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“I feel like as a woman I’m not welcome”:

A gender analysis of UK asylum
law, policy and practice



Asylum Aid
Protection from Persecution

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“I feel like as a woman I’m not welcome”:

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GLOSSARY

Sex: The biological differences between women and men.

Gender: Refers to the social construction of power relations between women and men, and the implications of these relations for women and men's identity, status and roles. It is not the same as 'sex' which is biologically defined.

Gender-Related Persecution: Refers to the experiences of women who are persecuted because they are women, i.e. because of their identity and status as women.

Gender-Specific Persecution: Refers to forms of serious harm which are specific to women.

Gender Equality: This means that women and men enjoy the same equality and that the different behaviour, aspirations and needs of women and men are equally valued and favoured.

Gender Mainstreaming: Involves the incorporation of gender considerations into all policies, programmes, practices and decision-making so that at every stage of development and implementation, an analysis is made of the effects on women and men, and appropriate action taken.

Gender Sensitivity: It acknowledges the different roles and responsibilities of women and men in the community and the relationships between them. Men and women are different, therefore their experiences, needs, issues and priorities are different. Strategies are also different to achieve equitable outcomes for women and men.

Gender Impact Assessment: One of the tools used in gender proofing. It involves an assessment of policies and practices to see whether they will affect women and men differently, with a view to adapting these policies/practices to make sure that any discriminatory effects are eliminated.

Gender Disaggregated Statistics: Statistics and data gathered and broken down by sex in order to aid comparison.

Non-Refoulement: Article 33 of the Refugee Convention prohibits the expulsion or return ('refoulement') of refugees to a territory where her life or freedom would be threatened on account of her race, religion, nationality, membership of a particular social group or political opinion.

Acronyms

AIT	Asylum and Immigration Tribunal
AI	Asylum Instruction
APD	EU Asylum Procedures Directive
API	Asylum Policy Instruction
ASU	Asylum Screening Unit
CEAS	Common European Asylum System
COI	Country of Origin Information
COIS	Country of Origin Information Service
ECHR	European Convention on Human Rights
EIG	UKBA Enforcement Instructions and Guidance
EU	European Union
DFT	Detained Fast Track
DL	Discretionary Leave
FGM	Female Genital Mutilation
FSU	Further Submission Unit
FIU	Fast Track Intake Unit
FTT – IAC	First Tier Tribunal (Immigration and Asylum Chamber)
HP	Humanitarian Protection
IAA	Immigration Appellate Authority
IAT	Immigration Appeal Tribunal
IFA	Internal Flight Alternative
IRC	Immigration Removal Centre
LGBT	Lesbian, Gay, Bisexual and Trans
LSC	Legal Services Commission
NAM	New Asylum Model
NRM	National Referral Mechanism
OGN	Operational Guidance Note
PACE	Parliamentary Assembly of the Council of Europe
PSG	Particular Social Group
PTSD	Post-Traumatic Stress Disorder
QADT	UKBA Quality Audit and Development Team
QD	EU Qualification Directive
RCD	EU Reception Conditions Directive
RFRL	Reasons for Refusal Letter
Refugee Convention	1951 United Nations Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees
STHF	Short Term Holding Facility
UKBA	United Kingdom Border Agency
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UTT – IAC	Upper Tier Tribunal (Immigration and Asylum Chamber)

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“If I am being asked which life I don’t want to live, it is this life”.

Rachel, 32 year old asylum seeker from the Democratic Republic of the Congo

1.1 Background

Whereas many women may have ‘conventional’ claims for asylum based on their race, religion, nationality or political opinion, many fear persecution solely because of their gender, including because they refuse to conform to established gender roles within a given society.¹ Women are also subjected to harm which is gender-specific. These forms of harm include but are not limited to female genital mutilation (FGM), forced marriage, forced sterilisation, forced abortion, domestic violence and rape and sexual violence.² However, the Refugee Convention³ fails explicitly to refer to asylum seekers who fear gender-related persecution because there was a lack of understanding when the Refugee Convention was drafted that gender may impact on the type of persecution or that gender may be a reason for persecution.⁴ The need therefore to consider the Refugee Convention and the asylum procedure from a gender perspective is essential.

1.2 Aims of the Report

This report comprehensively outlines the law, policy and practice in the UK regarding the refugee status determination process, the asylum procedure, reception conditions and detention conditions from a gender perspective. This information is analysed in light of the experiences of women seeking asylum in the UK and their legal representatives and advocates working on their behalf. The report assesses whether the law, policy and practice on asylum are gender-sensitive in accordance with the UK’s obligations under international, European and national standards. It also considers whether the Government’s commitment in the Action Plan for the Call to End Violence Against Women and Girls to “work to ensure that the asylum system is as gender-sensitive as possible” has been achieved. In the Action Plan the Government has committed:

To make the asylum system as gender-sensitive as possible so that women and girls who have been persecuted through violence and/or discrimination can have every opportunity to make their case and to have their asylum application considered as fairly as possible.⁵

Law, policy and practice in the asylum system change constantly and there is thus a need for a current assessment of the gender-sensitivity of the UK asylum system. This is the first report that undertakes a gender analysis of law, policy and practice in all aspects of the UK asylum system. There are various organisations that dedicate resources to address the specific needs of women asylum seekers in different areas of the asylum process but this report aims to provide a broad but detailed overview of the whole system. It is hoped that this report will provide decision-makers, legal representatives and asylum and women’s rights campaigners with a useful tool with which to assess the development of law, policy and practice in this fast evolving area.

- 1 N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000.
- 2 UK Border Agency, *Asylum Instruction on Gender Issues in the Asylum Claim*, September 2010.
- 3 Article 1A, 1951 Geneva Convention Relating to the Status of Refugees.
- 4 Edwards A. ‘Age and Gender dimensions in international refugee law’, in *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, edited by E. Feller, V. Türk and F. Nicholson, (Cambridge: Cambridge University Press, 2003), p. 80.
- 5 Home Office, *Call to End Violence Against Women and Girls: Action Plan*, March 2011, para. 45.

This research was initially commissioned for a project funded by the European Refugee Fund, which runs between October 2010 and March 2012 to produce a comparative report on the gender-sensitivity of asylum systems in nine different EU Member States.⁶

1.3 Methodology and Sample

The research was based on a mixed methods approach. This involved a desk-based review of law and policies and primary research using qualitative methods in order to capture the experiences of women seeking asylum in the UK and of legal representatives and advocates supporting them. The qualitative methods included questionnaires and semi-structured interviews and focus groups with key informants from two groups: stakeholders in the refugee sector and women asylum seekers and refugees. The interviews were transcribed and analysed to identify trends. The interviews and focus groups with women asylum seekers and refugees in particular, were assessed to identify some of the most important and recurrent issues in the asylum system.

The questionnaires were completed and the interviews carried out between February and April 2011. The information contained in the report is correct as of January 2012.

Stakeholders

Three questionnaires were prepared for the research covering (i) the refugee status determination and the asylum procedure, (ii) reception conditions and (iii) detention conditions. Legal representatives and organisations working within the refugee sector were asked to complete the questionnaires according to their expertise. Stakeholders in the areas of status determination, asylum support and detention were contacted to take part in the research with the aim of gathering responses from a broad base of expertise. Most organisations contacted responded positively whereas a minority were unable to participate due to lack of capacity. A balanced representation between the different areas analysed in the report (refugee status determination; asylum procedure; reception conditions; and detention conditions) was ensured. When it became apparent that stakeholders found it very time-consuming, interviews were organised as an alternative in order to complete the questionnaires. This permitted the researcher to provide clarification where necessary and focus on each stakeholder's specific knowledge. In total, there were 18 stakeholders' responses via questionnaires or interviews. Additionally, Reasons for Refusal Letters and Tribunal determinations were considered from Asylum Aid's casework where such consent was granted and are referred to in the report where relevant.

Women Asylum Seekers and Refugees

Semi-structured interviews and focus groups with women asylum seekers and refugees were undertaken in order to highlight their personal experience of claiming asylum in the UK. Interviewees were identified through refugee women's organisations or support organisations working with women asylum seekers and refugees and through Asylum Aid's casework. Women asylum seekers and refugees were interviewed in Cardiff, Leeds, London and Swansea. The interviews with women asylum seekers focused on their experience of going through the asylum procedure in the UK, from arrival to their current status, including accommodation, support and detention.

The research participants were not asked detailed questions about the harm suffered in their country of origin or en route to the UK but were simply asked to briefly explain the basis for their asylum claim. *Figure 1* therefore represents the basis of their claims but may not include or adequately reflect the extent of the harm and persecution suffered by the women asylum seekers who took part in the research. Some women referred to more than one issue as the basis of their claim. 17 had claims involving gender-based persecution, 8 mentioned political opinion as the basis of their claim and two mentioned race/ethnicity.

⁶ The nine EU Member States are Belgium, France, Hungary, Italy, Malta, Romania, Spain, Sweden and the UK.

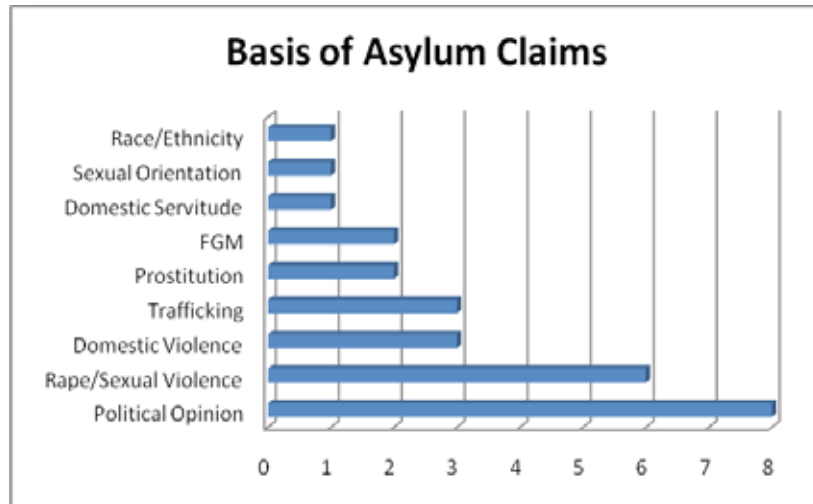


Figure 1

In total, 19 women asylum seekers and refugees were interviewed through a mix of individual interviews and focus groups. All the women were at different stages of the procedure: 3 were waiting for a decision by the UK Border Agency, 2 were waiting for an appeal hearing, 6 were waiting on the outcome of a fresh claim, 2 were without outstanding applications, 4 had been granted refugee status, and 2 had been given indefinite leave to remain in the UK. The women asylum seekers and refugees who participated in the research come from 12 different countries (2 participants each from the Democratic Republic of the Congo; Guinea-Conakry; Kenya; Nigeria; Sierra Leone; Uganda; and Zimbabwe and one participant from Cameroon; Congo-Brazzaville; Somalia; Turkey; and Vietnam). 80% of the participants claimed asylum since the New Asylum Model was introduced in 2007.⁷ Most women were aged between 36 and 45 (Figure 2).

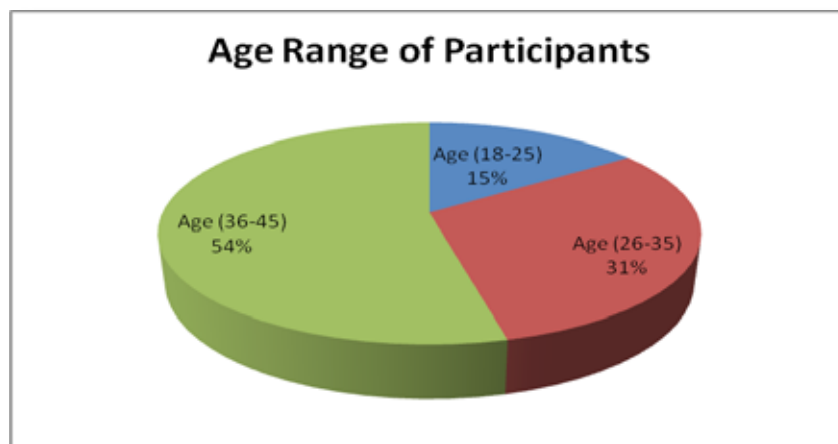


Figure 2

Ethical Considerations

Ethical issues were considered throughout the research, especially considering that many of the women asylum seekers and refugees have suffered from serious harm, persecution and torture and therefore represent a vulnerable group of participants. The research was conducted in accordance with the Social Research Association ethical guidelines. All participants were asked to give signed consent after the research aims and purposes were explained to them and were given this in writing as well. Participants were informed that their names and details would be kept confidential and that they would not be recognised from the data

⁷ The New Asylum Model was brought in to speed up and introduce an end-to-end asylum decision-making process. Decision-making was regionalised and new procedures and training programmes were established.

published in the report. All names have been changed in the report. All participants could have a friend or support worker present during the interview. Two focus groups were arranged and the researcher spent some time with each participant prior to the focus group to discuss issues of confidentiality and anonymity and to ask them about the basis of their claim to ensure they would not have to discuss this with the group. Female interpreters were used where necessary and the author undertook interviews without interpretation in English and French.

Terminology

Throughout the report, the term “legal representative” is used to describe barristers, solicitors or accredited caseworkers who represent asylum seekers under the legal aid scheme. The term “advocate” is used to describe stakeholders from the voluntary sector who work with asylum seekers through the provision of advice and support.

The UK Border Agency Asylum Instruction on *Gender Issues in the Asylum Claim* is referred throughout as the AI on *Gender*.

2.1 The Refugee Convention

The Refugee Convention was drafted at a time when there was “complete blindness to women, gender, and issues of sexual inequality”.⁸ For example, the non-discrimination provision in the Refugee Convention does not refer to sex or gender.⁹ Crawley notes that it is assumed that international refugee law is gender neutral as it makes no distinction between male and female refugees, yet the manner in which international refugee instruments are interpreted by the state reflects and reinforces gender biases. She also highlights that the law has developed within a male paradigm.¹⁰ Edwards has argued that the consequences of these omissions are that “they established the masculine experience as the norm of [international refugee law and policy]”.¹¹ The United Nations High Commissioner for Refugees (UNHCR) response to the absence of women from mainstream international refugee law instruments was to develop gender-specific criteria and guidelines, albeit much later and further to the recognition of women’s rights within international human rights law. In 2000, Bloch, Galvin and Harrell-Bond argued that there was a need for a complete rethink of legislation and policy in Europe to ensure that women asylum seekers were recognised as refugees and be successfully settled.¹² In 2010, Edwards stated that advances in the field of international refugee law and policy in gender-related claims remained “nascent, contingent, and fragile”.¹³

2.2 The United Nations Framework

The Executive Committee (ExCom) of the UNHCR has provided guidance and recommendations for States to ensure women seeking asylum are adequately protected.¹⁴ There are a variety of ExCom Conclusions that provide recommendations on the treatment of women seeking asylum in countries of asylum¹⁵ whereas others refer to their treatment in countries of origin.¹⁶ ExCom has recommended “the development by States of appropriate guidelines on women asylum-seekers, in recognition of the fact that women refugees often experience persecution differently from refugee men”.¹⁷ Two years later, ExCom called “upon the High Commissioner to support and promote efforts by States towards the development and implementation of criteria and guidelines on responses to persecution specifically aimed at women, by sharing information on States’ initiatives to develop such criteria and guidelines, and by monitoring to ensure their fair and consistent application. In accordance with the principle that women’s rights are human rights, these guidelines should

8 Alice Edwards, ‘Transitioning Gender: Feminist engagement with international refugee law and policy 1950-2010’, in *Refugee Survey Quarterly*, 2010, vol. 29(2), p. 22. Edwards has examined the five historical periods spanning feminist engagement with international refugee law and policy. The periods range from the complete exclusion of women in the international refugee instruments (1950-1985), to a focus on women as a specific group with special needs (1985-present); to gender mainstreaming (1997-mid-2004) and its later variation, the “age, gender and diversity mainstreaming” (2004-present).

