

Witchcraft Accusations as Gendered Persecution in Refugee Law

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Abstract: Witchcraft-related violence (WRV), in particular directed towards women and children, has become a source of increasing concern for human rights organisations in the current century. Yet for those fleeing WRV this heightened attention has not translated across into refugee status. This research examines how claims of WRV were addressed in all available asylum decisions in English, drawn from five jurisdictions. We argue that WRV is a manifestation of gender-related harm; one which exposes major failings in the application of refugee jurisprudence. Inattention to the religious and organisational elements of witchcraft practices, combined with gender insensitivity in analysis, meant that claims were frequently re-configured by decision-makers as personal grudges, or family or community disputes, such that they were not cognisable harms within the terms of the Refugee Convention; or they were simply disbelieved as far-fetched. The success rate of claims was low, compared to available averages, and, when successful, claims were universally accepted on some basis other than the witchcraft element of the case. This article focuses in particular upon cases where the applicant feared harm as an accused witch, while a second related article addresses those fearing persecution from witches or through the medium of witchcraft.

Introduction

Witchcraft-related violence (WRV) has become a source of increasing concern for international human rights and aid organisations through much of the current century (Aguilar Molina, 2006; ActionAid, 2012; Human Rights Watch, 2017). The US State Department reports 425 WRV deaths in Tanzania during 2015 alone (US DoS, 2017: 30). In recent years, the UN Committee on the Rights of the Child and UN Committee on the Elimination of all forms of Discrimination Against Women have drawn attention to WRV directed towards women and children in their annual and country reports, (summarised in Hanson and Ruggiero, 2013: [2.2]) as have the UN Special Rapporteur on Violence Against Women, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the UN High Commissioner for Human Rights (United Nations Human Rights Council, 2002 and 2012; Alston, 2009, 2012; United Nations Human Rights Office of the High Commissioner, 2009; United Nations Human Rights Council, 2016). More recently, both UNICEF and UNHCR have published a number of research reports, undertaken training and formed partnerships with local groups to respond to WRV, including that occurring within UNHCR's own refugee camps (Cimpric, 2010; Nwadinobi, 2008; Schnoelbelen, 2009; Bussien et al, 2011; Powles and Deakin, 2012; Dols García, 2013). The focus of the international community has been almost exclusively on African states, although reports frequently acknowledge that WRV is not

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limited to Africa, and also occurs in Nepal, India, Indonesia, Papua New Guinea and some Central America states (Schnoelbelen, 2009: 22-26; European Asylum Support Office, 2015: 2.5; Crisp 2008).

This increased international attention to WRV has been accompanied by state-based initiatives that monitor and/or criminalise WRV, and in particular accusations of witchcraft, within their domestic jurisdictions (Larson, 2011; SALRC, 2016; Forsyth, 2016; Eves 2017). In parallel, some states in the Global North have also sought to combat local WRV through legislation, taskforces or policy reform initiatives (Bahkt and Palmer, 2015). Within the UK a special 'faith based' child abuse unit of the London Metropolitan Police, Project Violet, has existed since 2005, in response to a series of high profile deaths of children through exorcisms and witchcraft related rituals (Stobart, 2006; Schnoebelen, 2009: 29-31; BBC News, 2012, 2014; Somos, 2017). Project Violet has contributed to a National Action Plan concerning responses to child abuse 'linked to faith or belief', primarily witchcraft and spirit possession; of which there are more than 30 documented cases each year (The National Working Group on Child Abuse Linked to Faith or Belief, 2012).

Yet this heightened attention to WRV, in particular as a form of persecution that is directed largely toward women and children (Mgbako and Glenn, 2011), and the increasingly detailed documentation of the human rights abuses that have resulted from it, has not translated across into refugee decision-making. This is particularly striking given that the highest level interpretive guidance offered by UNHCR, the *Guidelines on International Protection*, draws attention to witchcraft beliefs and practices in two of its publications. UNHCR highlights the gendered nature of some forms of religious persecution with specific reference to the example of witchcraft in the *Guidelines on Religion* (United Nations High Commissioner for Refugees, 2004: [24]), and mentions accusations of witchcraft as a risk faced by intersex children and their families in the *Guidelines on Sexual Orientation and Gender Identity* (United Nations High Commissioner for Refugees, 2012: [10]).ⁱ Moreover, the UNHCR *Resettlement Handbook* discusses WRV in the context of elder abuse of older women who have been 'maimed, ostracized or killed when labelled as witches in response to unexplained natural phenomena affecting communities' (United Nations High Commissioner for Refugees, 2011: 195).

This article examines WRV in modern refugee jurisprudence as a manifestation of gender-related harm; one which exposes major failings in refugee jurisprudence and adjudication processes. In order to make a claim for refugee protection from another nation, a claimant must demonstrate that they have a well-founded fear of persecution based upon one of five protected grounds (race, religion, political opinion, nationality and particular social group) that their State of origin is unwilling or unable to protect them from (Hathaway and Foster, 2014). In our analysis of WRV cases, systemic inattention to the scope of the Convention category of Religion, combined with gender insensitivity in analysis, meant that claims were frequently re-configured by decision-makers as personal grudges, or family or community disputes, such that they were not cognisable harms within Convention terms; or they were simply disbelieved as far-fetched. The success rate of claims was low, compared to available averages, and, when successful, claims were universally accepted on some basis other than the witchcraft element of the case.

Our data set provides a rich resource for exploring the gendered nature of WRV in refugee decision-making. The five countries from which cases are drawn — Australia, Canada, United Kingdom, United States and New Zealand — represent the major nations in which English language refugee jurisprudence is developed, albeit within divergent national frameworks. The analysis undertaken here is thematic, in that we sought to explore the ways in which claims of witchcraft related violence arose, and were addressed, in refugee adjudication broadly. While we did not seek to directly compare outcomes across jurisdictions, in particular because differential decision release policies meant that countries receiving smaller numbers of claims (Australia and Canada) had significantly more available decisions than larger receiving nations (UK and USA), there were no obvious or marked difference in approach across the different receiving nations.

Elsewhere, Arbel, Dauvergne and Millbank have suggested that gender-related persecution jurisprudence is best understood as a ‘mosaic’ in which disparate and highly specific pieces fit together to form a global picture of asylum systems responses to violence; that is, that recognition of the particularities of specific kinds of claims, such as forced marriage, or claims from certain places, should be examined as both unique and connected phenomenon (2014). Witchcraft claims exemplify the need for such an approach. They are highly specific in terms of the lived experiences of WRV and witchcraft practices, but also exemplify broadly typical elements of gendered refugee claims, including characterisations of claims within the PSG category to the exclusion of other Convention grounds, of private realm harms as domestic or personal, and also exemplify the ontological crisis posed by RSD more broadly – as decision-makers struggle with the unknown, unknowable Other. Witchcraft claims illuminate and allow for new insights into these broader questions, while also deserving of analysis in their own right as a very specific kind of claim.

