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| Institution: University of Westminster |
| Unit of Assessment: 20 LAW Panel C |
| Title of case study: Enhancing legal protection for asylum seekers |
| <p>1. Summary of the impact</p> <p>Research by Lambert and Phillips has directly influenced how the UK Upper Tribunal deals with asylum determination for persons fleeing armed conflict, and persons who are persecuted for gender identity and sexual orientation. The research has also had a broader reach, influencing the thinking of the UN Refugee Agency on legal protection for persons escaping armed conflict, and advocacy by the British, French and Swedish foreign ministries and human rights organisations against homosexual and transgender persecution.</p> |
| <p>2. Underpinning research</p> <p>Research on asylum for victims of armed conflicts was undertaken by Prof. H el ene Lambert, during 2009-2010, Cat. A staff at Westminster since 2007. Research on sexual orientation and gender identity was undertaken by Dr. Oliver Phillips during 1993-2011, Cat. A staff at Westminster since 2002.</p> <p>Lambert's research (with co-researcher Prof. Farrell, War Studies, KCL) explores the implications of the changing character of armed conflict on refugee law. This research is significant in the context of the establishment of a Common European Asylum System (CEAS). At the heart of the CEAS is a Directive adopted in 2004 (Qualification Directive 2004/83/EC, amended by Directive 2011/95/EU) that extends the scope of EU member states' obligations to provide protection and a legal status to persons fleeing 'indiscriminate violence in situations of international or internal armed conflict' (Article 15c). This provision raises new challenges for the courts in EU countries in terms of how to assess conflict severity and the associated threat to civilians. Her research examined four metrics for assessing conflict severity: battle deaths, civilian casualties, population displacements and state failure, and showed how the first two metrics (currently used in the major databases on armed conflict) display significant and often underappreciated analytical and methodological limitations. The last two metrics also present considerable methodological challenges in application, but promise more analytical leverage in assessing the true risk to civilian populations in an armed conflict. This analysis was situated in the context of the emerging CEAS and discussed the practical challenges faced by the EU Court of Justice and the senior UK and French courts in using these four metrics through a comprehensive analysis of the emerging case law from these courts. This research (leading to ref (i) listed in s.3) was used by the Upper Tribunal to outline its approach to assessing conflict severity and the risk to civilians in Iraq in a country guidance case <i>HM and Others (Iraq)</i>, which is where Lambert's claimed-impact lies (see s.4 below).</p> <p>Phillips's research analyzes the relationship between human rights, sexual orientation and gender identity in post-colonial Southern Africa, with particular focus on the interaction between criminal law, customary law, constitutional rights and political dynamics in Zimbabwe and South Africa; this has offered detailed reviews of the legal and social treatment of lesbian, gay, bisexual and transgender (LGBT) people in Zimbabwe, which have directly informed adjudication of LGBT asylum claims from Zimbabwe in the UK. The initial research project, funded by a Smuts Travel Grant from the University of Cambridge, led to the award of a PhD for Phillips' thesis <i>Sexual Offences in Zimbabwe: Fetishisms of Procreation, Perversion and Individual Autonomy</i> (Institute of Criminology, University of Cambridge, 1999). This was subsequently augmented by a 12-month Rockefeller Foundation Post-Doctoral Fellowship, at the Program for the Study of Sexuality, Gender, Health and Human Rights at the University of Columbia, USA (Aug 2000 - Aug 2001). Since September 2002, Phillips has been a visiting fellow at the Southern and Eastern African Resource Centre for Women and Law (www.searcwl.com) in Zimbabwe. SEARCWL has funded his return to Zimbabwe and the region each year since 2003, sustaining the continuation of his research.</p> <p>Key elements of Phillips's research, used in adjudication of asylum claims in the UK, include analysis of all the case law relating to the prosecution of homosexual offences in Zimbabwe and other</p> |

Impact case study (REF3b)

legal measures that have impacted on the lives of LGBT people (discovered through interviews, and research of archives, law reports, police dockets etc.), thereby highlighting a pattern of state prosecution (ref. 3(ii)). The research has also focused on the role of the Constitution, and the relationship between criminal and customary law, in framing the strong political rhetoric that has shaped attitudes to sexual orientation and gender identity in Zimbabwe over the last 15 years (ref. 3(iii)). It has also provided a specific analysis of how this context has led LGBT people to find themselves frequent targets for blackmail; one publication specifically considered the extent to which the domestic law confronts or compounds blackmail, and the limits of challenging it through the human rights framework (ref. 3(iv)).