9 Article 3 of the Refugee Convention states that “the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin”.

10 Heaven Crawley, *Refugees and Gender: Law and Process*, 2001, p. 5.

11 Edwards, 2010, p. 23.

12 Alice Bloch, Treasa Galvin and Barbara Harrell-Bond, ‘Refugee Women in Europe: Some Aspects of the Legal and Policy Dimensions’ in *International Migration*, 2000, vol. 38(2).

13 Edwards, 2010, p. 30.

14 ExCom shares its consensus opinion on international protection through non-legally binding instruments called ExCom Conclusions. ExCom Conclusions constitute expressions of opinion which are broadly representative of the views of the international community. For more information see www.unhcr.org/pages/49e6e6dd6.html.

15 See for example EXCOM Conclusion on Refugee Protection and Sexual Violence, No. 73 (XLIV) – 1993; EXCOM Conclusion on Refugee Women and International Protection, No. 64 (XLI) – 1990; and EXCOM Conclusion on Refugee Women and International Protection, No. 39 (XXXVI) – 1985.

16 See UNHCR, A Thematic Compilation of Executive Committee Conclusion (4th Edition), August 2009, in particular the section on Women’s Rights, p. 251. See also EXCOM Conclusion on Women and Girls at Risk, No. 105 (LVII) – 2006, 6 October 2006 and EXCOM Conclusion on Refugee Women, No. 60 (XL) – 1989.

17 EXCOM Conclusion on Refugee Protection and Sexual Violence, No. 73 (XLIV) – 1993, para. (e).

recognise as refugee women whose claim to refugee status is based upon a well-founded fear of persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, including persecution through sexual violence or other gender-related persecution”.¹⁸

The United Nations first specifically recognised the plight of women refugees in 1979 when the General Assembly added an item on the situation of women refugees to the provisional agenda for the World Conference of the UN Decade of Women.¹⁹ In its 2006 in-depth study on violence against women, the UN General Assembly recommended that States “adopt a gender-sensitive approach to the granting of asylum”²⁰ and noted that “Treaty bodies have also highlighted the lack, in many countries, of comprehensive laws on trafficking and specific provisions for a gender-sensitive approach in their asylum laws”.²¹

The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) requires signatory parties to incorporate the principle of equality between men and women into their legal system, and to ensure the elimination of acts of discrimination against women. The CEDAW Committee considers violence against women as a form of sex discrimination and the Convention sets out that States must take effective measures to end violence against women. The rights to equality between men and women and non-discrimination on the grounds of sex enshrined in CEDAW are crucial components for the international protection of women refugees and asylum seekers. The CEDAW Committee has specifically called on governments to implement gender-sensitive asylum procedures.²² In October 2010, UNHCR submitted to the CEDAW Committee a draft proposal for the elaboration of a general recommendation on gender equality in the context of forced displacement and statelessness. It recognises that a gender-sensitive approach needs to be integrated throughout every stage of the asylum process and notes that “Articles 1, 2, 5(a) and 15 of the Convention have the effect of obliging States parties to ensure that gender-related forms and grounds of persecution are recognised as legitimate grounds for asylum in law and in practice”.²³ In October 2011, the CEDAW Committee adopted a statement on the anniversary of the Refugee Convention and called for gender equality for refugees and noted “the CEDAW Committee calls on States to recognize gender related forms of persecution and to interpret the ‘membership of a particular social group’ ground of the 1951 Convention to apply to women. Gender sensitive registration, reception, interview and adjudication processes also need to be in place to ensure women’s equal access to asylum”.²⁴

Some of the strategic objectives of the Beijing Platform for Action include providing protection for refugee women.²⁵ It refers to refugee determination procedures, stating that women and men should have equal treatment and access to asylum procedures. It urges States to recognise as refugees women whose claims are based on gender-related persecution, to promote efforts to develop gender guidelines, and to disseminate and implement the gender guidelines of the UNHCR.²⁶

The Special Rapporteur on Violence against Women reports to the United Nations Human Rights Council. In 2000, the first Rapporteur, Radikha Coomaraswamy, reiterated that government bodies must “adopt and implement guidelines recognising gender-related persecution as a basis for women to claim refugee status”.²⁷

18 EXCOM General Conclusion on International Protection, No. 77 (XLVI) – 1995, para. (g).

19 UN doc. A/RES/34/161, 17 December 1979 cited in United Nations, *The United Nations and the advancement of women, 1945-96* (New York: United Nations, 1996), 243.

20 UN General Assembly, *In-depth study on all forms of violence against women*, UN doc. A/61/122/Add.1, 6 July 2006, para. 382, p. 107.

21 *Ibid.*, para. 276, p. 78.

22 Alice Edwards, *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women*, Legal and Protection Policy Research Series, 2009.

23 UNHCR, *General Recommendation on Gender Equality in the Context of Forced Displacement and Statelessness*, 21 October 2010, para. 14.

24 CEDAW Statement on the Anniversaries of the 1951 Convention Relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness, adopted on 19 October 2011 during the 50th session, *A call for Gender Equality for Refugees and Stateless Persons*.

25 United Nations, *Beijing Declaration and Platform for Action*, UN doc. A/CONF. 177/20, 17 October 1995, Strategic Objective E. 5, paras 147h, 147i and 148.

26 UNHCR, *Guidelines on International Protection: Gender-related persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the status of refugees*, UN doc. HCR/GIP/02/01, 7 May 2002

27 R. Coomaraswamy, *Integration of the human rights of women and the gender perspective, violence against women*, UN doc. E/CN.4/2000/68, 29 February 2000, para 122(f).

In 2009, the second Rapporteur, Yakin Ertürk, recognised that “work remains to be done to establish gender as independent grounds for claiming asylum as a refugee” and stated that “it would seem important for the mandate to dedicate a thematic report on [concerns relating to gender forming a basis for refugee status] for standard setting, providing an analysis of trends, and addressing aspects of gender guidance, fast track asylum determination procedure, internal flight alternative, detention, forced removal and destitution”.²⁸

2.3 The Council of Europe

In 2010, the Committee on Migration, Refugees and Population from the Parliamentary Assembly of the Council of Europe (PACE) published a report on gender-related claims for asylum recognising that specific attention must be paid to such claims to ensure effective protection in Member States.²⁹ In October 2010, the PACE adopted a Resolution recommending a series of measures to Council of Europe Member States to ensure that proper account is taken of the gender dimension when asylum applications are being assessed.³⁰ The Committee of Ministers of the Council of Europe however has not adopted the draft recommendation and has failed to address PACE's recommendations regarding a set of guidelines to ensure that gender-related persecution is adequately taken into account in national asylum procedures and the need to develop gender-sensitive training programmes and tools for those involved in asylum procedures.³¹

In 2010, the Council of Europe adopted a Convention on preventing and combating violence against women and domestic violence. One of its aims is to “contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women”.³² The Convention requires parties to take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of the Refugee Convention and as a form of serious harm giving rise to subsidiary protection.³³ The parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds³⁴ and “parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection”.³⁵

UNHCR highlighted that “article 60 as it stands therefore iterates well established international and regional standards and provides much needed guidance in this field. This article will also allow more consistency among Member States and promote compliance with state obligations under the 1951 Convention and the CEDAW provisions relating to access to justice and equality before the law”.³⁶ A memorandum from the Council of Europe Legal Adviser notes that the drafting of these articles were based on the UNHCR Guidelines on Gender-Related Persecution³⁷ and Resolution 1765 (2010)³⁸ and Recommendation 1940 (2010)³⁹ of the PACE. These set out much more detailed provisions that could be used to interpret the meaning of article 60(3) of the Convention.

28 Ertürk, Y. *15 years of the United Nations Special Rapporteur On Violence Against Women ,Its Causes and Consequences*, United Nations May 2009.

29 Committee on Migration, Refugees and Population in the Parliamentary Assembly of the Council of Europe, *Gender-related claims for asylum*, Doc. 12350, 26 July 2010.

30 Parliamentary Assembly of the Council of Europe, Resolution 1765 (2010) on *Gender related claims for asylum*.

31 Committee of Ministers, *Reply to Gender-related claims for asylum: Recommendation 1940 (2010)*, Doc. 12687, 18 July 2011.

32 Council of Europe, Convention on preventing and combating violence against women and domestic violence, May 2011, article 1b.

33 *Ibid.*, article 60(1).

34 *Ibid.*, article 60(2).

35 *Ibid.*, article 60(3).

36 Memorandum from the Directorate of Legal Advice and Public International Law (Jurisconsult), Legal Advice Department and Treaty office, Council of Europe, *Legal Opinion on the compatibility of Articles 3, 4, 5, 60 and 61 of the draft Council of Europe Convention on preventing and combating violence against women and domestic violence with international law, including human rights law*, 16 March 2011, para. 19.

37 UNHCR *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 2002.

38 Parliamentary Assembly of the Council of Europe, Resolution 1765 (2010) on *Gender related claims for asylum*.

39 Parliamentary Assembly of the Council of Europe, Recommendation 1940 (2010) on *Gender-related claims for asylum*.

In November 2011, the UK stated that further consideration was needed before a decision was taken as to whether it would sign and ratify the Convention.⁴⁰ It initially decided to defer ratification due to “difficulties with several articles”.⁴¹

2.4 The European Union

The European Union (EU) has shown its commitment to gender mainstreaming by establishing equality between men and women as a specific task of the EU: “in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women”.⁴²

In the EU, the Charter of Fundamental Rights establishes that the right to asylum shall be guaranteed with due respect for the Refugee Convention and in accordance with the Treaty establishing the European Community.⁴³ The Charter also sets out that everyone is equal before the law,⁴⁴ that any discrimination based on sex and sexual orientation shall be prohibited⁴⁵ and that equality between men and women must be ensured in all areas.⁴⁶

The Common European Asylum System (CEAS) aims at harmonising practice between EU Member States in the field of asylum to decrease variation in recognition rates and the subsequent secondary movements of asylum seekers. Guild notes however that “it is not evident that common procedures are resulting in equivalent outcomes”.⁴⁷

Overall the existing instruments of the CEAS are weak in terms of recognising both gender-specific persecution and gender-related persecution. The Council of the EU noted in its European Pact on Immigration and Asylum (2008) that “considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes”.⁴⁸ The five year Stockholm Programme is silent on any gender issues that could arise in the asylum system.⁴⁹ Harmonisation under the CEAS has been and remains a challenge. UNHCR recently noted that “it is clear that interpretation and application of the asylum instruments continue to differ, often producing sharply divergent outcomes in terms of international protection”.⁵⁰ UNHCR also notes the divergence in terms of conditions of reception and that these discrepancies need to be addressed both through further legislative amendments and through practical cooperation.⁵¹

In 2006, the European Parliament passed a Resolution on the role and place of immigrant women in the EU noting that “the gender dimension has not been systematically taken into account either at the level of harmonised policies or at the level of data collection”⁵² and therefore urging the Council and the Commission in the CEAS framework to include the risk of FGM as a ground for asylum in accordance with the UNHCR Guidelines on gender-related persecution.⁵³ The Resolution also calls on Member States

40 Home Office, Ending violence against women and girls: Action Plan progress review, 24 November 2011, p. 27.

41 *Idem*.

42 Article 8 TFEU. See also article 10 TFEU: “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

43 Charter of Fundamental Rights of the European Union (2000/C 364/01), Article 18.

44 *Ibid.*, article 20.

45 *Ibid.*, article 21(1).

46 *Ibid.*, article 23.

47 Elspeth Guild, *Improving Policies in the Field of Asylum and Human Rights protection in the US and EU*, EU-US immigration Systems 2011/2013, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI), European University Institute, 2011, p. 3.

48 Council of the European Union, European Pact on Immigration and Asylum, 24 September 2008, 13440/08, section IV.

49 European Council, The Stockholm Programme: An open and secure Europe serving and protecting citizens, (2010/C 115/01).

50 UNHCR, *Recommendations to Poland for its EU Presidency*, July-December 2011, p. 5.

51 *Idem*.

52 European Parliament, *Resolution on women’s immigration: the role and place of immigrant women in the European Union* (2006/2010(INI)), para. H.

53 *Ibid.*, para. 34

“to enforce policies that ensure the equality of all people, such as that of the 1951 Convention relating to the status of Refugees, so that measures taken against illegal immigration by the Member States are fully compatible with the principles of non-discrimination”.⁵⁴

Nevertheless, there are few references to gender in the initial EU Qualification Directive,⁵⁵ none in the Asylum Procedures Directive⁵⁶ and the Reception Conditions Directive only refers to pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence as vulnerable persons.⁵⁷

UNHCR considers that the current Asylum Procedures Directive (APD) does not always ensure fair and accurate outcomes and that in allowing for exceptions, derogations and discretion the APD has created protection gaps potentially in breach of international and European law. UNHCR’s particular gender-related findings have highlighted the need for reform of the law and practice to ensure the gaps are filled.⁵⁸ The gender-related findings focused mainly on the opportunity and requirements for a personal interview, the examination procedure, including prioritised and accelerated procedures, and subsequent applications.

The latest Commission’s proposal for a recast Asylum Procedures Directive of June 2011 now contains a provision for applicants in need of special procedural guarantees because of their gender, sexual orientation and gender identity.⁵⁹ These applicants consequently benefit from article 24 of the recast Asylum Procedures Directive which provides that Member States shall ensure that applicants are identified in due time and take appropriate measures to ensure applicants are granted sufficient time and relevant support to present the elements of their application as completely as possible and with all available evidence. The provision refers to the identification mechanism in article 22 of the recast Reception Directive which has not yet been agreed.⁶⁰ Other provisions may have a relevant impact on gender sensitivity such as the requirement to take into consideration gender issues in the examination of applications⁶¹ and ensuring that personal interviews take into account gender issues, providing (“wherever possible”) interviewer and interpreter of the same sex.⁶²

The Commission published its recast Qualification Directive proposal on 21 October 2009.⁶³ In September 2010, Asylum Aid, the European Women’s Lobby and ILGA-Europe wrote to the LIBE Committee Rapporteur with recommendations to ensure the recast Qualification Directive was gender-sensitive.⁶⁴ There were positive outcomes from the LIBE Committee in terms of gender-sensitivity but despite this there was limited improvement in the actual compromise text agreed upon.

54 *Ibid.*, para. 37.