Taking the collection of WRV asylum claims as whole, the numbers of male and female claimants are roughly equal. This in itself is noteworthy, as men make up the vast majority of refugee claimants in receiving countries worldwide – reflecting their greater access to resources enabling them to travel. Of the five jurisdictions represented, only the UK publishes statistics that are disaggregated by gender; in 2014, 73 per cent of asylum applicants in the UK were men (2015: Table 8). When dividing our case set according to whether witchcraft appeared as the *target* or *method* of persecution, the picture is even more starkly gendered. Cases in which the applicant claimed persecution as an accused or imputed witch comprised almost two-thirds female applicants (of whom nine had one or more children attached to the main application, and one case involved a female child as the main applicant). In contrast, those claiming to have been persecuted through witchcraft were over two thirds male (and none had a child attached).ⁱⁱ

This research project thus addressed all WRV asylum claims as gender related harms, but divided the analysis into two related publications: this one examining claims where the mostly female applicants faced persecution on the basis of being *accused* of being witches, followed by a second publication concerning the mostly male claimants who feared persecution *through* the medium of witchcraft. Although there are some common elements in the cases, this division recognises the different ways that gender plays out in asylum claims, reasoning and outcomes. So for example, a significant portion of the cases with male applicants fearing witchcraft concerned issues of communal status or control, connected with inheritance

disputes over land or chieftaincy. These claims were gendered in masculine ways; men were resisting, or were seen to be non-conforming with, dominant expectations of masculinity within the public realm. In a virtual mirror image, the cases with women accused of witchcraft, like female applicants more broadly, were more likely to involve private-realm harms at the hands of family or partners, and gendered types of harm, such as forced marriage, domestic violence, genital cutting or rape. In addition, the jurisprudential challenges posed by each kind of claim were distinct, in particular that men fearing witchcraft faced acute difficulties in defining any kind of PSG, and in making out the objective element of fear. These factors merit separate discussion of these related case sets involving WRV.

This article first provides a brief account of what is meant by witchcraft, then gives an overview of the entire WRV dataset and outlines the main features of the accused of witchcraft cases that are addressed here, before going on to examine the ways in which accusations of witchcraft ought to be (but largely are not) understood as gender based harm in refugee status determination (RSD) systems. Finally, we examine how WRV falls within the scope of both religious persecution and PSG as grounds for protection under the *Refugee Convention*. In the second article, concerning fear of witchcraft, we take up the issue of how WRV fits within the religion ground in more detail.

Understanding Witchcraft Beliefs and Practices

The representative [said he] has seen someone beaten to death when someone dies. A person is attacked to confess, to apportion blame. In most cases families disown those accused of witchcraft. If something bad happens, for example if one's company starts to decline, often people will go to a native doctors and look for someone to blame. The police will not do anything about it (1202540 [2012] RRTA 473 [59]).

Witchcraft forms an integral part of everyday life in many parts of the world, influencing how people understand the world and their place within it. A survey of 'Traditional African Religious Beliefs and Practices' found that a majority of respondents from Cameroon, DRC, Ghana, Mali, Rwanda, South Africa and Tanzania answered 'yes' to the question 'Do you believe in witchcraft?' (Pew Forum, 2010: 178). 'Witchcraft' is an umbrella term for beliefs and practices concerning supernatural powers and objects, which vary widely across communities, regions and time (Pavanello, 2017). Francis Nyamnjoh, for example, has characterised witchcraft as cosmological 'order that marries the so-called natural and supernatural, rational and irrational, objective and subjective, scientific and superstitious, visible and invisible, real and unreal' (2001: 28, 29). Early anthropologists, most notably E E Evans-Pritchard in his foundational study of Zande people in Sudan, sought to categorise different understandings of the occult in local contexts, drawing a principal distinction between notions of witchcraft, sorcery and magic. According to Evans-Pritchard, witchcraft refers to an inherited physical 'substance in the body of witches', whereas sorcery requires the skilful use of physical objects and substances to act upon the physical world with a conscious intent to cause harm (Evans-Pritchard, 1937: 1). Both witchcraft and sorcery have destructive capacities and could be invoked to provide rational explanations for the occurrence of misfortunate events. (For Evans-Pritchard, these can be contrasted to notions to 'good magic' that are deployed to protect against occult forms of danger.)

Such distinctions have provided a useful, albeit at times overlooked, analytics for attending to the different meanings of occult forces in locally-specific contexts. Yet, such categorisations have given rise to problems of translation and comparability. On the one hand, scholars in a range of settings have long noted that local lexicons for the occult do not directly equate with the English term 'witchcraft' or the French term *sorcellerie* and that the meanings conveyed through local terms cannot be fully captured through the words witchcraft or sorcery (Moore and Sanders, 2001). Rather, the idiom of 'witchcraft' is a distinctly European term that came to be used to understand non-European cosmologies through a variety of colonial practices, including legislation outlawing 'witchcraft' beliefs and practices. Such state endeavours framed local beliefs and practices as threatening and harmful, largely reducing them to their apparently 'ugly core' (Geschiere, 1997: 13). As a result, as Miranda Forsyth notes, the terms witchcraft and sorcery have been 'widely criticised as being derogatory or neo-colonial, referencing inappropriate European traditions, and failing to identify the highly diverse range of practices and beliefs at stake' in different understandings of the occult (Forsyth, 2016: 4.3). Despite this, the idiom of witchcraft remains significant. First, the terminology of witchcraft is used by asylum seekers themselves in expressing their claims in RSD processes, and secondly it is the framework of decision-makers that we are analysing here.

Indigenous understandings of occult forces have not remained static since colonial times, and been transformed through processes of state-making, urbanisation, and migration (Moore and Sanders, 2001: 5; Ciekawy, 1998). Local lexicons of the occult have come to borrow from neighbouring discourses as well as appropriate Eurocentric terms such as witchcraft. Thus, Peter Geschiere has argued that witchcraft discourses have become ubiquitous, mobilised both in public discourse and by people themselves as part of their everyday lives. For Geschiere, witchcraft as a term is thus 'extremely slippery' and highly dynamic: at once omnipresent and adaptable to changing social relations while also generally understood to have a common core (Geschiere, 1997, 2013: xvi). As Katherine Luongo has noted, scholars have come to 'regard witchcraft as an evolving process rather than a fixed set of practices, as situated in a resonant history rather than in an anthropological present, and as a lived experience rather than an abstract imaginary': she notes that research since the 1980s has demonstrated an 'interpenetration' of witchcraft, law and politics in Africa (Luongo, 2015: 186).

