



'Inequality and Fairness in Refugee Protection'

Refugee Law Initiative 7th Annual Conference (21–23 June 2023)

Gender Inequality and Unfairness in Refugee Protection: the Power of Feminist Engagement

CEDAW Committee: Champion of Refugee Women's Rights or Maintaining the Status Quo?

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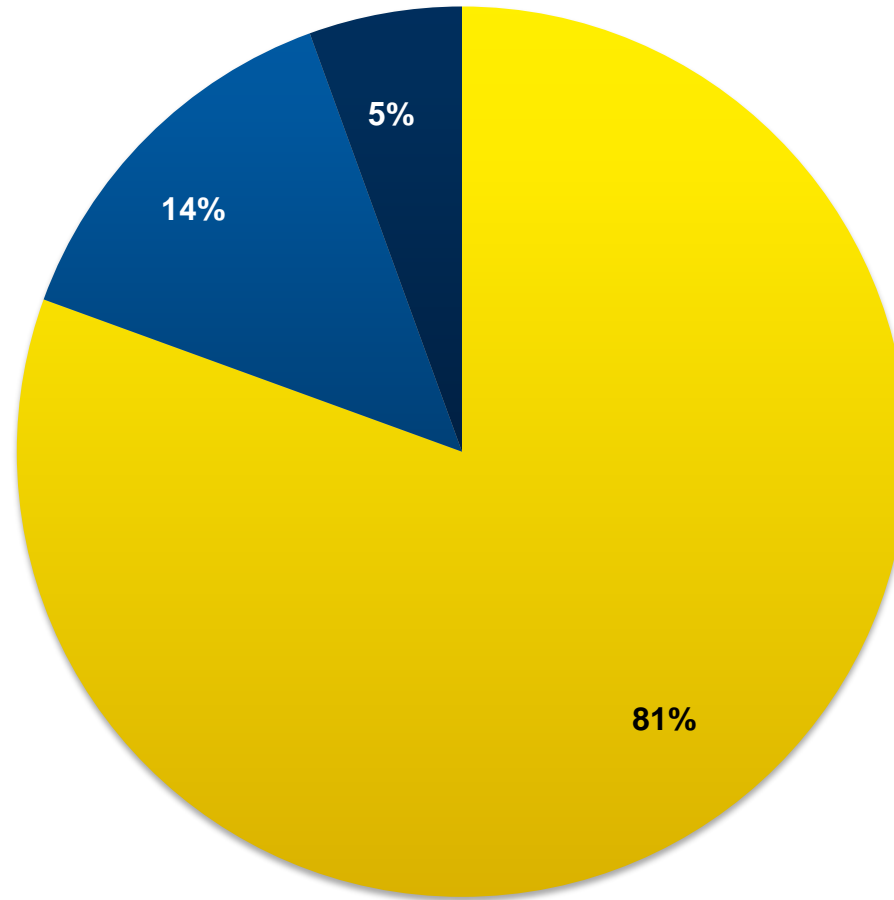
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Asylum jurisprudence of the Committee