55 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, articles 1(3)(c), 9(2)(f), 10(1)(d), 20(3), 29(3). The Council and the European Parliament have adopted a recast Qualification Directive but the UK has decided not to opt-in.

56 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

57 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, article 17(1).

58 UNHCR, *Improving Asylum procedures: Comparative Analysis and Recommendations for Law and Practice. Key Gender Related Findings and Recommendations*, March 2010, p. 38.

59 Article 2(d) states that “applicant in need of special procedural guarantees” means an applicant who due to age, gender, sexual orientation, gender identity, disability, serious physical illness, mental illness, post traumatic disorders or consequences of torture, rape or other serious forms of psychological, physical or sexual violence is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive”. See also recital (25) and article 15.

60 On this issue see ILGA-Europe, *Policy paper on the recast of the EU asylum Procedure and Reception Directives*, July 2011.

61 European Commission, Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast), 2009/0165 (COD), June 2011, article 10(3)(c).

62 *Ibid.*, article 15(3).

63 European Commission, Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (Recast), COM(2009) 551 final/2.

64 Asylum Aid, European Women’s Lobby and ILGA-Europe, proposal for amendments on the Commission’s proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of the international protection and the content of the protection granted (recast), September 2010.

On 12 July 2011, the European Parliament, the Commission and the Council adopted a compromise text.⁶⁵ Most of the amendments that had been included in the text adopted by the European Parliament in the Orientation Vote related to gender or minors were removed. In the final recast Directive, the proposed amendments to article 10(1)(d) to make the two limbs of particular social group clearly alternatives and the recital referring to equality between men and women have not been adopted.⁶⁶ The recast Directive continues to recognise non-State agents as actors of protection;⁶⁷ in terms of vulnerable persons the text now adopts the terminology of “mental disorders” instead of the Commission’s “mental health problems and the Parliament’s “mental health illnesses”.⁶⁸

The improvements within the recast Directive in terms of gender-related claims are fewer and less significant than what the Parliament Rapporteur and NGOs would have hoped for. However, recital (30) now states:

It is equally necessary to introduce a common concept of the persecution ground “membership of a particular social group”. For the purposes of defining a particular social group, issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration insofar as they are related to the applicant’s well-founded fear of persecution.

Article 10(1)(d) of the recast Directive states that:

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

Article 8(3) on the availability of internal protection notwithstanding technical obstacles to return has been deleted and Article 20(3) on the specific situation of vulnerable persons now includes victims of human trafficking.

The recast Qualification Directive has now been adopted by the Council and the European Parliament.⁶⁹ However, the UK has expressed its intention not to opt-in to any of the recast Directives.⁷⁰

A central element of the recast Asylum Procedures Directive and Reception Directive is a mechanism to identify vulnerable asylum seekers.⁷¹ A distinction can be made between a state of vulnerability and a situation of vulnerability.⁷² Women asylum seekers are not necessarily vulnerable *per se* but might find

65 Council of the European Union, Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast), 2009/0164 (COD), July 2011.

66 Directive of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 2009/0164 (COD), recital (15).

67 *Ibid.*, article 7.

68 *Ibid.*, articles 20 and 30.

69 Directive of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 2009/0164 (COD).

70 Written Ministerial Statements, Thursday 13 October 2011.

71 European Commission, *Report to the Council and to the European Parliament of 26 November 2007 on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, para. 3.5.1.

72 Laurence Debauche-Discart, *Asylum seekers with special needs*, Ministerial Conference on Quality and Efficiency in the Asylum Process, 13-14 September 2010, Brussels.

themselves in a situation of vulnerability through the asylum system where for example they are detained or are refused accommodation and support.

The need for Member States to provide a procedure for the identification of vulnerable asylum seekers so that their special needs can be addressed was highlighted at a Ministerial conference in 2010.⁷³ The non-identification of vulnerable asylum seekers may affect the fairness of the asylum procedure and their ability to be recognised in need of international protection.⁷⁴ It has been highlighted that an early identification and adequate follow-up for traumatised asylum seekers is key to address their special needs.⁷⁵ It was also noted that the current EU legislative framework only addresses these issues in a very limited manner and that the “recast of the Directives offer the possibility to lay down on a harmonised basis national identification procedures as well as commonly agreed principles which guarantee a high quality and efficient assessment of asylum claims submitted by traumatised asylum seekers”.⁷⁶

Conclusion

Set out above is the international and European legal framework within which the UK operates and which sets the standards according to which the UK asylum system can be measured. This legal framework, in addition to domestic jurisprudence and the government’s commitments to make the asylum system more gender-sensitive, provides a benchmark against which the UKBA’s practice can be tested.

However, the UK’s decision not to become part of and be bound by a Common European Asylum System and the Convention on preventing and combating violence against women that may better address gender disparities and ensure better treatment of vulnerable asylum seekers suggests that commitments made in domestic settings are not intended to be strengthened by international legal obligations.

73 *Idem.*

74 *Idem.*

75 Myrthe Wijnkoop and Erick Vloeberghs, *Traumatized asylum seekers: A vulnerable group asylum seekers with special needs in the asylum process*, Ministerial Conference on Quality and Efficiency in the Asylum Process, 13-14 September 2010, Brussels.

76 *Idem.*

Swana's Story

Swana is a 21 year old asylum seeker from West Africa. She claimed asylum in 2010 because she was afraid that her seven month old daughter would be subjected to female genital mutilation (FGM) if returned home. Swana came to the UK with relatives when still a teenager. When they departed, she was left without immigration status but also with no connections to her home country.

The UKBA refused her asylum application on the basis that, although she was originally raised as a Muslim, she was adopted by close Christian relatives when her mother died. It was argued that her daughter would not, therefore, be at risk of FGM. The UKBA also argued in their refusal letter that she would be able to relocate internally, and that her daughter was so young that she had not created significant ties in the UK. Swana appealed the decision by the UKBA, although her solicitor submitted no new evidence in support of her claim. The immigration judge dismissed her appeal, agreeing with most of the points made by the UKBA and argued that relatives could help her to re-settle.

She felt upset when she received the determination. When she contacted her solicitor she was told that there were no grounds of appeal, and that she could no longer represent her. The solicitor did not inform her that she could appeal the decision to refuse legal aid. Swana simply received a letter saying that her case had been closed.

Swana lodged her application for permission to appeal to the First-Tier Tribunal with the help of a friend. When this was refused, she lodged the application directly with the Upper-Tier Tribunal, but this was refused as well. It took her a long time to find another solicitor, which she had to do alone.

As she was preparing her fresh claim for asylum with her new solicitor, Swana disclosed new information that she had never been able to speak about before. Swana explained that she had been sexually abused for many years by the same relative that the UKBA and Tribunal had assumed could help care for her. She had never realised the relevance of this information to her asylum claim, and had never had the sort of support necessary to disclosing such intimate information. Despite all this, however, this information was not accepted by the UKBA as amounting to new evidence, and thus did not meet the criteria for a fresh claim for asylum.

Swana recently found a new solicitor, and she is preparing a second fresh claim for asylum. Swana felt that the UKBA and immigration judges had made too many assumptions about how she could relocate to another area without really understanding the conditions in her home country.

She is currently trying to gather further evidence including articles on how difficult it is for a single mother to survive in her home country with no male support and protection, where FGM is still practiced. She is also collecting many letters of support, and will be submitting a psychological report as no medical evidence was submitted before. Swana noted that maybe if she had disclosed the sexual abuse at an earlier stage it would have made a difference in the outcome of her case. She had initially not intended to tell anyone because it was so painful for her to think about.

Swana has now been receiving counselling, which has helped her. But Swana describes applying for asylum as a long and deeply stressful process, during which she was forced to represent herself, alone and without support. She was not sure about what she was doing – but she had no choice.

Refugee Status Determination

3

A refugee is defined in the Refugee Convention as a person who:

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear is unwilling to return to it.⁷⁷

In the UK, an asylum applicant is someone who “makes a request to be recognised as a refugee under the Geneva Convention on the basis that it would be contrary to the United Kingdom’s obligations under the Geneva Convention for him to be removed from or required to leave the United Kingdom”.⁷⁸ Asylum seekers can claim asylum at the UK border or in-country at the Asylum Screening Unit in Croydon. After the screening interview they will be given temporary admission into the country and placed in the New Asylum Model framework for deciding asylum claims or detained and routed into the Detained Fast Track process (DFT).

Under the New Asylum Model instated in 2007,⁷⁹ each asylum seeker should be allocated a case owner who will be responsible for their case, including undertaking the substantive asylum interview, making the decision on the asylum claim and taking decisions regarding asylum support and reporting conditions. If their asylum claim is refused asylum seekers have the right to appeal the decision to the First-Tier Tribunal, Immigration and Asylum Chamber. In the DFT process, decisions and appeals are made within a much shorter timeframe.⁸⁰ Victims of trafficking may be referred to the National Referral Mechanism to request a conclusive ground decision leading to the grant of a one year temporary residence permit and they may also pursue their asylum claim simultaneously.

3.1 Statistics of Women Asylum Seekers in the UK

In 2010, one third of asylum applications in the UK were lodged by women (29.7%) and this proportion has remained constant since 2003.⁸¹ In 2002, one quarter of asylum applications in the UK were lodged by women as main applicants (26%) and in 2000 and 2001, approximately one fifth of asylum applicants were women.⁸² Thus the proportion of asylum seeking women in the UK has grown over the last ten years and is now constant.

77 Article 1A, 1951 Convention Relating to the Status of Refugees.

78 Paragraph 327(a) Immigration Rules (HC 395). See also paragraph 334 Immigration Rules (HC 395) which contains some exceptions where refugees can be excluded from protection in the UK if they are a danger to the security of the UK or have been convicted of a particularly serious crime and constituting a danger to the community of the UK.

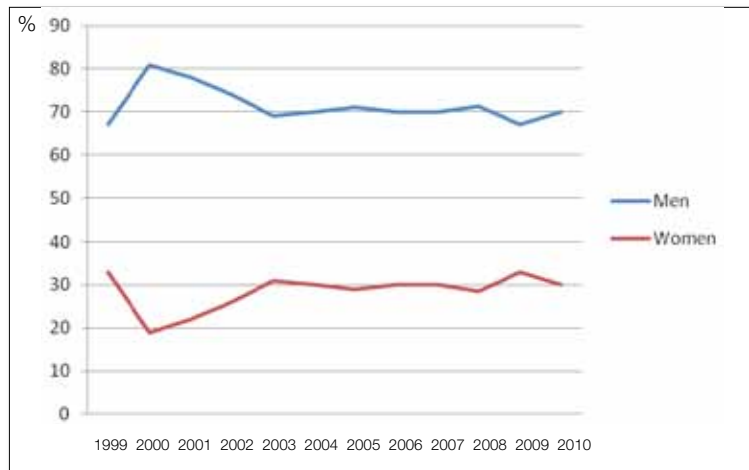
79 For more information on the changes instated under the NAM, see Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, pp. 21-22.

80 For more information about the asylum procedure and the rights of appeal see the Asylum Procedure Factsheet in the Appendix.

81 Home Office, Immigration Statistics, April to June 2011: Asylum, Table as.03: Asylum applications from main applicants by age, sex and country of nationality.

82 Home Office, Asylum Statistics – United Kingdom 2001, 31 July 2002, para. 11.

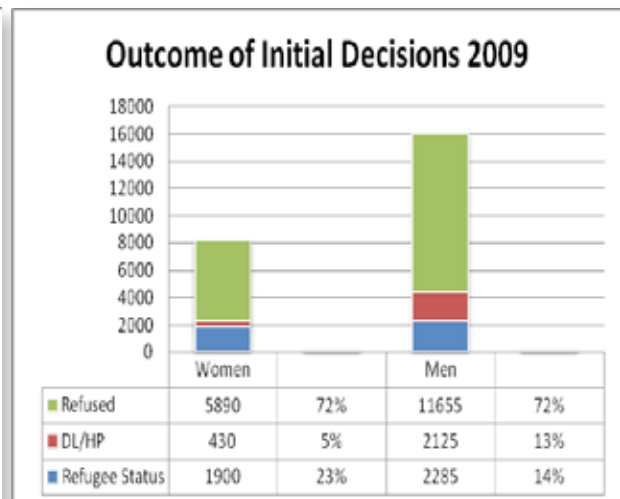
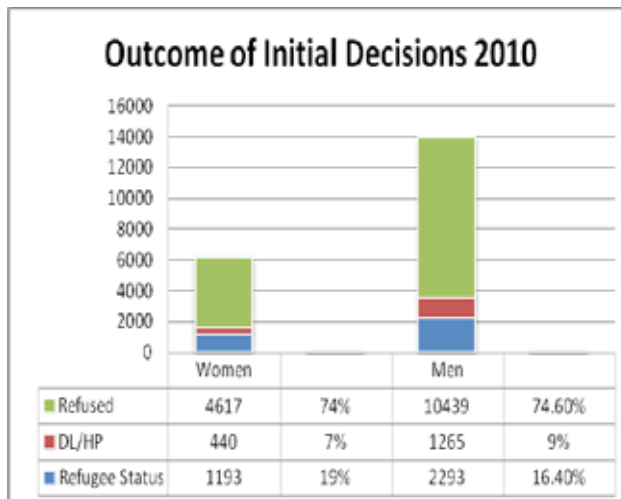
Year	Men	Women
2010	70%	29.7%
2009	67%	32.9%
2008	71.4%	28.5%
2007	70%	30%
2006	70%	30%
2005	71%	29%
2004	70%	30%
2003	69%	31%
2002	74%	26%
2001	78%	22%
2000	81%	19%
1999	67%	33%



The table below shows the results of initial decisions by sex for 2009⁸³ and 2010:⁸⁴

Year	Women				Men			
	2009		2010		2009		2010	
Total initial decisions	8225		6250		16065		13997	
Asylum	1900	23%	1193	19%	2285	14%	2293	16.4%
Discretionary Leave or Humanitarian Protection ⁸⁴	430	5%	440	7%	2125	13%	1265	9%
Refused	5890	72%	4617	74%	11655	72%	10439	74.6%

In the past, men were more likely to receive a grant of subsidiary protection (discretionary leave and humanitarian protection) than women. However, statistics for the last 2 years suggest that this difference between men and women may be decreasing. The rate of refusals in 2010 also increased by 2% for both men and women.