Anthropologists have shown how social, economic and political transformations brought on by new technologies and new forms of circulation in parts of Africa, for example, have given rise to profound anxieties about what it means to be 'living in a world of witches' (Ashforth, 2015). Jean and John Comaroff have argued that 'occult economies' have taken on a new prominence in contemporary postcolonial societies (Comaroff and Comaroff, 2000). As a result, some communities have experienced an upsurge in witchcraft accusations as a way of responding to inequalities in wealth and power. This has given rise to a new anti-witchcraft politics that manifested in new and protean practices of witchcraft-finding and eradication. The proliferation of witchcraft beliefs and practices is thus a distinctly modern phenomenon, and should be understood as one way that people 'define their moral and social universe and then act upon those definitions in a rapidly changing world' (Ciekawy and Geschiere, 1998: 3). However Luongo argues that refugee decision-makers in witchcraft-related asylum cases have mobilised the idea of witchcraft with 'an uncomfortable ahistoricity and an awkward detachment from institutions' (Luongo, 2015: 187).

Witchcraft in Refugee Cases

Searching the terms 'witch*', 'witchcraft', 'black magic', 'occult', 'sorcery' and 'exorcism' unearthed 176 written refugee decisions over 14 years from five jurisdictions where references to witchcraft beliefs or practices appeared as part of an asylum seeker's claim.ⁱⁱⁱ

The decisions include determinations across all levels, although the bulk of the case set (103 decisions) is made up of merits determinations, where a tribunal decision-maker considered the claimants' substantive grounds for asylum.^{iv} The cases appeared in Australia (79 decisions), Canada (70 decisions), New Zealand (3 decisions), the United Kingdom (16 decisions) and the United States (8 decisions) from 1993 to 2016 (inclusive).^v Although these decisions represent only a fraction of those decided, they are comparable to other large scale national (Baillot, Cowan, & Munro, 2014; Arbel, 2013; McKinnon, 2016; MacIntosh, 2009; Kneebone, 2005) and international comparative studies of RSD (Dauvergne and Millbank, 2010; Millbank, 2009) and represent a significant advance in knowledge through collecting together such cases for the first time.

Across all jurisdictions, by far the most common country of origin for claimants raising witchcraft claims was Nigeria, comprising 46 cases from the total pool of 176.^{vi} Other common countries of origin included Cameroon, Ghana, Indonesia and Tanzania.^{vii} Within the sub-set of cases involving claimants *accused* of witchcraft the country picture shifts slightly: Nigeria is still overwhelmingly the main country of origin (with 26 cases), followed by Nepal (5), Ghana, Indonesia, Kenya and Zimbabwe (3 each); Benin, Cameroon, Fiji, the Philippines and Uganda (2 each); and China, DRC, Gambia, Guinea, Haiti, India, Liberia, Malawi, Namibia, Pakistan, PNG, South Korea and Vanuatu (1 each). The omission of Tanzania is particularly striking given the high levels of violence against women accused of witchcraft reported by NGOs (Makoye, 2017; HelpAge, 2017). It is also notable that PNG has very high levels of reported WRV (Forsyth, 2016; Eves, 2017) yet there were no available decisions concerning PNG asylum seekers in Australia on the basis of an accusation of witchcraft (Wallace, 2016). **These omissions underscore the fact that refugee *decisions* do not necessarily represent refugee *experiences*.**

The vast majority of decisions were negative, in that the claimant was not granted asylum or judicial review of an earlier negative asylum determination. Of the total 176 decisions, only 22 per cent were counted as positive in that the claimant succeeded in the outcome they sought. For merits decisions, this was slightly lower, with only around 16.5 per cent of cases successful. Success rates are notoriously difficult to calculate across jurisdictions, but this appears to be somewhat lower than available averages in positive outcomes for tribunal level refugee determinations generally.^{viii} When viewed against positive rates in comparable datasets of gender related refugee cases, such as those concerning forced marriage, sexual orientation or gender identity, in the same receiving countries over similar time-frames, the positive rate for WRV claims appears low.^{ix} In common with many gender related refugee claims, a major hurdle that claimants faced, across both groups of WRV claims, was that of satisfying credibility and evidentiary requirements. We found that credibility in particular formed a key basis for rejection of claims based on witchcraft accusations.

As noted in the Introduction, the decisions fall into two quite different kinds of claims: those where an applicant fears harm on the basis of being accused of practising witchcraft or related

activities (including black magic, sorcery and other occult practices), and claims where an applicant fears harm through witchcraft practices or related activities. Interestingly, the majority of decisions concerned claims where the applicant feared harm through witchcraft practices (62 per cent of the overall case set), while a minority concerned claims based on accusations of witchcraft directed towards the claimant (38 per cent).

The division between these two categories was not always clear cut. This was made particularly apparent by the fact that the 10 claims by gay men and lesbians straddled the divide, depending upon how they were articulated. That is: an applicant might have said that as a lesbian she was attacked as a witch, or that those who attacked her attempted to 'cure' her through sending her to the witchdoctor, or that her sexuality was understood as a form of bewitchment, or some combination of the above. While the first claim is readily categorised as accused of witchcraft, the latter two are more ambiguously fear of witchcraft, and any combination of the claims defies the divide altogether. Nevertheless we argue that the distinction between accusations of witchcraft and fear of witchcraft is a useful one in that it broadly represents a gendered pattern of claim, and because the jurisprudential challenges raised by each are markedly distinct.

Once disaggregated for gender and kind of claim, a complex picture emerges. There were 66 cases where the applicant feared harm on the basis of being accused of witchcraft, with a positive rate of 26 per cent (which was roughly the same at merits and judicial review levels).^x While the majority of claimants on the basis of accusations of witchcraft were female, it is notable that they were dramatically more likely to record a positive result at the merits level than were male applicants: of the 21 initial cases brought by women, 7 decisions (or 33 per cent) were successful; in contrast, of the 12 initial claims brought by men, only one (or 8 per cent) was successful. However even in successful cases, decision-makers framed the grounds for granting asylum around other additional, or interconnected, factors in the claim. We argue that this evinces a tendency, in both successful and unsuccessful decisions, to treat accusations of witchcraft as peripheral and to actively search for other grounds or forms of harm to base the decision on. This was borne out in multiple ways: in the defining of the Convention ground, including the exclusion of Religion and the framing of the PSG to highlight other aspects of the claimant's identity, deflecting attention from the WRV towards other persecutory acts, characterising WRV as personal in motivation such that there was no nexus between the harm feared and a Convention ground, or disbelieving part, or all, of the claim. We contend that these cases demonstrate that witchcraft is an ontological challenge within RSD; one which could have been addressed through the application of well-established jurisprudence on *imputed* Convention grounds, but was instead avoided, displaced and dismissed.

Accusations of Witchcraft as Gendered Persecution

This section lays out the ways in which accusations of witchcraft cases were gendered, in particular through the frame of relationality, and how the personal, 'private' and emotional dimensions of claims were understood as apart from, rather than intertwined with, understandings of witchcraft in RSD. Witchcraft related violence throws into stark relief the enduring tension between the exotic and the prosaic in gender related refugee claims. Feminist commentators have long argued that Western RSD systems have disproportionately focused on eroticised harms such as FGM and so-called honour killing, which are seen to

present public and 'cultural' dimensions oppositional to the receiving State. This focus has been at the expense of recognition of every-day harms such as family violence and sexual assault, which are dismissed as domestic, privately motivated and/or a problem 'here too' (Macklin, 1995; Razack, 1995; Dauvergne and Millbank 2010). As Carol Bohmer and Amy Shuman have argued, this places applicants in an almost impossible position wherein asylum claims based on perceived 'exotic, abhorrent acts of persecution are both more recognized as persecution and more susceptible to the suspicion' of decision-makers (Bohmer and Shuman, 2007: 210).

