regularly not met, with reports of single mothers and children sleeping on the floor and being without working ovens or washing machines.³²⁰

³¹³ Baillot and Connelly (n 297) p 18

³¹⁴ Home Affairs Committee, Helen Bamber Foundation (n 312) para 1

³¹⁵ Home Affairs Committee, 'Twelfth report of Session 2016-17, Asylum accommodation,' HC 637, (January 2017) p 22

³¹⁶ Refugee Action, 'Slipping Through the Cracks' (n 243) p 1

³¹⁷ Home Affairs Committee, 'Twelfth report of Session' (n 315) para 61

³¹⁸ Home Affairs Committee, 'Twelfth report of Session' (n 315) 69

³¹⁹ Home Affairs Committee, 'Twelfth report of Session' (n 315) para 61

³²⁰ Home Affairs Committee, 'Twelfth report of Session' (n 315) para 29

Despite calls from the Committee for the government to immediately address these issues, a 2018 inquiry covering the same subject found evidence of little change.³²¹ These living conditions are particularly harsh for vulnerable asylum applicants with mental health needs, experiences of trauma, and those with children. Reports of women being unable to keep their children safe and clean in dispersal housing and going hungry to ensure their children eat enough are extensive, and in many cases severe.³²² This situation is unacceptable from a rights perspective and risks infringing people's Article 3 ECHR, Article 11, and Article 12 ICESCR rights. It also calls into question whether the United Kingdom is fulfilling its legal obligations to children, under the International Child Rights Convention.

4.5.1: Life on asylum support: subsistence rates and life below the poverty line

The issue of inadequate conditions within asylum support housing is compounded by low subsistence support rates under S95. In 2013, the Children's Society's inquiry into asylum support for young people highlighted that subsistence rates were insufficient to meet people's essential living needs, with reports of food poverty not being uncommon.³²³ The government's decision to continue to keep subsistence rates frozen at 2011 levels of £36.62 per single adult was subject to a judicial review brought by Refugee Action in 2014. The judgment was significant, as the Secretary of State's decision to freeze rates was quashed and a review of subsistence rates was ordered.³²⁴

Following the government's 2018 review of essential living needs and associated costs, subsistence rates were raised by 80p.³²⁵ This results in current S95 subsistence rates being set at £37.75 per person per week, corresponding to an allowance of £5 per day.³²⁶ An additional £5 per week is provided

³²¹ Home Affairs Committee, 'Thirteenth Report of Session 2017-2019, Asylum accommodation replacing COMPASS, HC 1758' (December 2018) para 6

³²² Home Affairs Committee, 'Twelfth report of Session' (n 315) p 24-29

³²³ The Children's Society, 'Report of the Parliamentary Inquiry into Asylum Support for Children and Young People' (January 2013) accessed here

<https://www.childrenssociety.org.uk/sites/default/files/tcs/asylum_support_inquiry_report_final.pdf>

³²⁴ *R (Refugee Action) v Secretary of State for the Home Department* [2014] EWHC 1033 (Admin)

³²⁵ For a full break down of the government's assessment of essential living needs and the associated costs see further: United Kingdom Home Office, 'Report on Review of Cash Allowance Paid to Asylum Seekers: 2017' (January 2018) accessed here < <https://www.statewatch.org/news/2018/jan/uk-ho-report-review-cash-allowances-asylum-seekers-2017.pdf>>

³²⁶ United Kingdom Statutory Instruments, The Asylum Support (Amendment) Regulations 2018, No 30, Kind and level of support for essential living needs, Section 2

to women with children under the age of 1, and an additional £3 for those with children aged 1 to 3 years.³²⁷ This raise has been condemned as being insufficient to remedy the situation of a growing numbers of asylum applicants living in poverty and relying on charitable support to cover their basic living needs.³²⁸

The EU RCD does not create a legal obligation on the United Kingdom to ensure that asylum support rates are equivalent to mainstream benefits for citizens, as Member States may grant 'less favorable treatment to applicants compared with nationals' in this regard.³²⁹ Additionally, human rights treaty monitoring bodies have asserted that differential treatment is not inherently discriminatory, as long as the treatment has an object and purpose.³³⁰ However, the government's assertion that asylum support rates, which currently constitute only 52% of income support levels, can provide an adequate standard of living appears unjustified when the extent of poverty is considered.³³¹ Arguably, these rates are inconsistent with the United Kingdom's legal obligations to ensure minimum ICESCR rights, and a dignified standard of living for applicants as intended by the EU RCD.