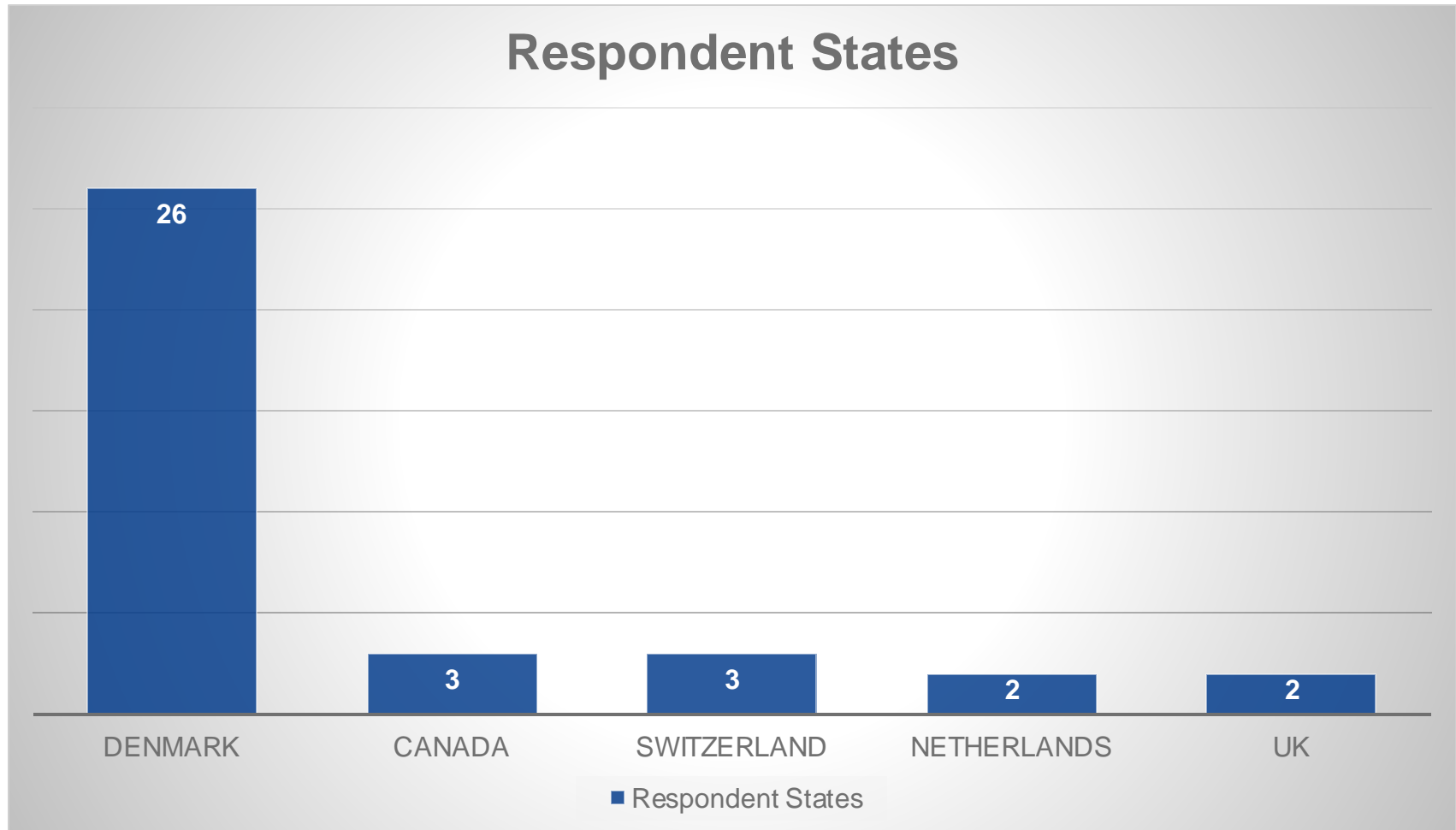
- OHCHR jurisprudence database (<https://juris.ohchr.org/>) search produced **141 cases** decided by the Committee between 2006 and 2022
- Additional targeted search for Views in communications missing from the OHCHR database using chronological communication numbers
- Excluded discontinued cases
- Result of **36 cases** involved women seeking asylum

Asylum jurisprudence of the Committee



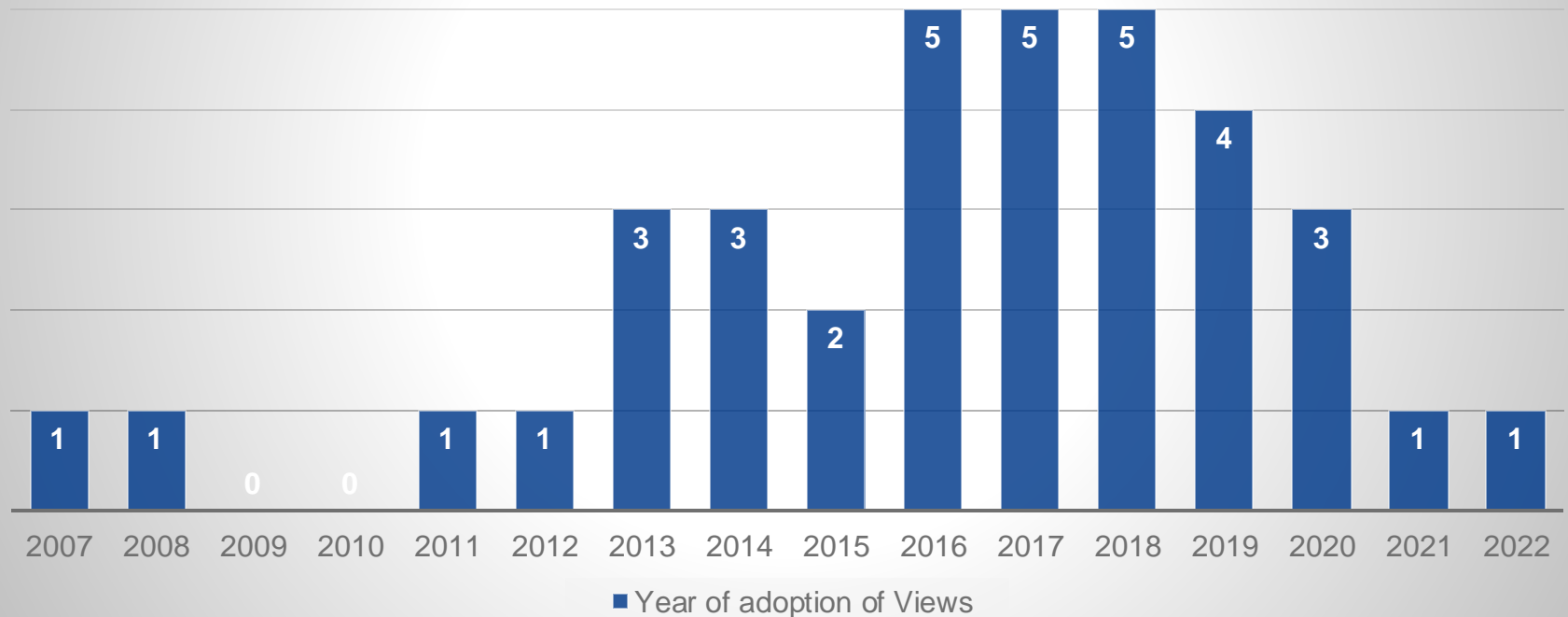
■ Inadmissible ■ Admissible, no violation ■ Admissible, violation