Asylum claims based on WRV take us to the outer edge of this paradox. Claims concerning witchcraft are so deeply exoticised that they distinguish the applicant as an unusual individual worthy of attention (and the national culture from which they fled so pre-modern as to merit protection from it); yet the occult elements of the claims are so unintelligible to Western decision-makers that there is a very real danger that the claimant will be disbelieved, or the witchcraft claims excluded. The elision of the witchcraft elements of the claim was very much a feature of the cases we examined in this research. Forms of WRV were viewed as individualised and exoticised beliefs and events, disconnected from social institutions and national politics, and were largely ignored in favour of more concrete and cognisable forms of harm or grounds of persecution. The failure to believe or understand these claims may be a result of failing to associate witchcraft with 'public' or political questions, and an association of witchcraft with domestic, feminised and private disputes.

In cases concerning accusations of witchcraft against women, like women's asylum claims more broadly, claimants often appeared and were defined through their familial relationships (as mothers, wives or as widows) and this radiated through an RSD process in which their experiences of harm were more likely to be framed as personally motivated rather than Convention based. The persecuting agents in the cases we examined were most frequently members of the claimants' own family or close kin. Anthropologist Peter Geschiere has referred to witchcraft as 'the dark side of kinship' as it frequently arises within the domestic realities and 'intimacy of the family and the home' (Geschiere, 1997: 11; see also Geschiere, 2013). This widespread characterisation of WRV as domestic or 'private' in nature has meant that claimants frequently struggled to establish nexus with the Convention ground, and to demonstrate a lack of State protection.

When an express personal motivation or object was narrated as part of the accusation of witchcraft – for example that the accuser was jealous of the victim or hoped for some material gain from the accusation – this could be fatal to the claim. Katherine Luongo gives the example of a Canadian case, *Fatoyinbo* (2012), in which the Tribunal determined that the son-in-law's accusation of witchcraft against the applicant was a 'simple vendetta', not persecution for Convention reasons. This case illustrates a profound failure of understanding, both of practices of witchcraft accusation and of gender-related persecution.

Anthropologists and historians have stressed that witchcraft accusations perform multiple social functions; they do not exist apart from community norms, and tensions (Chaudhuri, 2012), nor from affective registers, in particular jealousy, anger, mistrust, envy and fear (Luongo 2015; Powles and Deakin 2012; Mgbako and Glenn 2011). Powles and Deakin note that:

Witchcraft accusations are made and sustained by the exercise of power in a community through cultural discourses and practices...Sometimes a witchcraft accusation will serve the interests of one person over another, securing them access to land, property, or social advantage (Powles and Deakin 2012: 16).

Gender-related persecution often takes place in private settings with known assailants, who act with private, or mixed, motivations: it is the failure of State protection that transforms this into a Convention harm (Hathaway and Foster, 2014: [5.3]). Private settings, and/or motives, should not blind RSD to structural exercises of power. Luongo argues that in the case of *Fatoyinbo*, and others like it, decision-makers saw hostile speech and acts in family settings without understanding the profound and life-threatening social effect that an accusation of witchcraft may have for an applicant. She says:

It occludes the ways in which witchcraft is *socially saturating* and thus how accusations of witchcraft have a power that other hostile speech acts and other kinds of threat do not. Within the social world that Fatoyinbo had inhabited, allegations about her witchcraft practice *fundamentally remade her identity*, transforming her from a mother, kinswoman, and neighbour into a serial killer in the eyes of her associates (Luongo, 2015: 192, emphasis added).

It was striking that many of claims in our case set were narrated, and understood, in relation to the institution of marriage – that is, women were accused as witches, or were at heightened risk, because they were widowed, or had refused a claim of marriage. Notably, even when decision-makers did characterise the case as one involving gender-related harm, it was almost always the *other* gendered dimensions which were addressed. For example, in a 2010 Canadian decision that granted asylum to a Nigerian woman, the Tribunal focused on the issue of forced marriage, while overlooking the witchcraft accusations (*X (Re)*, 2000 CanLII 21442). The case concerned a widow who was accused of being a witch by her husband's family following the untimely death of her husband. In order to clear her name, her husband's family forced the applicant to engage in certain rituals, including sleeping next to her dead husband and drinking water in which he had been bathed (she refused to participate in the latter ritual on account of being pregnant and her Christian belief). The family also wanted the applicant to marry her brother-in-law, whom she claimed was a polygamist. The applicant described herself as a Christian and her husband's family as 'pagans' and claimed that her husband's family would kill her if she returned to Nigeria as they 'branded her a witch'. Unusually, the Tribunal granted the claimant asylum on the interrelated grounds of religion and membership of a particular social group, but it did not specify what the particular social group was in its reasoning and focused its brief reasoning on the documentary evidence on 'deep-rooted' practice of levirate marriages in Nigerian society. As a result, the specificity of witchcraft accusations as a particular form of gendered harm remained unrecognised or unarticulated within the Tribunal's reasoning.

Women's claims were also gendered and relational in that WRV against children produced female applicants who were either fleeing harm directed towards their child as an accused witch, or an accusation of witchcraft which encompassed them as a witch by reason of their relationship to the child. There were no comparable cases in the dataset by male claimants. In a report for UNICEF on witchcraft allegations specifically against children in Africa, Cimpric suggests that these can be divided into three distinct categories: the first concerning

vulnerable children, often orphaned or homeless, with physical disability or unusual behaviours that mark them out as visibly 'different'; the second is children who are known as the 'badly born' with physical disability or uncommon birth events, and the third are children with albinism (Cimpric, 2010). Although Cimpric, and some others, distinguish people with albinism from the 'badly born' on the basis that they are not seen as witches per se but rather as witchcraft *materiale* (as they are at high risk of being killed or maimed for body parts in a number of countries for sale and use in witchcraft practices), other suggest that this distinction is not so clear cut, and that people with albinism are also perceived as witches in some places.