Additionally, the United Kingdom is legally obliged to not implement retrogressive measures, which undermine people's ICESCR rights,³³² or cause indirect gender discrimination. However, in 2015 the government decided to abolish the policy of paying asylum applicants different amounts depending on the composition of their household was, in favour of a fixed flat rate.³³³ This significantly impacted single parent households and families with children, as weekly payments were greatly reduced.³³⁴ This policy change has a direct and disproportionate effect on women, who are statistically overwhelmingly more likely to be single parents.

³²⁷ United Kingdom Statutory Instruments, The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007, Section 7 (1) & (2)

³²⁸ Travis, 'Destitute United Kingdom asylum seekers get 80p rise in subsistence payments' (Guardian January 2018) accessed here < <https://www.theguardian.com/world/2018/jan/15/destitute-uk-asylum-seekers-get-80p-rise-in-subsistence-payments>>

³²⁹ Reception Conditions Directive recast (n 89) Article 17 (5)

³³⁰ Human Rights Committee (n 58) para 13

³³¹ Refugee Action, 'Slipping Through the Cracks' (n 243) p 7

³³² CESCR (n 63) para 9

³³³ Gower, 'Asylum support: accommodation and financial support for asylum seekers' Briefing Paper, Number 1909, (October 2015) p 7 accessed here<<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01909#fullreport>>

³³⁴ *ibid*, p 7

Chapter 5: The failure of legal frameworks to account for women's experiences

Through highlighting the range of barriers that women asylum applicants face when trying to access legal assistance and asylum support, this essay has highlighted that women do not experience disadvantage in only one isolated area of asylum procedures. Rather, the disproportionate effects legislation and policy have on women is systemic across procedures, albeit to varying levels of severity. Yet, these effects are not coincidental. In the same way that a decade of austerity measures did not coincidentally result in women, particularly disabled and BAME women, being disproportionately affected,³³⁵ these effects are again the direct result of a society which is not designed for women and also do not prioritize their equality with men.

The overarching reasons why women are at a disproportionate disadvantaged during asylum procedures are twofold; firstly, women enter the asylum system from a position of structural disadvantage, and secondly, the asylum system itself is not designed to remedy this disadvantage. From the perspective of feminist legal theory, it is unsurprising that the effects of asylum legislation and policy are more severe for women. This is because the law has been recognised as a product of patriarchal society, which is therefore inherently biased in favour of men.³³⁶ The law's claim to neutrality and universality is therefore a fallacy, as it was built with the exclusion of women's experiences and concerns.³³⁷ One of the clearest examples of how decision makers overlook women's experiences is through the design and implementation of gender-neutral legislation and policy. Not only does this fail to acknowledge that men and women are affected differently by apparently neutral rules, but it also fails to recognise that women's subordination can only be rectified through affirmative action.³³⁸

The disadvantage that women asylum applicants in the United Kingdom experience is the product of a collective and systemic failure at the international, national and regional levels to consider their needs.

³³⁵ Women's Budget Group, 'Women and the Spending Review: A briefing from the United Kingdom Women's Budget Group on the key policy priorities from the Women and Equalities sector' (August 2019) p 2 accessed here < <https://wbg.org.uk/wp-content/uploads/2019/04/spending-review-briefing-final-29-08-19.pdf> >

³³⁶ Baer, 'Feminist Theory and The Law' in *The Oxford Handbook of Political Science* (July 2011) p 308

³³⁷ Charlesworth, 'Feminist Critiques of International Law and Their Critics' *Third World Legal Studies: Volume 13, Article 1* (1995) p 10

³³⁸ Charlesworth and Chinkin (n 17) p 231

The invisibility of women's experiences within the Refugee Convention is relatively unremarkable, owing to it being indicative of the time in which the Convention was drafted. However, fifty years later, the CEAS has also fallen short of creating an asylum system that acknowledges women's disadvantage and prioritises defending their rights. When women's concerns are considered within the context of asylum, it is often limited to giving greater visibility to gendered forms of persecution during determination procedures. This is a significant development within the recast EU APD, which has a tangible impact on the ability for women to have their persecution recognised and receive protection.³³⁹ However, this is clearly not enough, and as this essay has highlighted, attention to how gender interacts with and impacts every stage of the asylum process is crucial for women's ability to access their rights.