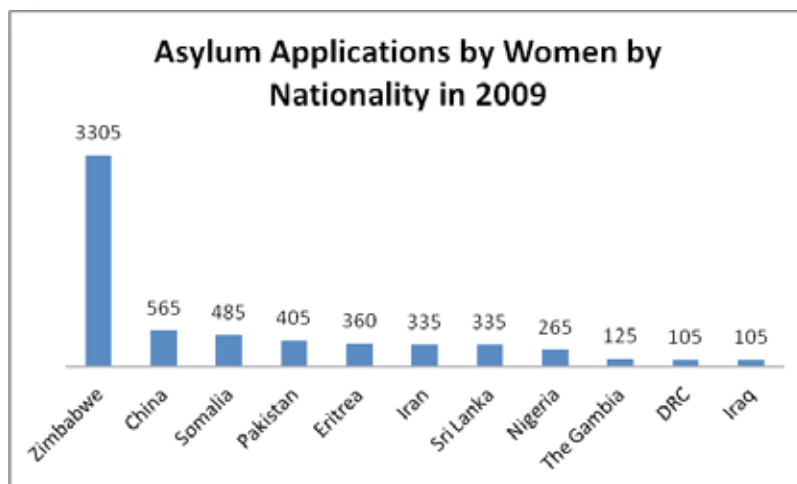
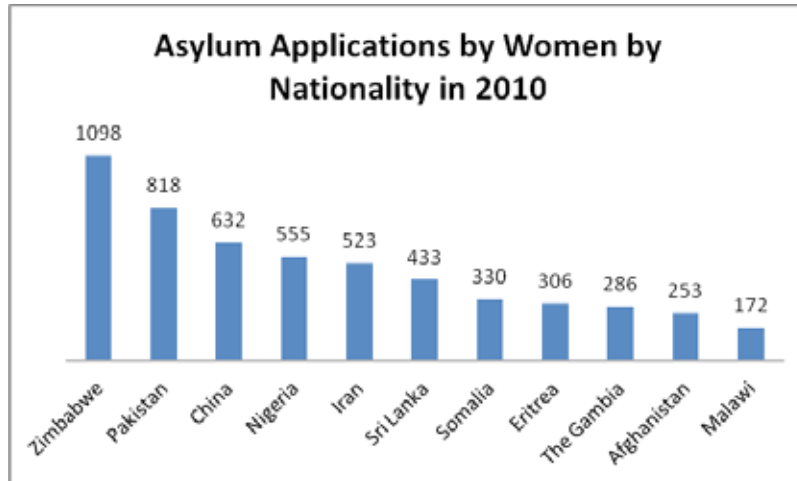


83 Control of Immigration: Statistics United Kingdom 2009, Home Office Statistical Bulletin 15/10, Table 2j Asylum Initial decision outcomes, excluding dependants, by country of nationality and sex, 2009.

84 Home Office, Immigration Statistics, April to June 2011: Asylum, Table as.05: Asylum initial decisions from main applicants by sex and country of nationality.

85 In 2010, 1096 of these cases were minors granted discretionary leave to remain and 11 were minors granted humanitarian protection. These figures are not disaggregated by gender. See Table as.09, Unaccompanied Asylum Seeking Children, excluding dependants, initial decisions, by age at initial decision, 2010. In 2009, 1940 of these cases were minors granted discretionary leave to remain and 20 were minors granted humanitarian protection. These figures are not disaggregated by gender. See Table 2m, Unaccompanied Asylum Seeking Children, applications received for asylum in the United Kingdom, excluding dependants, and initial decisions by age at initial decision and country of nationality, 2009.

The top ten countries of origin for women asylum seekers in the UK in 2010 were: Zimbabwe (1098); Pakistan (818); China (632); Nigeria (555); Iran (523); Sri Lanka (433); Somalia (330); Eritrea (306); The Gambia (286); and Afghanistan (253).⁸⁶ The top ten countries of origin for women asylum seekers in the UK in 2009 were: Zimbabwe (3305); China (565); Somalia (485); Pakistan (405); Eritrea (360); Iran (335); Sri Lanka (335); Nigeria (265); The Gambia (125); Democratic Republic of the Congo (105); and Iraq (105).⁸⁷



Gender-disaggregated statistical data provides essential information for policy makers to assess whether policy and legislation is not indirectly discriminatory against or places asylum seekers of one sex at a particular disadvantage.⁸⁸ It also allows public authorities to take action to address differential outcomes. Without this data it is not possible to monitor progress towards meeting the needs of victims of gender-related persecution.⁸⁹

86 Home Office, Immigration Statistics, April to June 2011: Asylum, Table as.03: Asylum applications from main applicants by age, sex and country of nationality.

87 Control of Immigration: Statistics United Kingdom 2009, Home Office Statistical Bulletin 15/10, Table 2c Applications received for asylum in the United Kingdom, excluding dependants, by country of nationality, age and sex, 2009.

88 Indirect discrimination is where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (article 2(b) Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services).

89 Opinion of the Committee on Equal Opportunities for Women and Men, Parliamentary Assembly of the Council of Europe on Gender-related claims for asylum, Doc, 12359, 24 September 2010, para.5.

The Home Office only provided gender-disaggregated statistics for appeals for the first time on 24 November 2011, covering the period from 2007 to 2010.⁹⁰ In January 2011, Asylum Aid had found that a disproportionate number of refusals of applications from women are overturned at appeal.⁹¹ The UKBA confirmed that internal management information for all asylum appeals heard in the last 12 months suggests a similar pattern, with an allowed appeal rate of 35% for women where the asylum decision was made within 6 months of application and 41% where the asylum decision took longer than 6 months. The comparable rate for men is 26%, irrespective of how long the decision took to make.⁹² The Deputy Prime Minister has stated that the disproportionate rate of allowed appeals in women’s asylum cases is something that the Government is carefully looking at, in order to understand the causes of this phenomenon.

And there are other groups who need better protection too. [...] And why do far more women have their case overturned at appeal? Is there an inherent unfairness built into the system? That is something we are looking at very carefully; and we’re ensuring the process is sensitive to the needs of women and girls. For example by making their interviews less intrusive; and making it possible for them to have a companion with them to provide emotional support. A country like the UK should be aiming for nothing less than the most compassionate, efficient, dignified asylum system in the world. That cannot happen until we’re sure no single group is being singled out.

Nick Clegg, Deputy Prime Minister, 60th Anniversary of the Refugee Council, May 2011

In 2010, 32.3% of women had their asylum appeals allowed, whereas the comparative rate for men was of 24.8%.⁹³ In that year, 4029 asylum appeals were allowed, constituting 27.4% of all asylum appeals determined.⁹⁴ In 2009, 36.9% of women had their asylum appeals allowed, whereas the comparative rate for men was of 24.5%.⁹⁵ In that year, 4150 asylum appeals were allowed by the Tribunal, constituting 28% of all asylum appeals determined.⁹⁶

And I am making a commitment today that, from this summer, information on our performance will be published, on a regular basis – with key statistics disaggregated by gender – so that you and any member of the public can scrutinise what we are achieving and hold us to account. Only by opening ourselves up to scrutiny in this way will we be able to show that we are bringing the whole asylum system back into balance.⁹⁷

Damian Green, Immigration Minister, National Asylum Stakeholder Forum, May 2011

90 Home Office, Immigration Statistics, July to September 2011, Asylum volume 3, Table as.14: Asylum appeal applications and determinations, by country of nationality and sex, 2007 to 2010.

91 UKBA, Asylum Improvement Project: List of change projects – December 2010, p. 4. Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, p. 32.

92 The UKBA have asked Asylum Aid to point out that although these figures are based on a much larger sample size (over 12,000 appeals in total and around 3,500 women’s appeals) they have not been subject to the degree of scrutiny and verification that would be required for publication as national statistics, and so their accuracy needs to be treated with a degree of caution (Email from the UKBA to Asylum Aid, 15th December 2010).

93 Home Office, Immigration Statistics, July to September 2011, Asylum volume 3, Table as.14: Asylum appeal applications and determinations, by country of nationality and sex, 2007 to 2010.

94 Home Office, Immigration Statistics, April to June 2011: Asylum, Table as.14: Asylum appeal applications and determinations, by country of nationality.

95 Home Office, Immigration Statistics, July to September 2011, Asylum volume 3, Table as.14: Asylum appeal applications and determinations, by country of nationality and sex, 2007 to 2010.

96 Control of Immigration: Statistics United Kingdom 2009, Home Office Statistical Bulletin 15/10, p. 44.

97 Damian Green, Immigration Minister, National Asylum Stakeholder Forum, May 2011

However, the UK is bound by the obligation to provide this information under EU law.⁹⁸ Other non-binding instruments have also encouraged States to do so.

The 2007 EU Regulation on Community statistics on migration and international protection⁹⁹ recognises that “harmonised and comparable Community statistics on migration and asylum are essential for the development and monitoring of Community legislation and policies relating to immigration and asylum”.¹⁰⁰ Under the Regulation, Member States shall supply the Commission with statistics including the number of persons having submitted an application for international protection disaggregated by age, sex and citizenship of persons concerned;¹⁰¹ persons covered by first instance decisions granting or withdrawing refugee status or subsidiary protection status disaggregated by age, sex and citizenship of the persons concerned;¹⁰² persons covered by final decisions granting or withdrawing refugee status or subsidiary protection at appeal or review disaggregated by age, sex and citizenship of the persons concerned.¹⁰³ The Regulation is directly applicable and legally binding in its entirety in the UK.¹⁰⁴

The UN has recommended that the following statistics be disaggregated by sex: applications pending at beginning of period, applications submitted during period, positive decisions during period (refugee status or humanitarian protection status), negative decisions during period, cases otherwise closed, applications pending at end of period, and positive decisions during period by status, first instance and appeal stages.¹⁰⁵

In 1998, the PACE noted its regret “that no reliable information and statistics about refugee women are collected in a systematic way by Council of Europe Member States”¹⁰⁶ and therefore called on the Committee of Ministers to “initiate the setting-up of a European system for data collection and needs assessment in regards to refugee women”.¹⁰⁷ In its 2006 report on Women’s Immigration: the role and place of immigrant women in the EU, the European Parliament Committee on Women’s Rights and Gender Equality noted that both at Member State and EU level, they “encountered great difficulty in collecting and recording data and statistics on migration flows into Europe and, in particular, on women’s migration”.¹⁰⁸ In 2006, the European Parliament passed a Resolution calling on “the Commission to collect gender-related data on immigration into the EU and to arrange for the analysis of that data by the European Institute for Gender Equality in order to highlight further the particular needs and problems of women immigrants and the most appropriate methods of integrating them into the societies of the host countries”.¹⁰⁹ In 2007, the European Parliament and the Council noted that “Community statistics on migration and asylum are currently subject to serious problems of non availability of data and poor harmonization”.¹¹⁰ UNHCR noted that Europe was the only region where demographic data was available for less than half of all persons of concern by the end of 2010.¹¹¹

98 The Council of the European Union and the European Parliament have the power to adopt legislation, including Regulations and Directives, which are binding on the Member States of the European Union. The European Union (EU) has also moved towards the achievement of a Common European Asylum System (CEAS) aimed at harmonizing asylum practice throughout the EU to improve standards and avoid the secondary movement of asylum seekers.

99 Regulation No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection.

100 Recital (6) Regulation 862/2007.

101 Article 4(1) Regulation 862/2007.

102 Article 4(2) Regulation 862/2007.

103 Article 4(3) Regulation 862/2007.

104 Article 288 Treaty on the Functioning of the European Union.

105 United Nations Recommendations on Statistics of International Migration, 1998, chapter V, para. 170.

106 Parliamentary Assembly of the Council of Europe, Recommendation 1374 (1998) on the Situation of Refugee Women in Europe, para. 2.

107 *Ibid.*, para. 6(iii).

108 European Parliament Committee on Women’s Rights and Gender Equality, Report on women’s immigration: the role and place of immigrant women in the European Union, A6-0307/2006, Explanatory Statement.

109 European Parliament resolution on women’s immigration: the role and place of immigrant women in the European Union (2006/2010(INI)), para. 29.

110 Decision No 1578/2007/EC of the European Parliament and of the Council of 11 December 2007 on the Community Statistical Programme 2008 to 2012, Title IV – Visas, Asylum, Immigration and Other Policies related to Free Movement of Persons, ‘current situation’.

111 UNHCR, Global Trends 2010: 60 years and still counting, p. 33.

Although the UK has made gender-disaggregated statistical information on the number of asylum applicants and the grant of refugee status or other complementary forms of protection at initial decision-making stage and appeal since November 2011, it was legally required to do so since 2007.

3.2 Gender Guidelines

Gender guidelines may assist decision makers to take into account a gender perspective when making asylum decisions. It provides guidance on how to take gender into account in all aspects of the asylum claim. If followed it is more likely that good quality decisions are made which ensures fairness and access to protection for those who fear persecution.

3.2.1 UNHCR Gender Guidelines

The UNHCR Handbook provides State authorities with guidance on the interpretation of the Refugee Convention and the refugee status determination procedure.¹¹² The UNHCR Handbook does not refer to gender or to gender-related claims for asylum in particular, so the UNHCR has developed guidelines on international protection to assist national authorities in considering such claims inclusively. For example, the UNHCR has stated that the definition of a refugee should be interpreted in a manner having regard to gender dimensions as gender is not explicitly included in the five Convention grounds for refugee protection.¹¹³ The UNHCR has also provided guidance on defining a particular social group,¹¹⁴ the principle of internal relocation,¹¹⁵ Female Genital Mutilation (FGM)¹¹⁶ and is currently revising its Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity.¹¹⁷ Edwards has noted that the UNHCR Guidelines “unintentionally reinforce the perception of refugee women as principally social and cultural in nature” and emphasises the reliance on the ground of particular social group to the detriment of women who are considered “less than political in nature, and certainly less political than their male counterparts”.¹¹⁸ This particular emphasis on certain aspects of women’s lives has resulted in a focus away from the areas of women’s lives that they share with men.

UNHCR Guidelines however, recognise that “making generalisations about women or men is not helpful and in doing so, critical differences, which may be relevant to a particular case, can be overlooked”.¹¹⁹ The Guidelines have wide international recognition and address different areas of the refugee status determination procedure which are particularly relevant to asylum seekers with gender-related claims. Using the UNHCR Guidelines on International Protection would ensure that the EU Directives and the Refugee Convention are interpreted in a manner that bridges the protection gap for asylum seeking women in the EU. However, in 2004, it became apparent that the UNHCR Guidelines had not been adopted or incorporated into domestic legislation/policies in 42 European countries.¹²⁰

3.2.2 Gender Guidelines for Initial Decisions

The UK Border Agency (UKBA) adopted an Asylum Instruction on *Gender Issues in the Asylum Claim* in 2004 which was last revised in September 2010.¹²¹ The Asylum Instruction is heavily drawn from the 1998

112 UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1, Reedited Geneva, January 1992, UNHCR 1979.

113 UNHCR *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 2.

114 UNHCR *Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*.

115 UNHCR *Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, July 2003.

116 UNHCR *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009.

117 UNHCR *Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*, November 2008.

118 Edwards, 2010, p. 27.

119 UNHCR *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para.7.

120 Crawley and Lester, *Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe*, 2004, p. 22. Forthcoming research in March 2012 will provide an updated picture of the implementation of UNHCR guidelines in domestic law in nine EU countries.

121 The UKBA adopted Asylum Policy Instructions and since 2010 have called these Asylum Instructions. For ease of reference the report refers to Asylum Instructions throughout, irrespective of when the policy guidance was adopted.

Refugee Women’s Legal Group’s *Gender Guidelines for the Determination of Asylum Claims in the UK*.¹²² The Asylum Instruction on *Gender* is available on the UKBA website and represents the Government’s policy on asylum. It should therefore be followed by UKBA case owners. The AI on *Gender* contains both substantive issues to be considered in the asylum determination process and issues to be implemented in the asylum procedure. More specifically, the AI on *Gender* advises case owners that gender-based violence may amount to persecution and explains how the five Convention grounds, namely race, religion, nationality, membership of a particular social group or political opinion, should be interpreted from a gender perspective. It also sets out the gender-specific considerations that should be taken into account when considering whether an internal flight alternative is a viable option. It gives guidance on how gender-sensitive interviews should be conducted and how gender may impact on the assessment of credibility.