In our study, there were four cases where a woman sought asylum for herself and her child on the basis of the child's autism or albinism such that the child was perceived as a witch, or was at risk for their 'magical qualities'. All four applications failed. Decision-makers characterised these claims, and country evidence, as about disability rather than examining them as issues of witchcraft triggered by physical or behavioural difference. For example, the case of *Shitta* before the UK Tribunal concerned a woman from Nigeria whose daughter had severe autism. The mother as the main applicant claimed that her daughter's lack of speech and general hyperactivity had been interpreted by her husband's family to indicate that the child was a witch and that the child's extended family had attempted to harm her. In rejecting the claim, the First-tier Tribunal judge emphasised that there were several organisations dedicated to caring for and treating people with autism in Nigeria and also noted that although autistic children may be 'unkindly treated', 'that is not the whole picture. The appellant herself conceded that something like half of the very large population of her parent's church were kind and sympathetic in their responses' (First-tier Tribunal Determination, quoted in *Shitta v SSHD* (Upper Tribunal IAC, Appeal AA/00832/2013, 29 July 2013) [14]). In this reasoning, the specificity of the danger in relation to the witchcraft accusation disappears.

It is not necessarily only adjudicators, but also advocates who may be involved in this process of excluding or minimising witchcraft, or sidelining what are seen to be inexplicably exotic elements of claims. In one Australian Tribunal case, the decision-maker asked the claimant's advisor during the hearing to nominate their preferred option in relation to a number of different yet overlapping social group claims put forward on behalf of the claimant. The advisor opted for the narrowest formulation of the particular social group, namely 'widowed Ugandan women in relation to whom a bride price has been paid', de-emphasising other options such as 'women' in Uganda. Strikingly, though, none of the four possible formulations included any reference to the accusation of witchcraft made against the claimant by her brother-in-law, who was also the man to whom she would be forcibly married (*V04/16971* [2005] RRTA 351).

It is ironic that Lawrance and Walker-Said (2016), and others such as Dauvergne and Millbank (2010), have documented the erasure of forced marriage in asylum claims, yet in our WRV case set there was a marked tendency *towards* a focus on the risk of forced marriage as the basis for refugee status, instead of witchcraft accusations. This tendency is evident, for example, in a 2015 New Zealand decision concerning a Malawian woman who was granted asylum on the basis of being pressured to marry her brother-in-law following the death of her husband (*AB (Malawi)* [2015] NZIPT 800672). The claimant had been subject to repeated

physical and emotional abuse by her deceased husband, his other wives and his family, including one of her husband's sons accusing her of being a witch. This claim was also characterised as one about forced marriage rather than witchcraft, despite the accusation of witchcraft being a pivotal element of the coercion.^{xi} We suggest that decision-makers typically reached for the part of the claim most intelligible to them: forced marriage rather than witchcraft; FGM rather than forced marriage, and so on.

In a number of cases analysed, the witchcraft dimension of the narrative was not sidelined but rather met with open incredulity, often at the cost of the claim. For example, in a 2011 Canadian case, the Tribunal rejected a Nigerian woman's claim of having been accused of being a witch as part of a broader pattern of domestic violence. The woman said she had suffered horrific and sustained abuse from her husband, including rape and beatings until she was unconscious. This abuse included her husband accusing her of being a witch because he had been unable to kill her (*X Re* [2011] CanLII 100759). In rejecting the claim, the Tribunal determined that her testimony was inconsistent and not credible as her 'allusions to witchcraft' were 'embellishments'. The decision-maker placed particular weight on the fact that the claimant had argued in her Port of Entry interview that she was applying for asylum on the basis that her husband considered her to be a witch and also that he would force her to be circumcised in order for her to produce a male child; but she had not mentioned the circumcision claim in her subsequent written statement. The decision-maker did not consider it reasonable that such a 'serious' matter would have 'slipped her mind'. Within Western RSD processes, FGM is a very significant claim; witchcraft is not – thus the applicant's reverse priorities were proof of falsehood rather than of a very different experience of life or different understanding of the threats that she faced.

A 2014 Australian case illustrates how deeply embedded, and unevidenced assumptions about witchcraft form the basis for disbelief of claims. The applicant, a Nepali woman, claimed that she was accused of witchcraft by her estranged father-in-law and subjected to domestic violence by her husband because he believed that she was a witch. The woman lived for many years in Singapore with her husband and two children, and returned regularly to Nepal. In 2011, after her father-in-law told her husband that the applicant was a witch who had caused her mother-in-law to fall ill, her husband started physically abusing her. This included threatening to kill her because he believed that she was a witch. The applicant claimed that she feared that she would be 'stigmatised by society as a witch and be the first to be blamed if anyone were to fall sick' and that she would not receive police protection against domestic violence (1305413 [2014] RRTA 393 [17]). In its decision, the Tribunal disbelieved the woman's claims about the accusations of witchcraft and as a consequence also rejected the domestic violence claim. The decision-maker did not find it:

plausible that her husband ... who had lived and worked in highly-developed Singapore for 13 years, would be influenced by village superstition about witchcraft notwithstanding submissions by the applicant's advisers that such a mindset can persist (*SZUOB v MIBP* [2015] FCA 752 [8]).

In making this assessment, the decision-maker equated witchcraft practices and beliefs with implicitly pre-modern and rural 'superstition', such that it was inherently 'implausible' for a

person living in an urban metropole to believe in, and accuse another person of, witchcraft. This case was unusual in that it was the subject of a judicial review application, based on the argument that the applicant was denied natural justice through the decision-maker's 'lack of Nepalese cultural awareness' and their having taken irrelevant considerations into account. However the appellate judge held that such a finding was open to the Tribunal, as it was 'not based on any misunderstandings of relevant cultural attitudes, but the inconsistency in the applicant's own evidence' (*SZUOB*, 2015: [43]). Both the Tribunal and subsequent Court decision demonstrate a particular understanding of witchcraft that is so unassailable it does not require an evidentiary basis.

Accusations of Witchcraft as Religious Persecution

Karen Musalo has noted in her analysis of religion as a Convention ground for protection claims in the USA, 'depending on who is doing the categorizing, other communities of belief may not readily be recognized as religions or beliefs coming within the parameters of the international norm of protection' (2004: 168). Yet the UNHCR *Guidelines on Religion* note at the outset that there is no 'universally accepted definition of Religion' and go on to state that refugee claims on religion may involve religion as belief (including non-belief); religion as identity and religion as a way of life (2004: [4],[5]). In Europe this issue was specifically addressed in 2004 by the EC Minimum Standards Qualification Directive (and affirmed in the 2011 re-cast) which provides a broad definition of the religion ground in Article 10(1)(b) as follows:

[t]he concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief (2004, 2011).

Overwhelmingly, scholarly literature and research on witchcraft in the fields of anthropology and sociology associate it with cultural and religious practices. Given this, one might expect that religion would be invoked by asylum seekers and/or considered by decision-makers as a viable ground for protection for WRV under the Refugees Convention. We suggest that consideration of religion as a ground could, and should, encompass the gendered nature of WRV. Notably the UNHCR *Guidelines on Religion* state:

Particular attention should be paid to the impact of gender on religion-based refugee claims, as women and men may fear or suffer persecution for reasons of religion in different ways to each other. ... These practices may be culturally condoned in the claimant's community of origin but still amount to persecution. ... When, due to the claimant's gender, State actors are unwilling or unable to protect the claimant from such treatment, it should not be mistaken as a private conflict, but should be considered as valid grounds for refugee status (2004: [24]).