Through granting rights to asylum applicants on a gender-neutral basis, the EU Directives have failed to create an obligation on Member States to consider the special measures that may be necessary to ensure women have equal access to their entitlements. Additionally, this approach overlooks the disproportionate consequences that the provisions within these Directives will have on women. This is particularly problematic owing to the EU RCD creating an inherent state of vulnerability for asylum applicants who have insufficient means to cover their essential living needs, but are banned from entering the labour market. Through placing women in a position of State reliance without due regard for the disproportionate consequences this will have on their quality of life, the Directives perpetuate women's inequality. From a feminist perspective, this is symptomatic of an international climate where lip service is often paid to women's rights, but legislation continues to be constructed in a way that will bring little practical change to women's lives.

The failure at the EU level to give adequate consideration to women's rights during asylum procedures sets a dangerous precedent for the national legislation and policy of EU Member States. Arguably, within the United Kingdom context, the barriers to accessing asylum support and legal assistance for asylum applicants is directly linked to the wider government policy of creating a hostile immigration environment for illegal immigrants.

The argument that the government has purposely reduced the economic and social rights of asylum

³³⁹ Procedure Directive (n 87) Preamble (32) and Article 15

applicants, as part of a policy of enforced destitution to disincentivise asylum claims in the United Kingdom, is not a new one.³⁴⁰ Rather, it has been widely argued by specialist refugee organisations that poverty and destitution are built into the asylum support system as a 'deliberate tool in the operation of immigration policy.'³⁴¹ From a rights perspective, the decision to deliberately expose people to a system that undermines their basic economic, social and cultural rights, and may result in circumstances that reach the threshold of inhumane or degrading treatment, is unacceptable.

For women asylum applicants, the consequences of enforced destitution and poverty are particularly grave, as the link between poverty and an increased risk of sexual and gender based violence, regardless of immigration status, is well established within the United Kingdom.³⁴² The risks associated with placing women asylum applicants and their dependents in a position of financial insecurity for the duration of asylum procedures are therefore not insignificant. The unwillingness to prioritise all women's rights and safety over the government's own immigration agenda is apparent through the lack of provisions protecting women with an irregular legal status in the new Draft Domestic Violence Bill. Additionally, the decision to not become legally bound by the recast EU Directives and delay the ratification of the Istanbul Convention reinforces this argument, as the government has to date opted out of extending greater rights entitlements to women.

Regardless of whether legislation, policy, and administrative decisions have been intentionally designed to create barriers for asylum applicants when trying to access their entitlements, this essay has highlighted that the current system is failing women in several ways. From a feminist legal perspective, the United Kingdom's asylum support system as it currently conceived, far from offering a haven from persecution for many, functions to create fertile ground for women's exploitation, abuse and destitution. This situation may fall short of the United Kingdom's international obligations, but it is not irreparable, as long as decision makers are willing to begin reimagining how the law can be used to better defend all women's rights.

³⁴⁰ See further, Parker, 'Falling Behind: The Decline of the Rights of Asylum Seekers in the United Kingdom and Its Impact on Their Day-to-day Lives' (E sharp Issue 25:1 Rise and Fall 2015)

³⁴¹ Joint Committee on Human Rights (n 182) para 120

³⁴² Refugee Council, 'The Vulnerable Women's Project' (n 309) p 6

Bibliography

Case law

Angel N. Oló Bahamonde v. Equatorial Guinea (Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991 [1993])

Gaygusuz v. Austria, Case No 39/1995/545/631, European Court of Human Rights (23 May 1996)

M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights (21 January 2011)

R (Refugee Action) v Secretary of State for the Home Department [2014] EWHC 1033 (Admin)

Secretary of State for the Home Department v. Wayoka Limbuela, Binyam Tefera Tesema and Yusif Adam, [2004] EWCA Civ 540, United Kingdom: Court of Appeal (England and Wales) (21 May 2004)

Primary Legislation

Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) (11 May 2011)

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (4 November 1950) ETS 5

European Union, Council of the European Union, Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (2 January 2006) OJ L 326; 13 December 2005

European Union, Council of the European Union, Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States (6 February 2003) OJ L. 31/18

