

# The Danish Refugee Appeals Board's approach in appeals from persons fleeing gender-based violence in the context of armed conflict

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# Introduction

- ▶ Analysis of 131 decisions made by the Danish Refugee Appeals Board which included 143 appellants from Syria, Afghanistan and Iraq
- ▶ Research Questions:
  - ▶ What is the Danish Refugee Appeals Board's approach in determining asylum appeals in the context of persons fleeing armed conflict?
  - ▶ What considerations are taken into account by the Danish Refugee Appeals Board in gender-related claims and what impact does this have on the international protection of persons fleeing armed conflict?
  - ▶ How does the Danish Refugee Appeals Board's practice fit with the UNHCR Guidelines on Claims for Refugee Status related to Situations of Armed Conflict and Violence?
- ▶ Main Findings:
  - ▶ Requirement of "individual and concrete risk" of persecution and "individual conflict" for award of Refugee Convention Status
  - ▶ Risk from non-state actors in gender-based violence cases in absence of state protection leads to award of Subsidiary Protection Status

# Table 1: Top three asylum applicants' country of origin 2013-2016

2016	2015	2014	2013
Total Number of Asylum Claims			
6,195	20,970	14,715	7,230
Country of Origin			
Syria	Syria	Syria	Syria
1,265	8,585	7,210	1,685
Afghanistan	Iran	Eritrea	Russia
1,120	2,755	2,275	965
Stateless	Afghanistan	Stateless	Somalia
500	2,225	1,140	920

## Table 2: Total first instance decisions by outcome and sex in 2016

Total	2016					
	Total		Women		Men	
Total First Instance Decisions	10,430		3,925		6,505	
Total Positive Decisions	7,125	68%	2,935	74.70%	4,190	64.40%
Geneva Convention Status	4,275	41%	1,205	30.70%	3,065	47.10%
Subsidiary Protection Status	2,805	27%	1,720	43.80%	1,080	16.60%

# Table 3: Syrian first instance decisions by outcome and sex in 2016

Syria	2016					
	Total		Women		Men	
Total First Instance Decisions	5,400		2,310		3,095	
Total Positive Decisions	5,250	97.20%	2,260	97.80%	2,990	96.60%
Geneva Convention Status	3,045	56.38%	860	37.20%	2,185	70.60%
Subsidiary Protection Status	2,190	40.55%	1,400	60%	790	25.50%

# Overview Protection Status

(i) **Refugee Convention Status**: well-founded fear of persecution for a Convention ground as provided for in the Refugee Convention definition (Aliens Act s. 7(1)) - 2 years residence permit;

(ii) **Protection Status**: real risk of death penalty or torture or inhuman or degrading treatment or punishment which reflects Articles 2 and 3 ECHR (Aliens Act s. 7(2)) - 2 years residence permit; and

(iii) **Temporary Protection Status**: where the risk of death penalty or torture or inhuman or degrading treatment or punishment arises in the context of a particularly serious situation in the home country characterised by arbitrary violence and assault on civilians (Aliens Act s. 7(3)) - 1 year residence permit

# The Danish Refugee Appeals Board's Practice

- ▶ Requirement of “concrete and individual risk” or risk arising out of “concrete and individual circumstances”
- ▶ Notion of personal conflict
- ▶ Notion of being individually persecuted or personally being subjected to persecution



# Commentary

- ▶ No requirement for persons to establish a risk of harm over and above those similarly situated (James Hathaway 1996; UNHCR *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence*, 2 December 2016, para. 22)
- ▶ Measure of sufficient seriousness + connection to Convention grounds (Atle Grahl-Madsen 1966)
- ▶ Text of the Refugee Convention itself, its historical context, the logic of protection and practice in other jurisdictions (James Hathaway 1996)
- ▶ No requirement for persons fleeing armed conflict to be ‘singled-out’ or targeted for persecution (UNHCR *Guidelines on International Protection No. 12*, para. 17)
- ▶ If “serious reasons to believe” a group is “systematically exposed to a practice of ill-treatment” and applicants can show membership in that group no “further special distinguishing features are required” (*N.A. v. the United Kingdom* (25904/07) [2008] ECHR 616, para. 116)

# Gender-related Claims in the context of Armed Conflict

- ▶ Restrictive interpretation of the Refugee Convention (Jesper Lindholm 2014)
- ▶ Greater weight placed on persecution from State authorities (despite official endorsement of non-state actors of persecution principle)
- ▶ On average women awarded Subsidiary Protection more often than Refugee Protection
- ▶ Analysis of sample from gender perspective shows risk from non-state actors in absence of state protection result in grant of Protection Status
- ▶ Limited legal reasoning

# Conclusion: Practice of Danish Refugee Appeals Board

- ▶ Limited legal reasoning
- ▶ Requirement of individual and targeted persecution
- ▶ Refusal of Refugee Convention Status to persons fleeing persecution from non-state actors, particularly in gender-related cases
- ▶ Role of UNHCR Guidelines No 12