Moreover, established international refugee jurisprudence holds that a claimant's *imputed* belief or identity is sufficient to satisfy the Convention grounds, and that the claimant need not actually belong to a particular religious group or sincerely hold a particular religious belief (Hathaway and Foster, 2014: [5.8.2]).^{xii} The majority of cases involving witchcraft accusations appear to concern imputed identities and practices, rather than a claimant's actual practices of witchcraft or avowed beliefs. It is also well accepted in law that religious persecution can

occur because of the *absence* of religious identification with the persecutors' beliefs, ie because the victim is seen as irreligious or belonging to a belief system opposed to the religion of the persecutor, as an apostate, atheist, sinner or in other respects anti-orthodox (Hathaway and Foster, 2014: [5.7]. See also the guide prepared for decision-makers within the refugee determination branch of the Australian Tribunal which lists persecution for reasons of religion as including transgressing social mores, conversion, apostasy and mixed marriage, AAT, 2016: Chapter 5 [5.13]-[5.16]). Thus the religion ground under the Convention appears a logical category of analysis for WRV.

However we found only a handful of cases in which applicants articulated claims to asylum on the basis of religion, and of these most were explicitly or implicitly dismissed in the text of the decision.^{xiii} For example in a 2013 Canadian decision a woman from Benin claimed that her employer (in Canada) has falsely accused her of being a witch (based on a dream that the employer had which was interpreted to mean that the claimant was possessed by 'evil spirits'). The applicant claimed asylum on the basis of 'imputed religious practice as a witch' as well as imputed membership of a particular social group, namely 'women in Benin who practice witchcraft' (*X (Re)*, 2013 CanLII 97281 (23 July 2013) [11]). Although the claimant's employer had informed others within their community in Canada of the witchcraft accusation, the decision-maker found there was 'no reasonable chance' that the claimant would be persecuted as 'claimant's subjective fear of persecution has *no objective basis...it is evident that the claimant is not a witch* and would not be considered a witch should she return to Benin' (emphasis added, [16]). The evidentiary link between not being a witch and not being *perceived* as one was not examined in the decision. Likewise in a claim by a Nigerian woman accused of witchcraft, the Canadian Tribunal held, '[w]hile the agent of harm may accuse the claimant of witchcraft, there is no reliable evidence before me that witchcraft exists or that the claimant is a witch who caused the road accident' (*X (Re)*, 2011 CanLII 97207).

In fact, we found only one successful decision where religion was recognised as the ground for granting refugee status in a claim involving a person being accused of using occult forces. The 1998 Australian decision concerned a Chinese heterosexual married couple in which the wife was a well-known Qigong practitioner. The Tribunal found that both the female applicant and her husband had a well-founded fear of persecution owing to the Convention reasons of religion and/or imputed political opinion (*N97/14401* [1998] RRTA 2861). While the decision-maker noted that perceptions of Qigong differed in China, with it being 'considered a science, a medicinal or health procedure, an emerging religion, a feudal superstition, a quackery, or even a potential political threat', she accepted that Chinese authorities may become 'suspicious of any group beyond their control, and depending on the circumstances the authorities may see those groups as constituting a clear challenge'. Additionally, country information on China suggested that Qigong practitioners had been imprisoned on the basis of 'conducting occult activities or feudal superstition'. In framing the perception and treatment of Qigong in China in this way, the decision-maker did not go as far as to label Qigong as a religion. Rather, she found that the applicant considered her activities as a Qigong practitioner as a 'legitimate practice of her religion' and recognised that the Chinese authorities similarly 'perceived her activities in part as religious'.

This kind of reasoning, examining the social context as one in which authorities and institutions generate an imputation of political and/or religious opposition, could equally

apply across many of the later WRV cases from African countries where the applicant was seen as a threat to the local or wider social order by virtue of being accused of witchcraft. Yet this did not occur. Significantly, there was no case in the entire dataset in which a decision-maker granted asylum on the basis that witchcraft *per se* was a religion, or imputed religious belief, for the purposes of establishing a Convention ground or nexus.

Accused Witches as a Particular Social Group

Particular Social Group is the Convention category in which most gender-related claims are determined. This Convention ground is both more conceptually challenging, and less coherent, than the other grounds of race, religion, political opinion and nationality (Foster 2014). The history of the development of the PSG category has involved two divided schools of thought about the basis for the definition (innate, immutable or essential characteristics *versus* social perception of a group) and attempts to cohere the divergent approaches effectively raised the bar in some receiving states to require *both* approaches (Foster, 2014: 18-22). In practice, regardless of which approach is utilised, tangled attempts to define the group in gender related cases have led to demonstrated past failures of analysis about nexus, persecutor motivation, and failures of state protection and provided space for ‘privatising’ impulses wherein the risk of harm faced by the applicant was characterised as unconnected to wider political, religious and social forces (Foster, 2014; Dauvergne and Millbank 2010; Labman and Dauvergne, 2014; Cheikh Ali, Querton and Soulard, 2012; Millbank, 2013; Honkala, 2017).

As with religion, refugee jurisprudence recognises that it is sufficient to be *imputed* with particular characteristics to be recognised as a PSG. In a 1997 Australian High Court decision, *McHugh J* actually gave ‘witches’ as an example when discussing the legal requirements of a particular social group:

A group may qualify as a particular social group, however, even though the distinguishing features of the group do not have a public face. It is sufficient that the public is aware of the characteristics or attributes that, for the purposes of the Convention, unite and identify the group. ... Nor is it necessary that the group should possess the attributes that they are perceived to have. Witches were a particular social group in the society of their day, notwithstanding that the attributes that identified them as a group were often based on the fantasies of others and a general community belief in witchcraft (*Applicant A v MIEA* (1997) 190 CLR 225 at 265).

Despite high level acceptance in policy, legislation and case law, under both the PSG approaches, that “women” *are* a PSG, “women” is rarely the category of claim or analysis in gender-related claims. In her comprehensive international analysis of PSG jurisprudence Michelle Foster notes that lower level decision-makers in many countries continually redefine and narrow the PSG in gender based claims (2014; see also Kneebone, 2005; Dauvergne and Millbank, 2010: 28-32). Our data set reflected this finding, with only one successful case raising claims of WRV in which the relevant PSG was stated to be “women”. In a New Zealand Tribunal decision, a Malawian woman was granted asylum on the basis of her deceased husband’s brother using violence and threats to force her to marry him, in order to conform to the Sena practice of widow inheritance. Her claim recounted the prolonged physical and emotional abuse that she had suffered at the hands of her husband, his other wives and his immediate family, including them accusing her of being a witch, and her fear of being forced

into another violent marriage (*AB (Malawi)* [2015] NZIPT 800672). Other cases defined the PSG much more narrowly. One example of this is a case where the main claimant argued that her daughter feared persecution on the basis of belonging to the social group of 'Nepalese female children of fathers who die near the time of their birth' (N04/49127 [2004] RRTA 703).