European Union, Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast 29 June 2013) OJ L. 180/60

European Union, Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast 29 June 2013) OJ L. 180/96

United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (Adopted 18 December 1979, entered into force 3 September 1981) United Nations Treaty Series, vol. 1249

United Nations General Assembly, Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 United Nations Treaty Series 137

United Nations General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976,) United Nations, Treaty Series, Vol. 99

United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) United Nations Treaty Series, Vol 993

UN General Assembly, Protocol Relating to the Status of Refugees (adopted 14 December 1950, entered into force 4 October 1967) 606 United Nations Treaty Series

United Kingdom Statutory Instrument, Immigration and Asylum Act 1999, C.33

United Kingdom Statutory Instrument, Nationality, Immigration and Asylum Act 2002, c.41

United Kingdom Statutory Instrument, The Civil Legal Aid (Remunerations) Regulations 2013 (No 422)

United Kingdom Statutory Instrument: Human Rights Act 1998 (9 November 1998)

United Kingdom Statutory Instruments, Housing Act 1996, C.52

United Kingdom Statutory Instruments, Immigration and Asylum Act 1999 (11 November 1999)

United Kingdom Statutory Instruments, Legal Aid, Sentencing and Punishment of Offenders Act 2012, United Kingdom: Parliament, House of Commons Library (1 May 2012)

United Kingdom Statutory Instruments, The Asylum Support (Amendment) Regulations 2018, No 30

United Kingdom Statutory Instruments, The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

United Kingdom Statutory Instruments, The Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016 No 781

United Kingdom Statutory Instruments, The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007

United Kingdom, Immigration Rules part 11 B Asylum, Right to request permission to take up employment 360 (Published 25 February 2016) accessed here < <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11b>>

United Kingdom, The Asylum Seekers (Reception Conditions) Regulations 2005 No 7

United Kingdom, The Asylum Support (Amendment) Regulations 2018, No 30

United Kingdom, The Asylum Support Regulations 2000, No 704

Secondary Sources

Asylum Aid, 'Unsustainable: the quality of initial decision-making in women's asylum claims' (January 2011) accessed here < <https://www.refworld.org/docid/4d3435d12.html>>

Alison and Taylor, 'Home Office abandons six-month target for asylum claim decisions' (The Guardian May 2019) accessed here <<https://www.theguardian.com/uk-news/2019/may/07/home-office-abandons-six-month-target-for-asylum-claim-decisions>>

Asylum Support Appeals Project, 'A decade of disbelieving destitution: Research findings on Home Office refusals or accommodation and support based on not believing an asylum seeker is destitute' (2015) accessed here <<https://www.asaproject.org/uploads/ASAP-Summary-A-Decade-of-disbelieving-destitution-Oct-2015.pdf>>

Asylum Support Appeals Project, 'Annual Report 2017/2018' (March 2018) accessed here < http://www.asaproject.org/uploads/ASAP_Annual_Report_2017-2018_FINAL_lo_res.pdf>

Asylum Support Appeals Project 'Barriers to Support Appeals for Asylum Seeking Women' (September 2011) accessed here < <https://www.asaproject.org/uploads/barrierstoappeals.pdf>>

Asylum Support Appeals Project, 'Not Destitute Enough: A report documenting UKBA's failure to apply the correct legal definition of destitution in asylum support decisions' (December 2008) accessed here <https://www.asaproject.org/uploads/not_destitute_enough.pdf>

Asylum Support Appeals Project, 'Quarterly monitoring report January – March 2019' (March 2019) accessed here < https://www.asaproject.org/uploads/Quarterly_Monitoring_Report_Q4_2018-2019_2.pdf>

Asylum Support Appeals Project, 'Section 95 Support Factsheet 1' accessed here < http://www.asaproject.org/uploads/Factsheet_1_-_section_95.pdf>

Asylum Support Appeals Project, 'Section 98 Support Factsheet 17' accessed here < http://www.asaproject.org/uploads/Factsheet_17_-_s98_Support_March_2019.pdf>

Asylum Support Appeals Project, 'UKBA Decision Making Audit, One Year on, Still No Credibility' (May 2013) accessed here < <https://www.asaproject.org/uploads/ASAP-Audit-on-decision-making-2013.pdf>>