We are determined to improve the gender sensitivity of our asylum system. The right guidance to our case owners, of course, which recognises that forms of persecution experienced by women are often very different to those experienced by men. But also the right training and support so that case owners take the right approach to handling cases of heightened sensitivity, particularly where gender-related violence is at issue.

Damian Green, Immigration Minister, May 2011

Asylum Aid undertook research in 2006 to assess whether the UKBA’s Asylum Instruction on *Gender* was being implemented in practice.¹²³ The research demonstrated a lack of awareness of gender issues and provided evidence of the Asylum Instruction on *Gender* not being followed.¹²⁴ In February 2006, the UKBA NAM Quality Team examined a month’s intake to the female detained fast track (DFT) process¹²⁵ in Yarl’s Wood Immigration Removal Centre in order to determine whether the cases were handled in accordance with the Asylum Instruction on *Gender*.¹²⁶ The report recommended the identification of a more robust referral mechanism for the DFT, better identification of potential gender-related claims which are not suitable for the DFT and the establishment of “a specific and detailed training programme for all Case Owners in the New Asylum Model (NAM), which deals with gender-related issues in the asylum process and ensures all Case Owners are aware of their obligations under the Gender Asylum Instruction.”¹²⁷

In 2008, the Independent Asylum Commission conducted an independent citizens’ enquiry into the UK asylum system and concluded that the AI on *Gender* was inconsistently observed, women’s cases based on sexual violence were not properly presented under the DFT and that gender-specific claims for asylum were not adequately addressed by the asylum system.¹²⁸ In its Fifth Quality Initiative Project Report, the UNHCR expressed concern at the absence of appropriate training for decision-makers in the DFT who lacked an understanding of gender-related aspects of asylum claims.¹²⁹ In 2010, Human Rights Watch produced a research report on the DFT at Yarl’s Wood IRC demonstrating that the DFT is unsuitable for complex cases such as gender-related claims for asylum and that the system fails to ensure basic standards of fairness.¹³⁰ Nevertheless, complex claims for asylum based on gender-related persecution continue to be routed into the DFT.¹³¹ A fundamental part of the problem, identified in the report, is the failure by the UKBA to follow the AI on *Gender*. The Refugee Council’s Vulnerable Women’s Project concluded that despite the

122 Refugee Women’s Legal Group, *Gender Guidelines for the Determination of Asylum Claims in the UK*, 1998.

123 S. Ceneda and C. Palmer, ‘Lip service’ or implementation? *The Home Office Gender Guidance and women’s asylum claims in the UK*, Refugee Women’s Resource Project at Asylum Aid, March 2006.

124 *Ibid.*, p. 11.

125 For an understanding of the asylum determination process and the difference between the New Asylum Model and the DFT, please see the asylum procedure factsheet in the Appendix.

126 Yarl’s Wood Detained Fast-Track Compliance with the Gender API: A Report by the NAM Quality Team’, Home Office August 2006. The Detained Fast-Track is an accelerated procedure for determining asylum claims while asylum seekers are detained. The inclusion criterion into the DFT is that the asylum claim can be decided quickly.

127 *Ibid.*, p12

128 Independent Asylum Commission, *Deserving dignity*, 2008, p. 42.

129 UNHCR, Quality Initiative Project Fifth Report to the Minister, March 2008, para. 2.3.42.

130 Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, February 2010.

131 *Ibid.*, p. 2.

introduction of the AI on *Gender*, survivors of sexual violence continue to face obstacles to a truly gender-sensitive asylum system.¹³² In 2011, Asylum Aid published research on the quality of initial decision-making in women’s asylum claims which concluded that asylum claims made by women were too often refused on grounds that were arbitrary and subjective. Decisions analysed demonstrated a limited awareness of the Refugee Convention and how it may apply to gender-related cases, and a failure to understand the nature of gender-related persecution.¹³³

In June 2011, the UKBA’s Quality Audit and Development Team (QADT) undertook a thematic review of gender issues in asylum claims following the revision of the AI on *Gender* and the publication of Asylum Aid’s research report on the quality of initial decision making in women’s asylum claims. They assessed a random selection of 21 gender-related cases from their ongoing 10% monthly audit sample for the period September 2010 to May 2011. The thematic review concluded that “some areas of the decision making process are not always easily identified as areas of concern because of the current auditing criteria and marking standards used in the audit process.” The thematic review revealed that some trafficking cases were found not to engage the Refugee Convention and that some case owners did not consider whether the persecution was on the ground of membership of a particular social group. Alternatively, they found case owners concluding that the applicant was not a member of a particular social group without any reasoning. The QADT found that if there was more than one Convention ground at play, case owners sidelined the gender-related grounds. There was also a lack of investigation in cases involving domestic violence and whether an applicant’s gender would affect her ability to seek state protection. Although country of origin information was identified, case owners failed to evaluate that information and how it related to the case.

Thus despite being one of the only EU member states to have gender guidelines, research over almost the last decade has shown the failure by the UKBA to properly implement and follow their AI on *Gender*.

3.2.3 Gender Guidelines for Appeals

In 2000, the Immigration Appellate Authority (IAA) published its own Asylum Gender Guidelines.¹³⁴ In September 2006, the Asylum and Immigration Tribunal (AIT), the IAA’s successor, declared that these gender guidelines were not the policy of the AIT.¹³⁵ Research by Rebecca Wallace¹³⁶ and by Women Against Rape and Black Women’s Rape Action Project¹³⁷ both provided evidence that immigration judges were not following the guidance even when it was in place. When the AIT was replaced by the First and Upper Tier Tribunal, Immigration and Asylum Chamber (IAC), in February 2010, the Practice Direction on *Child, vulnerable adult and sensitive witnesses*¹³⁸ was extended to the IAC. In October 2010, the IAC issued a Joint Presidential Guidance Note on *Child, vulnerable adults and sensitive appellant*.¹³⁹ The overall aim of the Guidance Note is to ensure that vulnerable individuals understand and are able to participate in proceedings.

On the other hand, the Asylum Gender Guidelines adopted by the IAA aimed to “assist the IAA in fully considering all aspects of asylum seekers claims to international protection under United Kingdom Law”. Thus, in comparison, the Guidance Note fails to address the specific problems faced by women seeking asylum in the UK. The scope of the Guidance Note is to address the needs of vulnerable individuals, and it adopts a needs-based approach to a fair hearing and access to justice with a sliding scale according to the severity of the vulnerability. However, there are weaknesses with the current Guidance Note. Many women who have experienced and/or who fear future gender-related persecution are traumatised but the

132 Refugee Council, The Vulnerable Women’s Project, *Refugee and Asylum Seeking Women affected by Rape or Sexual Violence: Literature Review*, February 2009, p.46. See also Women’s Asylum News, Issue No 91, April 2010, pp. 1-5.

133 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, January 2011.

134 N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000.

135 Note from C M G Ockleton, Deputy President, Asylum and Immigration Tribunal, Issue 17 (2006), 25. The Immigration Appellate Authority was the Asylum and Immigration Tribunal’s predecessor.

136 Rebecca Wallace and Anne Holliday, *The Application of the Gender Guidelines within the UK asylum determination process*, pilot research paper, 2005.

137 Black Women’s Rape Action Project and Women Against Rape, *Misjudging rape: breaching Gender Guidelines and international law in asylum appeals*, 2006.

138 Tribunals Judiciary, First Tier and Upper Tribunal, Practice Direction on *Child, Vulnerable Adult and Sensitive Witness*.

139 Joint Presidential Guidance Note No 2 of 2010: *Child, vulnerable adult and sensitive appellant guidance*.

Guidance Note fails to take into account the nature of the claim for asylum itself (as opposed to the nature of the mental health of the Appellant). Although it addresses problems related to the process and the examination/evaluation of evidence given by vulnerable individuals, it fails to deal with many specific issues associated with gender-related claims for asylum. Women seeking asylum are disadvantaged in the asylum process not only because of the trauma they may have suffered but also because of their gender and the Guidance Note does not acknowledge and address this fact.¹⁴⁰

Thus despite having guidelines for vulnerable appellants, the Asylum and Immigration Chamber does not have guidance specifically aimed at improving decision making in women’s asylum appeals.

3.3 Persecution and Gender

Women are often subjected to forms of harm similar to those experienced by men; in addition they also face forms of harm which may be specific to their gender. This may include but is not limited to sexual violence and rape, FGM, domestic violence, forced marriage, forced abortion and forced sterilisation. There have been long-standing concerns that the concept of persecution has not been interpreted in a manner which included these gender-specific forms of harm. This means that some women asylum seekers may experience difficulties in being recognised as refugees if the harm they suffered is not defined as persecution.

Gender may be relevant in assessing persecution where: (i) the form of persecution experienced is gender-specific or predominantly gender-specific: for example, rape and other forms of sexual violence, domestic violence, crimes in the name of honour, FGM, forced abortion and sterilisation; and/or (ii) the reason for persecution is gender-based, i.e. the applicant fears persecution on account of her or his gender or gender identity.¹⁴¹ The AI on *Gender* states that:

The UK Border Agency accepts that acts of a gender-specific nature, other than sexual violence, may also constitute persecution. Whether a particular action amounts to persecution requires the decision-maker to reach a judgement in each case.¹⁴²

The House of Lords have established that the threshold that serious harm must meet is a high one in order to amount to persecution.¹⁴³ The fact that violence against women occurs in every country or the fact that within a particular country, violence against women is widespread is irrelevant when considering whether gender-based violence constitutes “serious harm”.¹⁴⁴ Indeed the AI on *Gender* recognises that:

The fact that violence against women is common, widespread and culturally accepted in a particular society does not mean that protection on an individual basis is inappropriate. FGM, for example, is widely practised in some societies but it is a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution.¹⁴⁵

Whether treatment amounts to “serious harm” should be assessed according to international human rights standards.¹⁴⁶

140 This was recognised in the IAA Asylum Gender Guidelines which stated that “women, by virtue of their gender, may have specific protection needs and concerns”, N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000, para. 1.5.

141 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.2.

142 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.1.

143 *Horvath v. Secretary of State For The Home Department* [2000] UKHL 37 (6 July 2000).

144 N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000, para. 2A.14.

145 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.2.

146 N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000, para. 2A.15.

3.3.1 Gender-Specific Persecution

Below are some examples of gender-based violence which may form the basis of asylum claims and how they are interpreted by the UKBA in the AI on *Gender* and in practice. Asylum claimants must show that the harm they are at risk of amounts to persecution. Some legal representatives interviewed for this research highlighted that the elements of the claim being challenged were more often related to credibility, state protection and/or internal relocation rather than whether the gender-specific harm amounts to persecution. However, the interpretation of gendered forms of harm in asylum decision-making remains a problem as identified in Asylum Aid’s research report *Unsustainable*, where for example it was not accepted that Sawsan was the victim of domestic violence because her husband had on one occasion tried to hit her or when Sanam’s forced marriage was referred to as an arranged marriage as opposed to a forced marriage.¹⁴⁷

Female Genital Mutilation (FGM)

FGM is considered a form of persecution in UK jurisprudence.¹⁴⁸ The AI on *Gender* notes that:

FGM, for example, is widely practised in some societies but it is a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution.¹⁴⁹

Generally, where a woman has already been subjected to FGM, the UKBA would not consider that she would face a risk of persecution on the basis of FGM in the future. However, this can be rebutted by objective evidence/expert reports in particular circumstances such as for example where FGM was part of a ritual for the applicant to become a *soweil*,¹⁵⁰ or where FGM has been performed but there is also a risk of forced marriage or where the applicant is at risk of having the procedure re-done after the birth of a child. Alternatively, where applicants have had FGM undertaken, this can be an indication of a risk of FGM to their daughters.

Forced Marriage

Forced marriage has been accepted by the Secretary of State for the Home Department to amount to persecution.¹⁵¹ The Immigration Appeal Tribunal concluded in 2005 that “young Iranian women who refuse to enter into arranged marriages” constitute a particular social group. In this case, the Appellant was at risk of death and/or serious physical abuse by her father because she opposed her forced marriage to a man much older than herself.¹⁵² However, several legal representatives interviewed for this research said that forced marriage was not always recognised as persecution due to a variety of reasons. This included the manner in which the applicants phrase and articulate the issue (by not necessarily using the words ‘forced marriage’ for example) and the lack of training for UKBA case owners on gender-specific persecution. An advocate explained how asylum claims on the basis of sexual orientation could face credibility issues if the applicant had been married in her/his country of origin.

Adultery

False or true accusations of adultery are generally recognised as a transgression of gender-related social norms that may lead to persecutory punishment and treatment.¹⁵³

147 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, January 2011, pp. 57-58.

148 *Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department* [2006] UKHL 46, 18 October 2006.

149 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.2.

150 Name of a senior member of the women’s Sande/Bondo society who performs FGM. *FB (Lone women, PSG, internal relocation, AA (Uganda) considered) Sierra Leone* [2008] UKAIT 00090 (27 November 2008).

151 *FB (Lone women, PSG, internal relocation, AA (Uganda) considered) Sierra Leone* [2008] UKAIT 00090.

152 *TB (PSG – women) Iran* [2005] UKIAT 00065.

153 *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal and Another, ex parte Shah* [1999] UKHL 20, 25 March 1999.

Forced Sterilisation and Forced Abortion

The Court of Appeal has accepted that forced sterilisation and forced abortion may constitute persecution.¹⁵⁴ A legal representative, interviewed for this research, acted for a woman who feared forced abortion in Zimbabwe and feared that this would be undertaken by the local/traditional medic because abortion is illegal in Zimbabwe. Legal representatives considered that decision-makers would generally consider this to amount to inhuman and degrading treatment as opposed to persecution although relatively few had seen asylum cases based on a fear of forced abortion. They considered however that there could be claims made on this basis.

Domestic Violence

The House of Lords has accepted that domestic violence can amount to persecution where there is an absence of state protection.¹⁵⁵ In another case, by considering the appellant's past experience cumulatively, the Upper Tribunal found that her brief detention and the "domestic violence she experienced at the hands of her husband, the ease with which he was able to have her detained and to inflict damage to her reputation on the back of a false accusation, together with his later threat to kill her and his ongoing harassment of her parents" amounted to persecution and serious harm.¹⁵⁶ The AI on *Gender* refers to domestic violence as a type of harm which is predominantly gender-specific.¹⁵⁷

In research on the quality of decision-making in women's asylum claims, there was evidence that some case owners failed to accept that psychological abuse could amount to domestic violence.¹⁵⁸ A legal representative, interviewed for this research, said that asylum claims based on a fear of domestic violence were often difficult to evidence, in particular where the domestic violence took place outside the UK. Some legal representatives said that if there had been only one incident of physical violence in the relationship (irrespective of other forms of psychological abuse), case owners did not always appreciate that this could amount to persecution.