3. References to the research

- (i) H el ene Lambert and Theo Farrell, "The Changing Character of Armed Conflicts and the Implications for Refugee Protection Jurisprudence", *International Journal of Refugee Law*, 22(2) 2010, pp.237-273.
Co-authored article in the leading journal in the sub-field. This publication is listed in REF2.
- (ii) Oliver Phillips, "(Dis)Continuities of Custom in Zimbabwe and South Africa: The Implications for Gendered and Sexual Rights", in *Health and Human Rights: An International Journal*, 7(2) 2004, Harvard School of Public Health, pp.82-113. (ISSN 1079-0969)
This publication was included in the 2008 RAE submission of the School of Law at Westminster University. It has significant similarities in substance to the following chapter in a very well received collection:
- (iii) Oliver Phillips, "Gender, Justice, and Human Rights in Post-Colonial Zimbabwe and South Africa", in Heidensohn, F. (ed) *Gender and Justice: New Concepts and Approaches*, Collumpton: Willan Publishing, 2006: pp.243-279. ISBN-13:978-1-84392-199-8.
- (iv) Oliver Phillips, "Blackmail in Zimbabwe: Troubling Narratives of Sexuality and Human Rights", *International Journal of Human Rights*, 13(2 /3) 2009, pp.345-364.

4. Details of the impact

Lambert's and **Phillips's** research has reached so far as to inform and directly influence judicial decisions of the UTIAC in Country Guidance cases. Unlike ordinary cases, UK judges determining subsequent appeals are obliged to treat Country Guidance as authoritative and to apply it. These cases do therefore have significant effect on all asylum seekers coming from these countries, not just the individual(s) involved in the case. The research has also contributed to advocacy for sexual and gendered rights, and has directly informed a major UNHCR's report on victims of armed conflict.

Lambert's article (ref. 3(i)) was extensively cited by the UTIAC in *HM and Others (Article 15(c)) Iraq v. Secretary of State for the Home Department*, CG [2010] UKUT 331 (IAC) at paras.91-92 and 253; "We have also drawn assistance from the review of case law and concepts by Helene Lambert and Theo Farrell.... The authors note the continuing reference to IHL [international humanitarian law] to inform the spirit of the measures by French courts" (para.91). The Tribunal endorsed the applicability of population displacement and state failure in assessing conflict severity: "We see no reason why these considerations should not be factored into the overall assessment... Destruction of the necessary means of living, if not simply a remote consequence (as was found by the Tribunal in *GS* to be the case in Afghanistan in 2009), may equally be a relevant factor. Similarly population displacement may well be an indicator of the intensity of such problems" (para.92); "our overall assessment of Article 15(c) risk has to be a holistic one looking at a range of variables, including those mentioned by Lambert and Farrell" (para.253). The UT then went on to adopt the criteria we proposed for assessing the severity of armed conflict in asylum cases. One of the three senior judges deciding the case was Dr. Storey, one of the participants in the Oxford Debate (see REF3a).

The decision is available at: <http://www.unhcr.org/refworld/docid/4ca367242.html>

The Upper Tribunal has since confirmed its decision in *HM2 CG [2012] UKUT 00409(IAC)* and invited Lambert and Farrell to brief a dozen of senior judges, including the President of the UT, on their ongoing research in this area (London, 18 June 2012).

Lambert's published research (ref. 3(i)) led her to be invited to present her research findings to:

North American and European asylum law practitioners and decision-makers (Research Workshop, York, Canada, 25-27 April 2011), High-Level Governments officials of the 27 EU Member States and EU institutions, and the UNHCR (Polish Presidency of the Council of the EU, 11-12 July 2011), judges of the UKIAC (presentation with Prof. Farrell, London, 18 June 2012), and to provide training to 60-70 legal practitioners directly involved in asylum cases across Europe (European Legal Network on Asylum, Advanced Course, Bologna, 4-6 May 2012).

The published research also informed the UN Refugee Agency's (UNHCR) early thinking as well as the final report on a major research project on asylum seekers fleeing indiscriminate violence. A copy of Lambert's co-authored article (ref.3(i)) was requested and discussed with UNHCR's senior legal coordinator and chief of protection policy and legal advice section. Furthermore, Lambert cooperated with the UNHCR's consultant writing the UK national report. The UNHCR study was published in July 2011; it discusses in great detail the *HM and Others (Iraq)* case and findings, including the criteria proposed by Lambert in her co-authored article (UNHCR, 'Safe At Last?', July 2011, at pp.44-47).

The Study is available at: <http://www.unhcr.org/refworld/pdfid/4e2ee0022.pdf> and has been widely communicated and distributed amongst states, UN officials, NGOs, academics and practitioners working in the area.