Asylum Support Appeals Project, 'Destitution: Unchecked, Unbalanced, Home Office Decision Making on Asylum Support' (September 2015) accessed here < <https://www.asaproject.org/uploads/Destitution-Unchecked-Unbalanced-August-2015.pdf>>

Asylum Support Appeals Project, 'Section 4 Support, Factsheet 2' accessed here < http://www.asaproject.org/uploads/Factsheet_2_-_Section_4_support.pdf>

Aspinall and Watters, 'Refugee and asylum seekers, A review from an equality and human rights perspective,' Equality and Human Rights Commission, Research Report 51 (University of Kent 2010)

Baer, 'Feminist Theory and The Law' in The Oxford Handbook of Political Science (July 2011)

Baillot and Connelly, 'Women Seeking Asylum: Safe From Violence in the UK?' (June 2018) accessed here < http://www.asaproject.org/uploads/Safe_from_violence_in_the_UK._ASAP-RC_report_.pdf>

Bogner and others, 'Impact of Sexual Violence on Disclosure during Home Office Interviews' The British Journal of Psychiatry, Volume 191, (2007)

British Red Cross, 'Poor Health, No Wealth, No Home: A Case Study of Destitution' (2015) accessed here < <https://reliefweb.int/report/united-kingdom-great-britain-and-northern-ireland/poor-health-no-wealth-no-home-case-study>>

Bulman, "Asylum waiting times at record high as thousands 'left in limbo'" (The Independent, 22 August 2019) accessed here < <https://www.independent.co.uk/news/uk/home-news/asylum-seekers-waiting-times-home-office-immigration-a9075256.html>>

Bunch, 'Transforming Human Rights from a Feminist Perspective', in J. Peter and A. Wolper (eds), *Women's Rights, Human Rights*, (New York: Routledge 1995)

Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 25 on article 4, paragraph 1', Adopted at the Thirtieth Session of the Committee on the Elimination of Discrimination against Women (2004)

Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 28: On The Core Obligations of States Parties under Article 2' (2010)

Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 19: Violence Against Women,' Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women (1992)

Committee on Economic, Social and Cultural Rights, 'Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights' Statement by the CESCR (13 March 2017) UN Doc E/C.12/2017/1

Committee on Economic, Social and Cultural Rights, 'General Comment No 4: The Right to Adequate Housing (Art. 11.1 of the Covenant)' 13 December 1991, E/1992/23

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

Charlesworth, 'Feminist Critiques of International Law and Their Critics' *Third World Legal Studies*: Volume 13, Article 1 (1995)

Clayton and others, 'Through Her Eyes: Enabling women's best evidence in UK asylum appeals' (November 2017) accessed here < https://www.nuffieldfoundation.org/sites/default/files/files/Through-Her-Eyes_Full-Report_Nov17.pdf>

Committee on Economic, Social and Cultural Rights, 'General Comment No 3: The Nature of States Parties Obligations (Art. 2, Para. 1, of the Covenant) adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights (14 December 1990) UN Doc E/1991/23

Edwards, 'Displacement, Statelessness, and Questions of Gender Equality and the Convention of All Forms of Discrimination Against Women' Background paper prepared for a joint United Nations High Commissioner for Refugees and the UN Committee on the Elimination of Discrimination against Women seminar (1 July 2009)

European Asylum Support Office, 'An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis' (August 2016)

European Union, Council of the European Union, The Stockholm Programme - An Open and Secure Europe Serving and Protecting the Citizens (2 December 2009) 17024/09

European Council, Presidency Conclusions, Tampere European Council 15 and 16 October 1999 (15 October 1999) SN 200/99, Brussels,

Executive Committee of the High Commissioner's Programme (EXCOM), Conclusion on Women and Girls at Risk No 105 (LVII) (October 2006)

Executive Committee of the High Commissioner's Programme, Determination of Refugee Status No. 8 (XXVIII) – 1977 (12 October 1977)

Executive Committee of the High Commissioner's Programme, Non-Refoulement No. 6 (XXVIII) - 1977 (12 October 1977)

Facio and Morgan, 'Equity or Equality for Women? Understanding CEDAW'S Equality Principles' [2009] IRAW Asia Pacific occasional paper series Vol 14

Freedman, 'Women's right to asylum: protecting the rights of female asylum seekers in Europe?' [2008] *Human Rights Review* 9 (4)