Rape and Sexual Violence

Rape is generally accepted as a form of persecution, if perpetrated by the State or by non-state actors in the absence of State protection and this is reflected in the AI on *Gender*.¹⁵⁹ However, one legal representative said that she had seen refusal letters where the UKBA argued that even when the rape took place in detention this was the action of a private individual and not the state. Legal representatives, interviewed for this research, said that they had many cases where applicants feared rape and sexual violence on return to their countries of origin. This was also an issue for LGBT applicants, particularly if they were at risk of coming to the attention of the authorities. One legal representative said that unless the applicant could show a risk of detention on return it would be considered that the risk of rape is too remote.

Honour Crimes/Killing

The AI on *Gender* refers to crimes in the name of honour as harm which is predominantly gender-specific.¹⁶⁰ If there is a risk of death because applicants are perceived as having offended the honour of their families or communities then this will be recognised as persecution.¹⁶¹ It may be more difficult to show that honour crimes (as opposed to honour killing) amount to persecution and will often depend on the particular facts of a case. Men also make asylum applications on the basis of honour crimes/killings. In cases based on the risk of honour crimes, one legal representative said that it is very difficult to establish the risk from the families or establishing the required level of risk. In research on the quality of decision-making in women's asylum claims, it appeared that all claims examined which were based on a fear of honour killing were found not to engage the Refugee Convention.¹⁶²

154 *Liu v Secretary of State for the Home Department* [2005] EWCA Civ 249 (17 March 2005).

155 *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal and Another, ex parte Shah* [1999] UKHL 20, 25 March 1999.

156 *KA and Others (domestic violence risk on return) Pakistan CG* [2010] UKUT 216 (IAC) (14 July 2010).

157 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.2.

158 Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims*, 2011, p. 57.

159 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.2.

160 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.2.

161 See for example, Operational Guidance Note on Iraq, October 2010, para. 3.10.

162 Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims*, 2011, pp. 50-51.

Trafficking

The AI on *Gender* recognises that:

Forced recruitment of women for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and/or abuse and may amount to persecution. In addition, trafficked women may face serious repercussions upon their return to their home country, such as reprisals or retaliation from criminals involved in trafficking rings or individuals, or discrimination from their community and families. Trafficked women may also face real possibilities of being re-trafficked.¹⁶³

The Asylum and Immigration Tribunal has accepted that a risk of (re-)trafficking amounts to persecution.¹⁶⁴ It is also generally accepted that being held in servitude for the purpose of forced labour amounts to persecution. However, one legal representative, interviewed for this research, explained how the UKBA sometimes viewed it as a labour contractual relationship and even relied on the fact that the applicant had gained valuable work experience which could be put to use on return to her country of origin. Cases were also highlighted where applicants were not locked up but were being controlled psychologically making it more difficult to demonstrate that the treatment amounted to persecution and that they had been trafficked.

Discrimination

The AI on *Gender* states that:

Women may also be subjected to discriminatory treatment that is enforced through law or through the imposition of social or religious customs that restrict their opportunities and rights.¹⁶⁵

Those at risk of death or imprisonment due to their sexual orientation or allegations of adultery may also fit into this category. In relation to claims on the basis of sexual orientation, an advocate interviewed for the research said the UKBA generally accepted that the state enforces discriminatory punishment such as in Iran, Uganda and Libya but applicants find it difficult to prove that they are gay or lesbian. The AI on *Gender* states that “a discriminatory measure, in itself or cumulatively may amount to persecution depending on the facts of the case”. One legal representative, interviewed for the research, explained the UKBA often argued that the level of discrimination suffered was not sufficiently severe and thus did not amount to persecution.

3.3.2 Non-State Actors of Persecution

The Refugee Convention does not define the meaning of persecution and neither is there a universally agreed definition.¹⁶⁶ Gender-related persecution or serious harm may be caused by the state or by non-state actors, such as the family, community or broader society not linked to the state. In cases where the harm is inflicted by non-state actors, there must also be an absence of state protection before the harm can be defined as persecution.¹⁶⁷ As the definition of persecution is different when the harm stems from non-state actors, women asylum seekers may find it more difficult to prove that they have a well-founded fear of persecution in order to be recognised as refugees. Thus, asylum seekers who fear persecution from non-state actors must in addition demonstrate that the state is either unwilling or unable to provide protection from the harm, in order to be recognised as refugees.

The UK recognises that non-state actors, such as the family or the community, can be actors of persecution where there is an absence of state protection.¹⁶⁸ Article 6 of the EU Qualification Directive establishes that

163 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, p. 16.

164 *SB (PSG, Protection Regulations, Reg 6) Moldova CG* [2008] UKAIT 00002 (26 November 2007).

165 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.3.

166 Macdonald QC and Toal, *Macdonald’s Immigration Law & Practice*, Seventh Edition, 2008, para. 12.48.

167 *Horvath v. Secretary of State For The Home Department* [2000] UKHL 37 (6 July 2000).

168 *Horvath v. Secretary of State For The Home Department* [2000] UKHL 37 (6 July 2000). *Secretary of State For The Home Department, Ex Parte Adan R v. Secretary of State For The Home Department Ex Parte Aitseguer, R v.* [2000] UKHL 67 (19 December 2000).

there must be an absence of state protection for non-state actors to be actors of persecution.¹⁶⁹ If it is accepted that the applicant has a well-founded fear of persecution from non-state actors, the success of their claim will depend on whether they can show that state protection is not available¹⁷⁰ and that it is unduly harsh for them to relocate.¹⁷¹ This approach has been criticised and it has been noted that the Refugee Convention suggests that the word "persecution" should be given its ordinary meaning and that the focus on the failure of state protection in non-state actor cases "is an unnecessary distraction".¹⁷² In *Horvath*, Lord Lloyd held that the text of the Convention does not suggest that anything other than the ordinary meaning should be used, "nor is there any hint that the failure of state protection is an ingredient in the meaning of the word".¹⁷³ Claims for leave to remain on the basis that if returned to their country of origin, applicants would be subjected to treatment contrary to article 3 ECHR, also require evidence that the receiving state will be unable to provide a reasonable level of protection.¹⁷⁴

3.3.3 State Protection

As women often fear persecution from non-state actors of persecution they also need to demonstrate that the state is unable or unwilling to provide them with protection in order to be recognised as refugees.¹⁷⁵ The assessment of whether the state provides protection in practice where the harm feared occurs in the private sphere is dependent on country of origin information (COI) and this is not always available or is difficult accessible.¹⁷⁶ Alternatively, the use of selective COI by case owners makes it more difficult for women to show that they cannot access protection in practice in their home country.¹⁷⁷

Despite the Refugee Convention only recognising states as being able to provide protection, the EU Qualification Directive also allows "parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State" to provide protection to victims of persecution.¹⁷⁸ The state or the parties and organisations have to take "reasonable steps" to prevent the persecution or the serious harm. The manner in which the EU Qualification Directive has been transposed into domestic legislation in the UK means that the existence of an effective legal system is sufficient to amount to protection. The lead case of *Horvath* which sets out the definition of persecution in non-state actors of persecution cases has been criticised for resulting in the refusal of asylum claims which deserve to be granted.¹⁷⁹ The recast EU Qualification Directive adopted at the end of 2011, specifies that the protection "must be effective and of a non-temporary nature" and the applicant must have access to such protection.¹⁸⁰ The UK, however, will not be bound by the recast Qualification Directive as it has decided not to opt-in and will therefore continue to be bound by the 2004 EU Qualification Directive.¹⁸¹

In the UK, there is no requirement to seek protection prior to leaving one's country of origin to be recognised as a refugee.¹⁸² It is not always a requirement that women asylum seekers must have sought protection

169 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

170 See section 3.3.3 on State Protection below.

171 See section 3.6 on Internal Flight Alternative below.

172 Macdonald QC and Toal, *Macdonald's Immigration Law & Practice*, Seventh Edition, 2008, para. 12.54.

173 *Horvath v. Secretary of State For The Home Department* [2000] UKHL 37 (6 July 2000). Macdonald QC and Toal, *Macdonald's Immigration Law & Practice*, Seventh Edition, 2008, para. 12.54.

174 *Bagdanavicius & Anor, R (on the application of) v* [2005] UKHL 38 (26 May 2005). Article 3 ECHR states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment".

175 See section 3.3.2 on Non-State Actors of Persecution above.

176 See section 3.7 on Country of Origin Information below.

177 Asylum Aid, *Unsustainable: the quality of initial decision-making in women's asylum claims*, 2011. Independent Chief Inspector of the UK Border Agency, *The use of country of origin information in deciding asylum applications: a thematic inspection*, October 2010-May 2011, para. 4.

178 Article 7(1)(b) Qualification Directive.

179 Macdonald QC and Toal, *Macdonald's Immigration Law & Practice*, Seventh Edition, 2008, para. 12.57.

180 Directive of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 2009/0164 (COD), article 7(2).

181 Written Ministerial Statements, Thursday 13 October 2011.

182 *Bagdanavicius & Anor, R (On the Application of) v Secretary of State for the Home Department* [2003] EWCA Civ 1605 (11

from the police in their home country if they fear non-state actors of persecution to evidence that the authorities are unwilling or unable to seek protection. However, there is a need to explain why the applicant did not seek state protection before fleeing as this is a significant issue that needs to be addressed. Legal representatives interviewed for this research said they often see the UKBA refusing asylum claims on the basis that the applicant should have sought protection before fleeing. There are cases where the UKBA accepts that the applicant could not realistically seek protection from the authorities, such as in asylum claims from Iran. In LGBT cases, it is more often an issue when the applicant will have to explain why they think the police will not protect them if same-sex relationships are not criminalised in the country of origin.

Thus for asylum seekers who fear persecution from non-state actors, the additional hurdle of demonstrating the lack of state protection makes it more difficult to be recognised as refugees. This is particularly compounded by the fact that there is less country of origin information on gender-related issues. Finally, the UK’s decision not to opt-in to the recast Qualification Directive means that it will not be bound by the more extensive requirements in relation to what constitutes effective state protection.

3.4 Refugee Convention Grounds

Gender is not explicitly mentioned as a ground for persecution in the legislation of the UK. If a claim is purely gender-related, decision-makers will usually rely on the ground of particular social group (PSG). The Asylum Instruction on *Gender Issues in the Asylum Claim* recognises that:

Gender must inform an assessment of whether one or more of the five Convention grounds may be applicable.¹⁸³

The AI on *Gender* also reminds case owners that an asylum claim may be based on more than one Convention ground and that an applicant is not required to identify accurately the applicable Convention ground. A legal representative, interviewed for this research, explained that the decision-making varied according to whether the AI on *Gender* was followed or not and that although the policy was good there is a real problem of implementation. Another legal representative said that a gender-sensitive interpretation of the Refugee Convention was the exception rather than the rule. One legal representative talked about the failure to recognise the particular vulnerabilities of victims of trafficking, in particular when reliance was placed on their capacity to avoid any risk in the future and the failure to appreciate the specific gender contexts to which applicants would be returned. Another legal representative thought that the gender element of the claim had to be highlighted by the legal representative to ensure this would be considered by case owners.

A legal representative explained that some women may be granted Discretionary Leave (DL) by the UKBA because the harm suffered is not considered sufficiently significant to amount to persecution. The authorities concede that there is a risk of harm but fail to understand the nature of gender-related harm. Another legal representative said that if Article 8 ECHR grounds were raised because the applicant is a mother, sometimes of a British child, this would result in the grant of DL although another legal representative said that it was difficult for the UKBA to accept that there is a genuine risk of women being at risk of destitution without family support. A legal representative explained that the Reasons for Refusals Letters often only contained a short consideration of whether the applicant should be granted humanitarian protection (HP) or DL and that if the asylum decision did not consider gender then the decision on HP and DL was unlikely to do so either. Article 15(c) of the EU Qualification Directive has not been considered by the courts in the UK from a gender perspective.

Research into the quality of decision-making in women’s asylum claims found that where a second Convention ground was identified, it was rarely given sufficient consideration and that in some cases only

November 2003). *Horvath v. Secretary of State For The Home Department* [2000] UKHL 37 (6 July 2000).
183 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 4.1.

the most obvious Convention ground was identified by UKBA case owners.¹⁸⁴

Irrespective of the merits of this argument [that the asylum seeker was a member of a particular social group] it is accepted that you are at risk on return to Rwanda for a Convention reasons, namely your race therefore whether you qualify as a member of a particular social group is considered to be a moot point, consequently it has not been considered.

UKBA Reasons for Refusal Letter, July 2010

The claim was refused on the basis that the applicant could relocate internally but also concluded that “it is not accepted that you possess a well founded fear of persecution on return to Rwanda”

Overall, legal representatives agreed that if gender-related claims were allowed this was generally on the basis of the PSG ground. Some gender-related claims may be allowed on other Convention grounds such as political opinion, religion or race but there must be something more in the facts of the case to allow for this. Some legal representatives referred to cases where applicants have serious mental health issues resulting in the grant of DL. In the case of *N v UK* the only issue considered was whether the Appellant would be able to access HIV treatment; however, the gender elements of the case (the fact that she had been raped by government soldiers) were not considered by the Lords.¹⁸⁵ Some legal representatives did not think that there was an over-reliance on subsidiary forms of protection in women’s cases but it was pointed out that when DL was granted, there was often a lack of advice regarding the possibility of appealing on asylum grounds. The problem when asylum seekers are granted DL is that they have no right to refugee family reunion and that they will have to apply for an extension of leave to remain in three years and this fails to provide them with stability. A legal representative explained how HP could be granted if the decision-maker accepted the risk of gender-related harm but failed to recognise the application of PSG.

3.4.1 Particular Social Group

There is a significant amount of case law on the interpretation of PSG in the context of gender-related claims for asylum. The courts and Tribunals in the UK have found the following PSG to exist:

- **Women in Pakistan;**¹⁸⁶
- **(Intact) women in Sierra Leone;**¹⁸⁷
- **Women in the Ivory Coast;**¹⁸⁸
- **Women in Somalia;**¹⁸⁹
- **Women in Afghanistan;**¹⁹⁰
- **Women in Bangladesh;**¹⁹¹
- **Women charged with committing adultery in Pakistan;**¹⁹²
- **Women who have committed adultery from Punjab, India;**¹⁹³
- **Women in Kenya (and particularly Kikuyu women under the age of 65);**¹⁹⁴
- **Women in Liberia belonging to those ethnic groups where FGM is practiced;**¹⁹⁵

184 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, p. 45.

185 *N v. Secretary of State for the Home Department* [2005] UKHL 31 (5 May 2005).

186 *Islam v Secretary of State for the Home Department; R v Immigration Appeal Tribunal and Another, ex parte Shah* [1999] UKHL 20, 25 March 1999.

187 *Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department* [2006] UKHL 46, 18 October 2006.

188 *MD (Women) Ivory Coast CG* [2010] UKUT 215 (IAC).

189 *HM (Somali Women, Particular Social Group) Somalia* [2005] UKIAT 00040.

190 *NS (Social Group – Women – Forced marriage) Afghanistan CG* [2004] UKIAT 00328.

191 *SA (Divorced woman – illegitimate child) Bangladesh CG* [2011] UKUT 00254(IAC).