Notably there was only one (albeit unsuccessful) case in the entire set of 176 decisions in which the decision-maker clearly accepted 'witch' as the defining feature of the recognised PSG (*1202540* [2012] RRTA 473). In that case a Nigerian man claimed that elders in his community had accused him of being a witch following the death of his father and the sudden death of his cousin in a car crash. As a result, the applicant claimed that community members beat and tortured him on a number of occasions to induce him to confess to using witchcraft and that the police had refused to intervene. The Australian Tribunal noted that 'it was willing to accept that "witches" (in other words, those perceived by others to be witches) constitute a particular social group in Nigeria'. Tellingly, however, the Tribunal rejected the applicant's claim on credibility grounds, including a finding that the claimant was unable to provide details of a pastor who had taken him to a church in order to 'deliver' him from witchcraft. It is strikingly paradoxical that an applicant's express disinterest in, and knowledge of, local exorcism practices, was held to damage the credibility of his claim to a status that was only ever imputed to him.

Alongside this sidelining of witchcraft claims in the articulation of the relevant particular social group is also an apparent failure, or unwillingness, to explicitly gender the framing of the particular social group in the handful of cases that do include reference to witchcraft in the framing of the PSG. The case set shows that where an accusation of witchcraft is recognised in the framing of the particular social group, that group is often framed in non-gendered terms, as a 'person accused of witchcraft'. This is unlike other particular social groups that appeared alongside the accusation of witchcraft claims, which were framed in clearly gendered terms such as 'widow' or 'woman fearing domestic violence' (see eg *X (Re)*, 2011 CanLII 98327).

In the majority of cases, regardless of how experiences of witchcraft accusations were posed by claimants, decisions did not involve any element of witchcraft in the definition of the particular social group. Rather, the witchcraft accusations were treated as an incidental factor to understanding the particular social group, or subsumed within another social category. Advocates and decision-makers articulated the relevant particular social group as, for example, 'widowed women in Uganda in relation to whom a bride price has been paid' (*V04/16971* [2005] RRTA 351); 'persons suffering mental illness in Ghana' (*1219395* [2013] RRTA 633); 'abandoned children of mixed marriage and race' easily recognised by their appearance (*1006566* [2010] RRTA 976), 'children whose grandfather was a cult member' (*1006566* [2010] RRTA 976), 'poor women with HIV/AIDS' in Haiti (*X (Re)*, 2009 CanLII 47104), 'Nepali single women without protection of a male relative and facing economic hardship' (*1305413* [2014] RRTA 393), or simply 'widows in Nepal' (*1207007* [2012] RRTA 1072). This framing can be seen, for example, in a 2005 Australian case concerning a widowed Ugandan woman who feared being forced to marry her brother-in-law and being subjected to further domestic violence (*V04/16971* [2005] RRTA 351). Even though the woman noted in her claim that her brother-in-law had accused her of being a witch and argued that this 'elevated the risk' she faced, the decision-maker did not consider this accusation in the written reasoning.

Rather, the woman was granted asylum on the basis of the PSG of widowed women in Uganda in relation to whom a bride price had been paid. By defining the PSG without reference to witchcraft, the accusation of witchcraft falls away from the persecution analysis.

The framing of the PSG to exclude witchcraft is problematic because it can flow through to the analysis of nexus and risk.^{xiv} To illustrate, in a 2012 Australian RRT case, a Nepali widow's application for asylum was rejected on the basis that the harms she feared were not deemed to be of 'sufficient seriousness' to amount to persecution (1207007 [2012] RRTA 1072 [58]). Her claim centred on the fact that she would be blamed for the 'short life' of her deceased husband and would be accused of being a witch (or *alakechhini* in Nepalese, meaning 'I do not have good fate and I am a witch and I took his life') by members of his family and the community. While the decision-maker accepted that widows in Nepal were discriminated against, he did not accept that the claimant's fears could amount to 'anything more serious than this' ([54]). Despite the claimant explicitly raising the matter of the potential witchcraft accusation, this was not considered in the decision, which instead examined the potential risk of persecution primarily in terms of the social ostracism faced by *widows* in Nepal.

These examples, occurring in both claims framed as PSG and those framed – but largely dismissed – as religious, illustrate that the failure to properly characterise the ground of the claim, and to understand it as one infused with gender-dimensions, flowed through to flawed analysis of risk of persecution and Convention nexus, leading in some cases to highly questionable outcomes.

Conclusion

This article has addressed witchcraft related violence as a neglected and specific sub-set of gender related asylum claims; but one which also fits within, and speaks to, a broader experience of gendered claims in RSD. The sub-set of cases analysed here involved those in which the applicant was accused of witchcraft: these WRV claims were dominated by women, with almost two thirds of cases involving female claimants. It was notable that claims by women accused of witchcraft were deeply infused with the domestic and relational elements common to gendered claims: applicants were typically at risk from family members, often triggered by non-conforming behaviour such as marriage refusals. The harms faced were commonly domestic violence, forced marriage and rape.

In the entire dataset, covering 176 cases from five jurisdictions determined over 14 years, WRV was not recognised as a gendered-related form of harm in and of itself, nor was it accepted as a manifestation of religion, and was instead largely excluded, elided, ignored, or disbelieved within the RSD process. Even when successful, applicants accused of witchcraft tended to be accepted on some other basis within their claim than the witchcraft element. Over the time period in which the cases were determined, and most notably from 2000 onwards, WRV has gained increased attention within international human rights NGOs and high level bodies, including UNHCR itself. Yet, in keeping with earlier research on other aspects of gendered harm in refugee status determination, such as that on forced marriage, this project found that widespread and high level human rights attention in domestic and international fora failed to translate into RSD processes and outcomes.

The sidelining and erasure of WRV as a form of gender-related harm and as religion based persecution, which occurred in both successful and unsuccessful decisions, demonstrates that WRV is still largely understood as outside of the scope of protection offered under the Refugee Convention. This is a failure of both jurisprudential analysis and of RSD processes. At a process level we argue that witchcraft-related claims are emblematic of the ontological crisis posed by RSD, as decision-makers struggle with the worldview and lived experiences of applicants that are radically different from their own. In exoticising or ignoring witchcraft claims, decision-makers divorced understandings of witchcraft and WRV from 'public' or legal frames and lost sight of fundamental questions such as the proper scope of state protection for vulnerable groups under the Convention. We argue that WRV can, and should, be recognised as a specific form of gender-related harm by refugee decision-makers. This form of harm intersects with other markers of vulnerability and alterity such as age, sexuality, marital status, kinship position and disability, but it is grounded in religious understandings and practices.