Asylum jurisprudence of the Committee



Asylum jurisprudence of the Committee

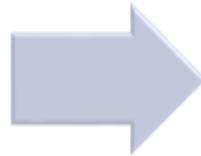
Views adopted by the Committee in asylum cases per year (2007–22)



Findings

Phase 1

- 2007 – 2015
- 13 cases
- progressive and principled normative development



Phase 2

- 2016 - 2022
- 23 cases
- excessive deference to national asylum decision making

Findings: Phase One (2007 – 2015)

- Progressive and principled normative development of CEDAW obligations
- Read an implied *non-refoulement* obligation into CEDAW, art 2(d)
- Began to clarify the scope of the implied *non-refoulement* obligation
 - Extends to harm by non-State actors
 - Women not always required to seek protection from State officials in country of origin before fleeing
 - ‘Gender-sensitive approach’ to all stages of the asylum process

Findings: Phase One (2007 – 2015)

This positive duty encompasses the obligation of States parties to protect women from being exposed to a ***real, personal and foreseeable risk of serious forms of gender-based violence***, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party: if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Convention will be violated in another jurisdiction, the State party itself may be in violation of the Convention.

M.N.N. v Denmark (CEDAW/C/55/D/33/2011, 15 July 2013) para. 8.10

States parties have an obligation to ensure that no woman will be expelled or returned to another State where her ***life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence.***

CEDAW Committee, General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women
(CEDAW/C/GC/32, 14 Nov 2014) para 23

Findings: Phase Two (2016 – 2022)

- Excessive deference to national asylum decision making
- Failure to identify or clarify apparent discrimination in **credibility assessments**
 - Timing or manner of disclosing GBV
 - Assumptions about women, and about male perpetrators of GBV
 - Internal and external inconsistencies in testimony of GBV
- Failure to identify or clarify possible **misapplications or misinterpretations of CEDAW**
 - Assessing women's asylum claims through the lens of male experiences
 - Evidentiary burden on women to prove identity and motivations of abusers
 - Conclusions that State and/or non-State protection against GBV is available in another country

R.S.A.A. and K.I.A

K.I.A. v Denmark (CEDAW/C/74/D/82/2015)

- Palestinian refugee and Jordanian national, living in Jordan
- Claimed to be a victim of serious domestic violence by her husband against her and her children
- Lied to her husband about her reasons for travelling to Denmark with their children
- Sought asylum in Denmark, claiming she would be subject to domestic abuse, degrading treatment and risk losing custody of her children if returned to Jordan
- Emphasised her particular vulnerability as a Palestinian woman in Jordan, and challenged Denmark's assertion that she was 'entitled ... to the same protection as all Jordanians' and could 'rely on the same rights as other Jordanian nationals' with respect to protection against DV by the Jordanian authorities

R.S.A.A. v Denmark (CEDAW/C/73/D/86/2015)

- Palestinian refugee and Jordanian national, living in Jordan
- Claimed to be a victim of serious domestic violence by her husband against her and her children
- Lied to her husband about her reasons for travelling to Denmark with their children
- Sought asylum in Denmark, claiming her husband would kill her and her daughters if returned to Jordan
- Emphasised her particular vulnerability as a Palestinian woman in Jordan, and challenged Denmark's assertion that she was 'entitled ... to the same protection as all Jordanians' and could 'rely on the same rights as other Jordanian nationals' with respect to protection against DV by the Jordanian authorities

R.S.A.A. and K.I.A

K.I.A. v Denmark (CEDAW/C/74/D/82/2015)

- Denmark made adverse credibility findings – ‘inconsistent’ and ‘increasingly elaborate’ testimony
- Denmark found it unnecessary to assess whether the Jordanian authorities would offer protection upon return
- Denmark rejected asylum claim
- **Committee ruled complaint inadmissible without providing substantive reasons**

R.S.A.A. v Denmark (CEDAW/C/73/D/86/2015)

- Denmark made adverse credibility findings – ‘inconsistent’, ‘non-credible’ and ‘fabricated for the occasion’
- Denmark found it unnecessary to assess whether the Jordanian authorities would offer protection upon return
- Denmark rejected asylum claim
- **Committee ruled complaint admissible and proceeded to find on the merits that removal to Jordan would violate CEDAW**

Conclusions

- Recommendations for a third phase of the Committee's asylum work, if CEDAW and the Committee are to realise their transformative potential:
 - Improved quality of asylum decision-making
 - Rethinking the deferential standard
 - A more proactive approach to credibility issues
 - Recognising the unique challenges of the refugee context
- Recommendations for States to provide adequate support to the Committee and follow its guidance
- Recommendations for scholars, advocates and jurists to engage with CEDAW and the Committee's jurisprudence, esp. the implied *non-refoulement* obligation