192 *KA and Others (domestic violence – risk on return) Pakistan CG* [2010] UKUT 216 (IAC).

193 *BK (Risk – Adultery -PSG) India CG* [2002] UKIAT 03387.

194 *P & Anor v Secretary of State for Home Department* [2004] EWCA Civ 1640.

195 *SK (FGM – ethnic groups) Liberia CG* [2007] UKAIT 00001.

- Women (at risk of FGM) in Sudan;¹⁹⁶
- Young Iranian women who refuse to enter into arranged marriages;¹⁹⁷
- Lesbian women in Albania;¹⁹⁸
- Women who do not conform to the heterosexual narrative and are perceived as lesbians in Jamaica;¹⁹⁹
- Former victims of trafficking in Moldova;²⁰⁰
- Former victims of trafficking in Nigeria;²⁰¹
- Former victims of trafficking in Thailand;²⁰²
- Former victims of trafficking in Albania;²⁰³
- Former victims of trafficking in China.²⁰⁴

Baroness Hale has recognised that it is possible for individuals who share a past experience, such as being the victims of sexual violence, to show they are linked by an immutable characteristic which is capable of being independent of the persecution and the cause of their current ill-treatment and as a result being members of a PSG.²⁰⁵ This has been followed in more recent Tribunal decisions.²⁰⁶

The AI on *Gender* considers the application of PSG in gender-related cases. The definition of PSG in the Qualification Directive states that:

Member States shall take the following elements into account when assessing the reasons for persecution ...

(d) a group shall be considered to form a particular social group where in particular:

[(i)] members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

[(ii)] that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;²⁰⁷

This was transposed literally into regulation 6(1)(d) of the Refugee or Person in Need of International Protection Regulations 2006 although the words “in particular” were replaced with “for example”. The House of Lords made clear in the case of *Fornah* that the two limbs of PSG in article 10(1)(d) should be alternative.²⁰⁸ In other words, a PSG can exist either by meeting the protected characteristic approach which is where the group is defined by an immutable characteristic or a characteristic so fundamental to their human dignity that it should not be denied or by meeting the social perception approach where the group is set apart from the rest of society. In *Fornah*, the Lords adopted the definition given by UNHCR in its Guidelines on International

196 *FM (FGM) Sudan CG* [2007] UKAIT00060.

197 *TB (PSG – women) Iran* [2005] UKIAT 00065.

198 *MK (Lesbians) Albania CG* [2009] UKAIT 00036.

199 *SW (lesbians – HJ and HT applied) Jamaica CG* [2011] UKUT 00251 (IAC).

200 *SB (PSG - Protection Regulations – Reg 6) Moldova CG* [2008] UKAIT 00002.

201 *PO (Trafficked Women) Nigeria CG* [2009] UKAIT 00046. Note that this case has partly been overturned by the Court of Appeal in *PO (Nigeria) v Secretary of State for the Home Department* [2011] EWCA Civ 132 but on other issues not concerned with PSG.

202 *AZ (Trafficked women) Thailand CG* [2010] UKUT 118 (IAC).

203 *AM and BM (Trafficked women) Albania CG* [2010] UKUT 80 (IAC).

204 *HC & RC (Trafficked women) China CG* [2009] UKAIT 00027.

205 *Hoxha & Anor v Secretary of State for the Home Department* [2005] UKHL 19 (10 March 2005), para. 37.

206 *SB (PSG - Protection Regulations – Reg 6) Moldova CG* [2008] UKAIT 00002. *AM and BM (Trafficked women) Albania CG* [2010] UKUT 80 (IAC), para. 166.

207 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Article 10(1)(d).

208 *Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department* [2006] UKHL 46, 18 October 2006, para. 15. In other words, a particular social group can be defined by the members sharing an immutable characteristic or a characteristic so fundamental to their human dignity that it should not be denied or the group is set apart from society as a whole.

Protection on Particular Social Group.²⁰⁹

A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.²¹⁰

The House of Lords accepted UNHCR’s approach to gender according to which “sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently to men”.²¹¹

Lord Bingham said that if Article 10(1)(d) QD:

Were interpreted as meaning that a social group should only be recognised as a particular social group for purposes of the Convention if it satisfies the criteria in both of sub-paragraphs (i) and (ii), then in my opinion it propounds a test more stringent than is warranted by international authority.²¹²

In the same year, the Asylum and Immigration Tribunal (AIT),²¹³ in the case of *SB (Moldova)*, failed to apply the judgment in *Fornah* that the two limbs of Article 10(1)(d) QD are alternatives.²¹⁴ Other immigration judges in the Tribunal have since followed this interpretation²¹⁵ and this interpretation has been followed by the UKBA in its AI on *Gender Issues in the Asylum Claim*. The Asylum Instruction on *Considering the Protection (Asylum) Claim and Assessing Credibility* gives guidance to decision makers when considering asylum claims. It also contains a section on PSG which interprets the case law relevant to the Convention ground. Both Asylum Instructions interpret the immutable characteristic and the social perception/recognition approaches as being cumulative, contrary to the judgment in *Fornah*.

In *SB (Moldova)*, the Tribunal noted that where the social group is gender-based then discrimination against the group must be shown to exist and that some degree of state involvement is “important”.²¹⁶ By adding the additional requirement that discrimination in the wider sense of the word must be shown when the PSG is defined by gender, the Tribunal has imposed an additional and unjustified hurdle on women who are being persecuted because of their gender. This is an incorrect interpretation of *Fornah* and establishes a more stringent test to PSG cases based on gender. This, it could be argued, is discriminatory, and should not be followed by future Tribunals or by the UKBA.²¹⁷

The AI on *Gender* states that the number of potential members of the PSG is irrelevant. However, when case owners consider that an applicant may form part of a PSG which has not yet been recognised in case law or in Operational Guidance Notes, they are required to discuss their conclusions with a senior case owner. The AI on *Considering the Claim* notes that if in any doubt a senior case owner should be consulted. Recent research on the quality of initial decision-making in women’s asylum claims highlighted that case owners appeared reluctant to engage with the Convention ground of PSG.²¹⁸

209 UNHCR Guidelines on International Protection: “Membership of a particular social group”, 2002, para. 11.

210 UNHCR Guidelines on International Protection: “Membership of a particular social group”, 2002, para. 11.

211 UNHCR Guidelines on International Protection: “Membership of a particular social group”, 2002, para. 12 and *Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department* [2006] UKHL 46, 18 October 2006, para. 15.

212 *Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department* [2006] UKHL 46, 18 October 2006, para. 16.

213 It has now been replaced by the First-Tier and Upper Tier Tribunals of the Immigration and Asylum Chamber.

214 *SB (PSG - Protection Regulations – Reg 6) Moldova CG* [2008] UKAIT 00002, para. 69.

215 *AZ (Trafficked women) Thailand CG* [2010] UKUT 118 (IAC), para. 134.

216 *SB (PSG - Protection Regulations – Reg 6) Moldova CG* [2008] UKAIT 00002, para. 53.

217 C. Querton, *The interpretation of the Convention ground of ‘membership of a Particular Social Group’ in the context of gender-related claims for asylum: A critical analysis of the Tribunal’s approach in the UK*, Refugee Law Initiative, Working Paper No. 3, January 2012.

218 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, pp. 45-51.

The [Secretary of State for the Home Department] does not accept that homosexuals in Cameroon are set apart or recognised as a distinct group in Cameroon and therefore that the Appellant’s claim attracts the protection of the Refugee Convention as a member of a particular social group.

The [Secretary of State for the Home Department’s] analysis of the position of homosexuals in Cameroon and his conclusion that they do not form a particular social group is perverse.

Asylum and Immigration Tribunal unreported Determination, 9 December 2009

A legal representative explained that it was difficult to get the UKBA to accept that the group is distinct from the rest of society, as the UKBA requires this element to be present in addition to members of the group sharing an immutable characteristic or that there is a lack of state protection. Overall, it was difficult for both the UKBA and the courts to accept a PSG unless it had already been determined by previous case law. For example, the UKBA’s Operational Guidance Note recognises that women from Iran who have a well-founded fear of persecution because of their gender are members of a particular social group as “they are discriminated against in matters of fundamental human rights” and should be granted asylum if they “have no recourse to state protection or internal relocation”.²¹⁹ This policy should be followed by case owners. However, the reluctance to engage with the Convention ground of PSG and the failure to follow the judgment in *Fornah* lays out a more difficult test to meet before women who are persecuted because of their gender can be recognised as members of a PSG.

3.4.2 Other Refugee Convention Grounds

The UKBA recognises in its AI on *Gender* that:

Non-conformist opinions or behaviour may in certain circumstances be the expression of a political opinion or may result in a woman having a political opinion attributed to her whether she holds one or not. For instance opposition to institutionalised discrimination against women in society or expressing views in opposition to the predominant social or cultural norms may be seen to constitute a political opinion. Non-conformist behaviour in certain cultures such as refusing to wear a veil, pursuing an education or choosing a partner could also lead to a woman having a political opinion attributed to her.²²⁰

In the case of *FB (Lone women - PSG – internal relocation – AA (Uganda) considered) Sierra Leone*, the Asylum and Immigration Tribunal considered that there was no imputed political opinion ground²²¹ where the appellant had “been identified as one who has rejected the traditional and customary ways of her village” because the connection between these political strands and her opposition to becoming a *soweï* and to entering a forced marriage was too far removed.²²²

219 UKBA, Operational Guidance Note: Iran, 15 November 2011, para. 3.11.14.

220 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 4.6.

221 A political opinion is imputed where the person does not actually hold the political opinion in question but is attributed it by the person responsible for the persecution.

222 *FB (Lone women, PSG, internal relocation, AA (Uganda) considered) Sierra Leone* [2008] UKAIT 00090 (27 November 2008). A *soweï* is a person who practices FGM.

The AI on *Gender* also states that:

Where the religion assigns particular roles or behavioural codes to women, a woman who refuses or fails to fulfil her assigned role or abide by the codes may have a well founded fear of persecution on the ground of religion.²²³

In reported determinations, there is little to suggest that the courts accept that opposing cultural and social norms and established gender roles is an expression of a political or religious opinion.²²⁴

3.5 Credibility

In asylum cases, credibility is an essential issue because corroborative evidence is often unavailable. During the refugee status determination process, the UKBA must make credibility assessments. If an applicant’s credibility is accepted, her account of events and evidence will be believed and relied on in the decision-making process. UNHCR states that “the relevant facts of the individual case will have to be furnished in the first place by the applicant himself. It will then be up to the person charged with determining his status (the examiner) to assess the validity of any evidence and the credibility of the applicant’s statements”.²²⁵

Women may face additional barriers in showing that their claim is credible. It may be more difficult for women to obtain documentary evidence due to the nature of the harm they have suffered and the nature of their activities and place in society.²²⁶ In cases of imputed political opinion, some women may not have the information requested by the UKBA to evidence their claim.²²⁷ It is also more difficult to access country of origin information on the status and treatment of women.²²⁸ Recent research has shown that in women’s asylum claims, the UKBA failed to consider the claim as a whole, including a tendency to disproportionately rely on irrelevant or peripheral facts of the claim and a failure to apply the lower standard of proof. There was also a focus on past events rather than the risk of future persecution.²²⁹

Esther, who claimed asylum on the basis of domestic violence in 2009 and who was fighting on behalf of her children at the same time in the family courts, recalled the exhaustion of “two years up and down, up and down, family court, immigration court, family court, immigration court, two children, school, childcare, like a mad woman. ... I’m all on my own and I’m fighting to stay at a place that I think is safe and nobody seemed to believe me”.

Negative findings of credibility by case owners may be used to refuse asylum claims. Research into the quality of initial decision-making in women’s asylum claims concluded that the assessment of credibility formed the core of refusals examined. The research also concluded that the analysis of credibility took precedence over other elements of the decision making process. The failure to understand gender-related persecution and the impact of trauma on memory also resulted in negative credibility findings.²³⁰ There have been long-standing concerns about the manner in which UKBA case owners assess credibility. For example, investigations into decisions taken by the UKBA before NAM was introduced have shown that refusals based on lack of credibility were made using unreasoned and unjustifiable assertions²³¹ and were not supported by analysis of

223 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 4.3.

224 For a more detailed analysis of this see Heaven Crawley, *Refugees and Gender: Law and Process*, 2001, pp. 65-70.

225 UNHCR Handbook, para. 195.

226 N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000, p. 50. Nina Allen, *Analysis of the coverage of gender issues in country of origin information reports produced by COI Service for the Advisory Panel on Country Information*, August 2007. Heaven Crawley, *Thematic review on the coverage of women in Country of Origin Information (COI) reports*, prepared for the Independent Advisory Group on Country Information (IAGCI), September 2011.

227 N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000, p. 52.

228 *Ibid.*, p. 50.

229 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, pp. 51-59.

230 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011.

231 Amnesty International UK, *Get It Right: How Home Office decision making fails refugees*, February 2004, p. 19.

the facts.²³² It was found that case owners make decisions based on assumptions about how people would behave in certain circumstances or on the basis of discrepancies in applicants’ accounts at the expense of an investigative approach.²³³ The UKBA was found by UNHCR not to properly consider the evidence or where the evidence is accepted not giving it due weight in relation to other credibility issues.²³⁴ It also appears that after the applicant has made a genuine effort to substantiate her story, case owners fail to give asylum seekers the benefit of the doubt as recommended in the UNHCR Handbook.²³⁵ UNHCR has noted the UKBA’s emphasis on elements irrelevant to the assessment of credibility in DFT cases.²³⁶ One of the key recommendations by the UNHCR to the UKBA under the Quality Initiative Project was the improvement of credibility assessments.²³⁷

The standard of proof in the examination of all asylum claims is that of “reasonable degree of likelihood” or “real risk”.²³⁸ The same standard of proof should be applied to the consideration of whether historical facts have occurred and whether there is a future risk of persecution.²³⁹ This is effectively a low standard of proof which operates for the benefit of the applicant.²⁴⁰

The Asylum Instruction (AI) on *Considering the Protection (Asylum) Claim and Assessing Credibility* recognises that the correct test for decision makers to consider whether there is a future risk of persecution is a “reasonable degree of likelihood” or “real risk”.²⁴¹ The AI establishes that case owners must consider whether there is a reasonable degree of likelihood that the applicant would be persecuted in her country of origin.²⁴²

The Immigration Rules set out that it is the duty of applicants to substantiate their claim and that where certain conditions are met, aspects of applicants’ statements need not be supported by documentary and other evidence. Thus where aspects of an applicant’s statement are not supported by documentary or other evidence, those will not need to be confirmed if the applicant meets all of the following five criteria:

- (i)** the person has made a genuine effort to substantiate his asylum claim...;
- (ii)** all material factors at the person’s disposal have been submitted, and a satisfactory explanation regarding any lack of material has been given;
- (iii)** the person’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person’s case;
- (iv)** the person has made an asylum claim... at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
- (v)** the general credibility of the person has been established²⁴³

232 Independent Race Monitor, Annual Report April 2002 – March 2003, UKBA Home Office, 16 June 2003, para. 31. Amnesty International UK, *Get It Right: How Home Office decision making fails refugees*, February 2004.