Phillips's published research on sexual orientation and gender identity in southern Africa (including items 3(ii-iv) above) has led him to be called as an 'expert witness', in over 70 cases before the UKAIT and UTIAC since 2002, where Zimbabweans are claiming asylum on the grounds of their sexual orientation or the threat of gender based violence. The Tribunals have made specific reference to the value of the information submitted in these many reports, for individual judicial decisions, but a far greater impact arises from Phillips's extensive citation in an appeal heard by the Upper Tribunal in October 2011, at which the UT established Country Guidance for the treatment of LGBT asylum claims from Zimbabwe (*LZ (homosexuals) Zimbabwe* CG [2011] UKUT 00487 (IAC) – available at: <http://www.unhcr.org/refworld/pdfid/4f2279192.pdf>).

In *LZ (Zimbabwe)*, Phillips submitted a lengthy written report to the UT, and then gave evidence directly to the sitting panel of UT Judge Macleman and Deputy UT Judge Holmes over a period of 4-5 hours, reflecting the seriousness with which the Tribunal treated Phillips's evidence. Phillips's expert submission significantly informed the UTIAC's decision, as is clear from their repeated references to his research in their development of Country Guidance.

In *LZ (Zimbabwe)*, the determination by UT explicitly cites the evidence of Phillips in over 35 different places, including:

- a) At paragraph 8, the UT appraises Phillips's contribution "He is a well qualified and recognised expert.... His evidence has been of high value, although we have not accepted all of his conclusions." Similarly at paras 105, 106, and 109 the UT explicitly recognises the significant impact of his evidence on their determination, while also articulating some limits to this.
- b) The UT's determination draws directly from the research in publication 3(iii) (above), at para 30 of the judgement drawing on Phillips's analysis of the judicial and constitutional process, and para 75 on gender relations.
- c) Similarly, from 3(ii) above, the UT draws directly on Phillips's analysis of case-law, and unreported cases (in Magistrate's Courts) to reveal patterns of prosecution and attitudes of the police and the judiciary at para 31-38 of the UT's determination.
- d) At para 43-44 of the judgement the UT draws directly on Phillips's recent research on blackmail published in 3(iv) above, and accepts his evidence and analysis unreservedly.

Phillips's research has also contributed to the development of strategies by organizations campaigning for law reform and sexual rights, and also government departments. This is evidenced by regular consultation, and participation in strategic committees. Phillips's research (ref. 3(iii)) led the Swedish Department of Foreign Affairs to hire him to brief the new Swedish Ambassador to Zimbabwe (September 2010). The Ministère des Affaires Etrangères of the French Government appointed Phillips as 'external evaluator' for bids received from LGBT advocacy groups around the world, for funding being offered by that Ministry (Nov. 2010- Feb. 2011). This appointment means direct intervention in the decision to distribute funds to 3 LGBT projects (selected from 123 bids around the world), offering a maximum amount of 180 000 Euros.

The publications listed in s.3 have also contributed to the strategic deliberations of Human Rights

Impact case study (REF3b)

Watch (HRW www.hrw.org) and International Gay and Lesbian Human Rights Commission (IGLHRC www.iglhrc.org). The blackmail article published in the *IJHR* (ref. 3(iv)) was chosen by IGLHRC to be reprinted as the Introductory “framing” chapter for their special report on Blackmail in Southern Africa. Subsequently, IGLHRC invited Phillips onto their Board of Directors (from Feb. 2011) in order to benefit more directly from his knowledge of the research field and analysis of LGBT analysis on a global scale. IGLHRC is a leading international organization whose advocacy has played a key role in the release of people detained on account of the sexual orientation in many countries, including most recently Cameroon, Nepal, Malawi and Egypt. This Commission was also instrumental in gaining consultative status for LGBT groups at the United Nations, and reports regularly to the UN Human Rights Committee, UN Special Rapporteurs and relevant human rights Treaty Bodies (e.g. Committee for the Elimination of Discrimination against Women CEDAW). Phillips’s research has further led him to be appointed to the Board of IDAHO (International Day Against Homophobia and Transphobia www.dayagainsthomophobia.org), a rapidly growing umbrella organization.

5. Sources to corroborate the impact**For Lambert:**

HM and Others (Article 15(c)) *Iraq v. Secretary of State for the Home Department*, CG [2010] UKUT 331 (IAC) at paras.91-92, 144 and 253 - <http://www.unhcr.org/refworld/docid/4ca367242.html>

UNHCR, ‘Safe At Last? Law and Practice in Selected EU Member States with respect to Asylum-Seekers Fleeing Indiscriminate Violence’, July 2011 - <http://www.unhcr.org/refworld/pdfid/4e2ee0022.pdf> (pp.43-47)

For Phillips:

LZ (homosexuals) Zimbabwe -

<http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=4f2279192> (paras 8, 30-38, 43-44, 75, 105-106, and 109).