At a fundamental jurisprudential level, WRV fits with the Convention category of religion if it is properly understood as concerning communities of religious belief, identity and ways of life. As the EC Minimum Standards and UNHCR Guidelines on Religion explicitly state, the Convention ground of Religion includes non-theistic beliefs and forms of worship. Understandings of witchcraft as diverse and localised experiences of religion, and witchcraft related violence as gender-related forms of harm that are grounded in religion, while not a panacea,^{xv} would go some way towards bringing WRV into a clearer focus of analysis within RSD. The fact that decision-makers are currently failing to apprehend WRV within the frame of religion should not deter higher legal challenge to the religion category in future asylum claims concerning witchcraft.

In a second related article, we address cases where mostly male applicants claimed protection on the basis that they feared harm from sorcerers or witches, or from unknown assailants through the medium of witchcraft. Those cases, although sharing many common features with those discussed here concerning applicants accused of witchcraft, posed even more acute challenges in terms of the application of the religion ground, the framing of the PSG, analysis of the objective element of the risk, and in credibility assessment.

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Omoruyi v SSHD [2000] C/2000/0025/IATRF, Court of Appeal, 12 October 2000.

United States

Mekenye v AG of the United States, 445 Fed Appx 593 (2011).
MZWOB v Minister for Immigration [2005] FMCA 310 (17 March 2005)

i

Note also that the UK Home Office recorded witchcraft as one of the six ‘main categories of claim’ in asylum claims from Ghana: Operational Guidance Note: Ghan, v 12.0 (November 2013). Such operational guidance notes are no longer public, but archived versions are available on RefWorld <http://www.refworld.org/docid/528370ed4.html> .

ii

In our case set of 176 decisions, 81 main applicants were female and 100 main applicants were male (equalling a total of 181 main applicants). This discrepancy between the total number of decisions and total number of main

applicants arose because 5 decisions in the case set consisted of husband and wife co-applicants, where the claims of both the male and female had WRV elements.

iii

This period varies slightly across these five jurisdictions depending upon institutional factors such as when the various courts and tribunals came into existence, for example the Australian tribunal came into effect in 1993; whereas the Canadian tribunal began in 1996.

iv

Thus 73 cases were judicial review determinations. As far as we could ascertain, only two cases involved the same claimant(s) at multiple levels of the process. In keeping with previous studies we counted decisions not applicants, and categorised as 'positive' cases in which the outcome sought by the applicant was granted, even though at judicial review level this rarely involves a grant of asylum but rather usually lead to a redetermination of status at lower level (with result often unknown), this may give an inflated sense of success. Equally, some claims involved multiple applicants but are still counted as one case result. Where claims involved two co-claimants of different genders, they were excluded for the purpose of calculating gender of the applicant. Where cases involve one main claimant and one or more children attached to the application, the gender of the main claimant was been included in our calculations of the gender of the applicant.

v

Australian cases were sourced from AustLii (www.austlii.edu.au) and LexisNexis AU; Canadian cases were sourced from CanLii (<http://www.canlii.org>); New Zealand cases were sourced from the Immigration and Protection Tribunal online database (<https://forms.justice.govt.nz/search/IPT/RefugeeProtection/>); UK cases were sourced from the Electronic Immigration Network case database (www.ein.org.uk), UN RefWorld online database (<http://www.refworld.org/>), UK Immigration and Asylum Chamber website (<https://tribunalsdecisions.service.gov.uk/utiac>), BAILII online database (<http://www.bailii.org/>) and the European Database of Asylum Law (<http://www.asylumlawdatabase.eu/en>); the US cases were obtained from WestLaw Next.

vi

Of these 46 cases, 29 decisions were from Canada; 8 from Australia; 6 from UK; and 2 from the US.

vii

There were 11, 11, 13 and 12 cases from these countries, respectively.

viii

In 2014-15, the Australian Tribunal reported a positive rate of 21 per cent: Refugee Review Tribunal, *Annual Report 2014-15* (2015) 21 <http://www.aat.gov.au/aat/files/MRDAnnualReports/MRTRRTAR201415.pdf> In the UK in 2010 the Tribunal reported a positive rate of 27 per cent: Home Office, cited in Balliot, Cowan and Munro, 2012: 272. Localised data obtained under FOI laws concerning decisions in the UK in October 2013 alone showed an overall 26 per cent positive rate: <https://www.gov.uk/government/publications/percentage-of-decisions-upheld-before-first-tier-tribunal-for-october-2013/percentage-of-decisions-upheld-before-the-first-tier-tribunal-for-october-2013>

ix

See eg an overall positive rate of 32 per cent in a case set of 120 forced marriage decisions from the same five jurisdictions from 1995-2008: Dauvergne and Millbank, 2010: 69; positive rates for sexual orientation claims in a data set of 528 Australian and 116 UK decisions from 1994-2007 varying between 22 per cent and 37 per cent: Millbank, 2009, and a 50 per cent positive rate in a case set of 42 transgender asylum claims covering the same five jurisdictions: Berg and Millbank, 2013: 125.

x

There were 33 initial decisions and 33 appeal decisions, recollecting that only two cases concerned the same claimant on appeal.

xi

See also *X (Re)*, 2011 CanLII 98327 (CA IRB) (7 February 2011), where the claimant sought asylum on the basis of belonging to a PSG of 'persons accused of witchcraft and women fearing domestic violence'. The decision-

maker did not accept the witchcraft allegations on the basis of credibility but found the woman's 'fear of persecution as a victim of domestic violence is well-founded'. Nonetheless, the woman was not granted asylum on the basis of an available internal flight option.

xii

And see a recent UK appellate decision suggesting that the scope of protection for an imputed ground (political opinion) ought to be the same as for the actual belief: *SSHD v MSM (Somalia) & UNHCR* [2015] UKUT 00413. As noted below, witches are the paradigmatic example of imputed status in Australian jurisprudence (albeit of an imputed PSG) in *Applicant A v MIEA* (1997) 190 CLR 225 at 265 per McHugh J.

xiii

See eg a US decision in which the Court of Appeals for the Third Circuit states that the applicant's initial claim unsuccessful for asylum was in part on the ground of religion (witchcraft), but does not elaborate beyond this: *Mekenye v AG of the United States*, 445 Fed Appx 593 (2011). See also a 2005 decision in which a Nigerian male applicant claimed unsuccessfully that his involvement with a religious organisation, Brotherhood of the Cross and Stars (a faith based system incorporating traditional African beliefs in reincarnation with a belief in God and Jesus), meant that he would be persecuted by people who believe that he was involved in witchcraft: *MZWOB v Minister for Immigration* [2005] FMCA 310 (17 March 2005)

xiv

This was noted as an appealable error by the Federal Court of Canada in *Gyarchie v Canada* [2013] FC 1221 [49] in which the Tribunal had analysed risk only by reference to the domestic violence claims and not by reference to the accusations of witchcraft.

xv

Of course RSD concerning religious belief has also been the subject of criticism: see eg All Party Parliamentary Group for International Freedom of Religion or Belief, *Fleeing Persecution: Asylum Claims in the UK on Religious Freedom Grounds* (2016); and, generally, UN High Commissioner for Refugees, *Beyond Proof: Credibility Assessment in EU Asylum Systems* (2013).

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