Goodwin-Gill and McAdam, *The Refugee in International Law* (Third edition Oxford University Press 2007)

Gov.UK, 'Appeal against a visa or immigration decision' accessed here < <https://www.gov.uk/immigration-asylum-tribunal/print>>

Gov.UK, 'Appeal against a visa or immigration decision' accessed here < <https://www.gov.uk/immigration-asylum-tribunal/print>>

Gov.UK, 'Submit new evidence to support your asylum claim' accessed here < <https://www.gov.uk/submit-new-evidence-asylum-claim>>

Gower, 'Asylum support: accommodation and financial support for asylum seekers' Briefing Paper, Number 1909, (October 2015) accessed here <<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01909#fullreport>>

Hathaway, 'The Structure of Entitlement Under the Refugee Convention' (Cambridge University Press 2005)

Hinchelwood, "Medical Foundation for the Care of Victims of Torture" Cited in, United Kingdom, Asylum and Immigration Tribunal / Immigration Appellate Authority, 'Immigration Appellate Authority (UK): Asylum Gender Guidelines' (1 November 2000) p 44 accessed here < <http://refugeestudies.org/UNHCR/64%20-%20Asylum%20Gender%20Guidelines.pdf>>

Home Affairs Committee, 'Thirteenth Report of Session 2017-2019, Asylum accommodation replacing COMPASS, HC 1758' (December 2018)

Home Affairs Committee, 'Twelfth report of Session 2016-17, Asylum accommodation' HC 637, Published Written Evidence, Helen Bamber Foundation' (ACC0021), (January 2017)

Home Affairs Committee, 'Twelfth report of Session 2016-17, Asylum accommodation' HC 637, (January 2017)

Home Affairs Committee, 'Twelfth report of Session 2016-17, Asylum accommodation' HC 637, Published Written Evidence, Refugee Council (ACC0033), (January 2017)

Home Office, 'Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2018 Report on Progress' (October 2018)

Human Rights Committee, 'CCPR General Comment No 18: Non-discrimination' adopted at the Thirty-seventh Session of the Human Rights Committee, (10 November 1989) UN Doc HRI/GEN/1/Rev.9 (Vol. I)

Human Rights Committee, 'CCPR General Comment No 15: The position of aliens under the Covenant' Adopted at the Twenty-seventh session of the Human Rights Committee (11 April 1986) UN Doc HRI/GEN/1/Rev.1 at 18

Johnstone, 'Home Office scraps six-month target for asylum decisions' (Civil Service World May 2019) accessed here <<https://www.civilserviceworld.com/articles/news/home-office-scraps-six-month-target-asylum-decisions>>

Joint Committee on Human Rights, 'The Treatment of Asylum Seekers, Tenth Report of Session 2006- 2007, Volume I – Report and formal minutes' (March 2007) Written Evidence: Memorandum from the Inter Agency Partnership, (2007) accessed here <<https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81we74.htm>>

Joint Committee on Human Rights, 'The Treatment of Asylum Seekers, Tenth Report of Session 2006- 2007, Volume I – Report and formal minutes' (March 2007) Written evidence: Memorandum from Citizens Advice (2007) accessed here < <https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81we36.htm>>

Joint Committee on Human Rights: 'The Treatment of Asylum Seekers,' Tenth Report of Session 2006-2007 Volume 1 – Report and Formal Minutes (30 March 2007) accessed here < <https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>>

Ministry of Justice and Legal Aid Agency, 'User Guide to Legal Aid Statistics England and Wales' (June 2019) accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834474/user-guide-legal-aid-statistics-apr-jun-2019.pdf>

Mr Robert Goodwill (The Minister of State for Immigration), European Union opt-in decision: Asylum Measures: Written Statement – HLWS376, (19 December 2016) accessed here <

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-16/HCWS374/>>

Office of the United Nations High Commissioner for Human Rights, 'The Rights of Non-Citizens' (United Nations Publication 2006)

Parker, 'Falling Behind: The Decline of the Rights of Asylum Seekers in the UK and Its Impact on Their Day-to-day Lives' [September 2015] eSharp Issue 25:1

Querton, 'I Feel Like, as a Woman, I'm Not Welcome: A gender analysis of UK asylum law, policy and practice' (London: Asylum Aid 2012) accessed here < https://d1r349398pb5ky.cloudfront.net/wp-content/uploads/2019/05/ifeelasawoman_report_web_.pdf>

Reehal and others, Seeking Asylum: 'Women's experiences of home office decision making, destitution and mental health issues' (February 2019) accessed here <http://refugeerights.org.uk/wpcontent/uploads/2019/02/RRE_SeekingAsylum.pdf>

Refugee Action, 'Slipping Through the Cracks: How Britain's asylum support system fails the most vulnerable' (July 2017) accessed here < <https://www.refugee-action.org.uk/wp-content/uploads/2017/07/Slipping-through-the-cracks-final4-A4.pdf>>

Refugee Action, 'Tipping the Scales: Access to Justice in the Asylum System' (July 2018) accessed here < <https://www.refugee-action.org.uk/wp-content/uploads/2018/07/Access-to-Justice-July-18-1.pdf>>

Refugee Action, 'Waiting in the Dark: How the asylum system dehumanizes, disempowers and damages' (May 2018) accessed here < <https://www.refugee-action.org.uk/wp-content/uploads/2018/05/Waiting-in-the-Dark-A4-16-May-2018.pdf>>

Refugee Council, 'Hungry & Homeless: the impact of the withdrawal of state support on asylum seekers' (April 2004) accessed here < https://www.refugeecouncil.org.uk/latest/news/1018_new_report_shows_government_policy_leaving_asylum_seekers_hungry_and_homeless/>

Refugee Council, 'Vulnerable Women's Project: Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence Literature Review' (February 2009) accessed here < <https://www.bl.uk/collection-items/vulnerable-womens-project-refugee-and-asylum-seeking-women-affected-by-rape-or-sexual-violence-literature-review>>

Rights of Women, 'Trafficking and Modern Slavery' (September 2017) accessed here < https://rightsofwomen.org.uk/wp-content/uploads/2014/09/ROW_Trafficking-A4-DIGITAL-V2.pdf>

Saksena, 'CEDAW: Mandate for Substantive Equality' [2007] Indian Journal of Gender Studies 14:3, Select Committee on Home Affairs, Written Evidence, 'Memorandum submitted by the Law Society' (July 2004) accessed here <<https://publications.parliament.uk/pa/cm200304/cmselect/cmhaff/109/109we08.htm>>

Select Committee on Home Affairs, Written Evidence, 'Memorandum submitted by the Law Society' (July 2004) accessed here <<https://publications.parliament.uk/pa/cm200304/cmselect/cmhaff/109/109we08.htm>>

Solicitors Regulation Authority and Legal Ombudsman, Quality of Legal Services for Asylum Seekers (January 2016) p 37 accessed here < <https://www.sra.org.uk/globalassets/documents/sra/research/asylum-report.pdf?version=4a1ab3>>

Solicitors Regulation Authority and Legal Ombudsman, Quality of Legal Services for Asylum Seekers (January 2016) accessed here < <https://www.sra.org.uk/sra/how-we-work/reports/asylum-report/>>

Spijkerboer, *Gender and Refugee Status*, (Ashgate Publishing, 2000)

Sturge, 'Asylum Statistics Briefing Paper, Number SN01403' (House of Commons Library March 2019)

Swedish Migration Agency, 'Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection' (28 March 2001)

The Children's Society, 'Report of the Parliamentary Inquiry into Asylum Support for Children and Young People,' (January 2013) accessed here
<https://www.childrenssociety.org.uk/sites/default/files/tcs/asylum_support_inquiry_report_final.pdf>

The Law Society, 'Access Denied? LASPO four years on: A Law Society review' (June 2017) p 6 accessed here < <https://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/>>

The Legal Services Commission and the Department for Constitutional Affairs, 'Legal Aid Reform: The Way Ahead' (November 2006) accessed here
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272392/6993.pdf>

World Economic Forum, The Global Gender Gap Report 2018 (2018) accessed here < http://www3.weforum.org/docs/WEF_GGGR_2018.pdf>

Travis, 'Destitute UK asylum seekers get 80p rise in subsistence payments' (Guardian January 2018) accessed here < <https://www.theguardian.com/world/2018/jan/15/destitute-uk-asylum-seekers-get-80p-rise-in-subsistence-payments>>

UK Visas & Immigration, 'Asylum Support: Policy Bulletins Instructions' (September 2014) accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817696/asylum-support-policy-bulletins-v8.0.pdf>

UK Visas & Immigration, 'Asylum Support: Policy Bulletins Instruction V 7.0' accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817696/asylum-support-policy-bulletins-v8.0.pdf>

Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) CEDAW/C/GC/28

UN Women, 'Progress of the World's Women 2019-2020: Families in a Changing World' (2019) accessed here < <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/progress-of-the-worlds-women-2019-2020-en.pdf?la=en&vs=3512>>

UNHCR, 'A guide to international refugee protection and building state asylum systems, A Handbook for Parliamentarians No 27' (2017)

UNHCR, 'Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1 A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees' (7 May 2002) HCR/GIP/02/01

UNHCR, 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (December 2011) HCR/1P/4/ENG/REV. 3

UNHCR, 'Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems,' Global Consultations on International Protection' Third Meeting, UN Doc. EC/GC/01/17 (4 September 2001)

UNHCR, "Lawfully Staying" - A Note on Interpretation (3 May 1988)

United Kingdom Home Office, 'Allocation of accommodation policy, Version 5.0' (March 2017) p 4 accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597382/Allocation-Of-Accommodation-v5_0.pdf>

United Kingdom Home Office, 'Gender issues in the asylum claim, Version 3.0' (10 April 2018) p 31 accessed here <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699703/gender-issues-in-the-asylum-claim-v3.pdf>

United Kingdom Home Office, 'Gender issues in the asylum claim' Version 3.0 (10 April 2018)

United Kingdom Home Office, 'Home Office, Asylum Interviews, Version 7.0' (5 June 2019) accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807031/asylum-interviews-v7.0ext.pdf>

United Kingdom Home Office, 'Home Office, Asylum Screening and Routing version 3.0' (26 July 2019) accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821131/screening-and-routing-v3.0-ext.pdf>

United Kingdom Home Office, 'Report on Review of Cash Allowance Paid to Asylum Seekers: 2017' (January 2018) p 10 accessed here < <https://www.statewatch.org/news/2018/jan/uk-ho-report-review-cash-allowances-asylum-seekers-2017.pdf>>

United Kingdom Home Office, 'Report on Review of Cash Allowance Paid to Asylum Seekers: 2017' (January 2018) accessed here < <https://www.statewatch.org/news/2018/jan/uk-ho-report-review-cash-allowances-asylum-seekers-2017.pdf>>

United Kingdom Home Office, 'UK Visas and Immigration, Information About Your Asylum Application' (1 April 2016) accessed here <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/513585/Point_of_Claim_English_20160401.pdf>

United Kingdom Home Office, 'Allocation of Accommodation Policy, Version 5.0' (7 March 2019) accessed here <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597382/Allocation-Of-Accommodation-v5_0.pdf>

United Kingdom Home Office, 'Asylum Support Application Form (ASF1)' (4 January 2013) accessed here < <https://www.gov.uk/government/publications/application-for-asylum-support-form-asf1>>

United Kingdom, UK Visas & Immigration, 'Section 55 Guidance' accessed here < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431346/Section_55_v12.pdf>

United Nations Office on Drugs and Crime, Global Study on Homicide, 'Gender-related Killing of Women and Girls' (Vienna 2018)

United Nations Refugee Council (UNHCR), '50th Anniversary The Wall Behind Which Refugees Can Shelter, The 1951 Geneva Convention,' [2001] Refugees Volume 2 Number 123

United Nations, 'The Millennium Development Goals Report 2015' (2015)

Valji, 'Women and the 1951 Refugee Convention: Fifty years of seeking visibility' [2001] Refuge: Canada's Journal on Refugees Volume 19 (5)

Wilding, 'Droughts and Deserts: A Study of Legal Aid Market Failure' (University of Brighton 2019) accessed here < <https://www.thejusticegap.com/droughts-and-deserts-a-study-of-market-failure-in-the-provision-of-legal-aid/>>

Women's Budget Group, 'Women and the Spending Review: A briefing from the UK Women's Budget Group on the key policy priorities from the Women and Equalities sector' (August 2019) accessed here < <https://wbg.org.uk/wp-content/uploads/2019/04/spending-review-briefing-final-29-08-19.pdf>>

World Health Organisation and others, 'Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence' (2013)