233 UNHCR, *Quality Initiative Project Fifth Report to the Minister*, March 2008, para. 2.3.19. Amnesty International UK, *Get It Right: How Home Office decision making fails refugees*, February 2004, pp. 19-20.

234 UNHCR, *Quality Initiative Project Third Report to the Minister*, March 2006, para. 2.3.8.

235 UNHCR, *Quality Initiative Project Fifth Report to the Minister*, March 2008, para. 2.3.18. UNHCR, *Quality Initiative Project Fourth Report to the Minister*, January 2007, para. 2.2.3. Paragraph 203 UNHCR Handbook.

236 UNHCR, *Quality Initiative Project Fifth Report to the Minister*, March 2008, para. 2.3.14. UNHCR, *Quality Initiative Project Fourth Report to the Minister*, January 2007, para. 2.2.8. UNHCR, *Quality Integration Project: Key Observations and Recommendations*, August 2010.

237 UNHCR, *Quality Initiative Project Third Report: Key Observations and Recommendations*, September 2005 – February 2006, para. 3.2. UNHCR, *Quality Initiative Project Fourth Report: Key Observations and Recommendations*, March 2006 – December 2006, para. 2.3 - 2.4 and 2.14. UNHCR, *Quality Initiative Project Fifth Report: Key Observations and Recommendations*, February 2007 – March 2008, para. 2.2 - 2.4. UNHCR, *Quality Initiative Project Sixth Report: Key Observations and Recommendations*, April 2008 – March 2009, para. 2.1 (p. 2) and 2.2 (pp. 4 and 7).

238 *Sivakumuran, R (on the application of) v Secretary of State for the Home Department* [1987] UKHL 1 (16 December 1987).

239 *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 (25 January 2000), para. 99.

240 Symes and Jorro, *Asylum Law and Practice*, 2010, para. 2.2.

241 Asylum Instruction on *Considering the Protection (Asylum) Claim and Assessing Credibility*, p. 21.

242 *Ibid.*, p. 16.

243 Paragraph 339L of the Immigration Rules (HC 395).

The Immigration Rules state that corroborative evidence is not required and that decision makers should consider applying the benefit of the doubt provided the applicant is generally credible. It is noted in the Asylum Instruction on *Credibility* that:

The applicant does not have to prove each material fact ... with documentary or other evidence. It is possible for an applicant to substantiate his claim and satisfy the burden of proof where he is unable to provide independent, corroborative evidence about past and present events, provided he can give a coherent and plausible account of his experiences which is not contradicted by available objective information relevant to his claim.²⁴⁴

Paragraph 339L of the Immigration Rules is intended to transpose Article 4(5) of the EU Qualification Directive (QD) but has done so by requiring that all five elements need to be met for an applicant’s statement to be accepted without any other form of evidence. The Directive however does not provide any guidance on the assessment of credibility. UNHCR has stated that the last requirement (i.e., that the general credibility of the person has been established) can be satisfied independently of the other four²⁴⁵ and the European Commission found that the UK’s application of the provision was more restrictive than intended by the Directive by raising the standard of the level of credibility required by Article 4(5) QD.²⁴⁶ Moreover, it is necessary to consider the effect of trauma on applicants’ ability to give coherent accounts, when assessing the application of paragraph 339L/Article 4(5) QD.

Thandiwe, a 40 year-old asylum seeker from Zimbabwe who suffered torture and sexual violence in prison was disbelieved by the UKBA on the basis that she was unable to answer some questions about MDC members. She explained that she felt very stressed at the interview and therefore forgot some of the answers despite knowing the information requested by the interviewing officer

One legal representative, interviewed for this research, said that there was some awareness of the AI on *Gender* within the UKBA and that there has been case law on gender-related claims for asylum but that there was a real problem of applicants’ claims being disbelieved, including applicants who said that they had been raped, been the victims of domestic violence or trafficking and that this placed them at an automatic disadvantage. This was particularly the case where, for example, the ill-treatment had left no visible physical scars. This legal representative also thought that when claimants failed to disclose their entire story at the beginning of the process this was held against them.

3.5.1 Inconsistencies, Plausibility and Presumptions

Discrepancies in an applicant’s account are to be expected as she is required to provide a detailed story of events that may have happened over a significant amount of time and having occurred a long time ago. Elements of the story may also be distressing for the applicant making it difficult to recount the story consistently over time, notably at the interview, when giving a statement or at the appeal hearing. The High Court has recognised that the undue concentration on perceived inconsistencies has led to error:

244 Asylum Instruction on *Credibility*, p. 10.

245 UN High Commissioner for Refugees, *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (OJ L 304/12 of 30.9.2004)*, 28 January 2005.

246 Report from the Commission to the European Parliament and the Council on the application of Directive 2004/83/EC of 29 April 2004 on minimum standards for the *Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted COM(2010)314 final*, Brussels, 16.6.2010.

Discrepancies are of course inevitable where, often long after events, and often in a language that is foreign to the applicant, an explanation comes to be given. But those discrepancies may often be irrelevant or capable of easy explanation. Why discrepancies can be important is that they go or can go centrally to the consistency of the main account that is given, and can be a pointer to its untruth in a circumstance in which someone sitting, as an adjudicator does, in the cold light of day having to make a decision, on the lower standard of proof, as to the honesty and integrity of an applicant may be driven to conclusions which depend on inconsistency where there is otherwise only a gut feeling that the evidence is not right but no other way of verifying such a conclusion.²⁴⁷

Any inconsistency must in any case be sufficiently serious to warrant a conclusion that the account is untrue.²⁴⁸ Thus a discrepancy regarding the number of times an applicant has been detained is peripheral to the claim and should not be significant in the assessment of credibility.²⁴⁹

Grace, a 23 year old asylum seeker who claimed asylum in 2010, was disbelieved by the UKBA on the basis that it was unlikely she would have been fed twice a day while detained in DRC.

Furthermore, the AI on *Credibility* instructs case owners that:

It is generally unnecessary, and sometimes counter-productive, for the decision maker to focus upon minor or peripheral facts that are not material to the claim.²⁵⁰

If the decision maker considers that there are inconsistencies in an applicant’s evidence, she should be given the opportunity to explain this. Indeed, the Asylum Instruction on *Credibility* notes that:

If, in the interview, a material fact appears to be inconsistent with either the applicant’s previous evidence or with generally known facts, s/he should be given the opportunity to explain or clarify this.²⁵¹

Decision-makers with little objective evidence and without first-hand empirical knowledge can only imagine societies from which women come and “try to adjust their common sense interpretive categories and subjective principles of judgment to these imagined societies”.²⁵² This was acknowledged by the Court of Appeal stating that:

Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar.²⁵³

247 *R v Immigration Appeal Tribunal, ex p Gba* (CO/4185/1999; 6 July 2000), cited in Symes and Jorro, *Asylum Law and Practice*, 2010, para. 2.11.

248 Symes and Jorro, *Asylum Law and Practice*, 2010, para. 2.11.

249 *R v Secretary of State for the Home Department, ex p Bazilepo* [1993] Imm AR 53, cited in Symes and Jorro, *Asylum Law and Practice*, 2010, para. 2.11.

250 Asylum Instruction on *Credibility*, p. 15.

251 Asylum Instruction on *Credibility*, p. 11.

252 Ferreira, N. and Caldeira, R. ‘Gender and sexual orientation-related asylum claims in English courts: Credibility in judicial decision-making’, *Seeking Refuge: Caught between bureaucracy, lawyers and public indifference?*, Centre of African Studies, SOAS, University of London, 16-17 April 2009, p. 9.

253 *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037, para. 29.

In a later case, the Court of Appeal confirmed this finding and stated that it was important for decision makers to seek to view asylum seekers’ account of events “in the context of conditions in the country from which” they come.²⁵⁴

Demeanour should not influence decision makers in the assessment of credibility. For example, it would be wrong to assume that an asylum seeker who suffers from PTSD would present in a particular emotional state. The Tribunal has stated that:

Given the adjudicator’s apparent awareness of the medical evidence that the appellant suffered from Post Traumatic Stress Disorder one of whose symptoms is emotional numbness, we do not think the adjudicator was justified in counting against the appellant at paragraph 26 his failure at the hearing to ‘show emotional distress when the traumatic events were raised...’.²⁵⁵

The AI on *Gender* notes that:

The fact that violence against women is common, widespread and culturally accepted in a particular society does not mean that protection on an individual basis is inappropriate.²⁵⁶

Cultural differences should not be part of determining the assessment of credibility. The AI on *Gender* notes that:

Interviewers should be sensitive to the fact that gender and cultural norms may play an important role in influencing demeanour, for example, how a woman presents herself physically at interview e.g. whether she maintains eye contact, shifts her posture or hesitates when speaking. Demeanour alone is an unreliable guide to credibility.²⁵⁷

One legal representative explained that cultural differences affect the manner in which women describe their experiences and the terminology they use to talk about the ill-treatment and conditions in the country of origin which sometimes resulted in UKBA case owners failing to identify the relevant issues. Another legal representative highlighted the fact that case owners often applied their own westernised standards in assessing the plausibility of how a woman would behave in a given situation.

3.5.2 Disclosure

Non-disclosure or late disclosure of information is something that may affect women more seriously because some women seeking asylum may feel too traumatised, feel shame or fear stigma at disclosing rape or sexual violence.²⁵⁸ A research study on the impact of sexual violence on disclosure found that asylum seekers with a history of sexual violence described more difficulty in disclosing personal information during the interview.²⁵⁹ Alternatively, they may think such types of harm are not relevant to their claim for asylum if they have not been adequately advised about the merits of their claim for asylum.

254 *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223 (26 July 2006), para. 25.

255 *M v Secretary of State for the Home Department (Yugoslavia)* [2003] UKIAT 00004 (29 May 2003), para. 7.

256 Asylum Instruction on *Gender Issues in the Asylum Claim*, para. 2.2.

257 Asylum Instruction on *Gender Issues in the Asylum Claim*, para. 7.2.

258 Amnesty International UK, *Get It Right: How Home Office decision making fails refugees*, February 2004, p. 36. D. Bögner, J. Herlihy and C. R. Brewin, ‘Impact of sexual violence on disclosure during Home office interviews’, *British Journal of Psychiatry*, 2007, 191, pp. 78-79.

259 D. Bögner, J. Herlihy and C. R. Brewin, ‘Impact of sexual violence on disclosure during Home office interviews’, *British Journal of Psychiatry*, 2007, 191, p. 78.

Swana, a young woman who claimed asylum on the basis that her daughter would be at risk of FGM, disclosed much later in the process that she had suffered sexual abuse by her relative. She did not disclose this information initially because she did not want to talk about it, but she also did not know this information was relevant to her claim. This information is crucial to her case as one of the grounds for refusal is that her relative is Christian and would therefore protect her and her daughter from FGM. She submitted this information as part of a fresh claim but the UKBA concluded that it did not amount to new evidence. The refusal of the fresh claim did not address the fact that she could no longer rely on her relatives for support if returned home.

Disclosure may also have been affected if a woman was initially dependent on her husband or other relative’s claim for asylum. When a woman then makes a claim for asylum in her own right, there may be facts that had not been disclosed previously because they were not central to the husband or other relative’s claim for asylum and this should not count against her.

Arrangements made during a woman’s interview or appeal hearing may also affect disclosure of her account of events. If a woman is being interviewed by a male interviewing officer and/or by a male interpreter, or because she does not feel the place is sufficiently private, she may not feel sufficiently at ease to disclose such information.

Before the New Asylum Model (NAM) was instated, the UKBA was criticised for not training its interviewing officers to ask the right questions to enable victims of torture to disclose this information.²⁶⁰ UKBA officers were also criticised for failing to give asylum seekers the opportunity to rectify apparent discrepancies between the asylum screening interview and the substantive interview.²⁶¹

Disclosure may not be facilitated if gender-sensitive interviewing procedures are not followed and rape and/or sexual violence may make disclosure more difficult²⁶² thereby negatively impacting on women claimants’ credibility. Women may delay their claim for asylum because they fear disclosing their history of sexual violence. Although this fear may be rooted in feelings of guilt and shame it will be up to the decision maker to consider what weight to place on such factors in an analysis of credibility.

I accept on the lower standard of proof the Appellant’s reasons for not mentioning the rapes to the police at the outset and for not mentioning them in her asylum interview. The Appellant says that in respect of the first matter, this was because she had not been aware that rape in marriage was an offence at the time and only became aware of this after the relevant interview; and, in respect of the second matter, because she was not asked about the rape in the asylum interview, having disclosed it earlier in a statement. I find that these are reasonable explanations by the Appellant.

First-tier Tribunal, Immigration and Asylum Chamber unreported Determination, September 2010

Rape trauma syndrome is also relatively overlooked by case owners and immigration judges who consequently fail to recognise the impact that trauma may have on lack of memory, loss of control, lack of self-evidence and low self-esteem. Findings by case owners and immigration judges that an account is implausible further affect women who are able to disclose the extent of their ill-treatment, consideration of which is biased by gendered and cultural norms.

Claiming asylum at a later stage in their own right should not negatively affect the credibility of women who were previously dependent on their husband or other male relatives’ claims for asylum. Also, choosing not to give oral evidence at appeal should not count against appellants.

260 Amnesty International UK, *Get It Right: How Home Office decision making fails refugees*, February 2004, p. 32.

261 *Ibid.*, p. 32.

262 N. Berkowitz and C. Jarvis, *Asylum Gender Guidelines*, Immigration Appellate Authority, 2000, p. 53.

The AI on *Gender* states that:

While the substantive asylum interview represents the applicant’s principal opportunity to provide full disclosure of all relevant factors, the disclosure of gender-based violence at a later stage in the determination process should not automatically count against her or his credibility. There may be a number of reasons why an applicant may be reluctant to disclose information, for example feelings of guilt, shame, and concerns about family honour, or fear of traffickers or having been conditioned or threatened by them.²⁶³

The High Court has accepted that asylum applicants may be “unable” to disclose that they have been raped. In this case the Secretary of State was not prepared to accept the applicant’s latest account because she did not consider it credible that an asylum seeker would keep quiet for seven years about events central to her claim. Where an applicant suffers from rape trauma syndrome and PTSD, the High Court found that if the evidence of the ill-treatment is accepted as being apparently credible, it was perverse to argue that the applicant was able but unwilling to disclose the information. The High Court specified that there must also be credible evidence which explains why the new evidence was not available initially, in other words medical evidence of PTSD or rape trauma syndrome will be required.²⁶⁴ Despite this High Court case, the Immigration Appeal Tribunal, in a 2002 case where the appellant had neither disclosed her account of rape at her interview nor to her representatives when they completed the statement of additional grounds, concluded that the adjudicator had not erred in law when she considered the account not to be credible despite having considered the evidence in light of the Immigration Appellate Authority *Asylum Gender Guidelines*.²⁶⁵ Later, in 2005, the Asylum and Immigration Tribunal noted that:

It is not appropriate to hold against the Appellant his late disclosure of the serious harm that befell him after he had been detained, and before he was brought to trial. [...] We rely upon Dr Cohen’s opinion, which is shared by every other expert in the field of whom we are aware; that late disclosure of sexual abuse is common, for reasons of shame amongst others, and we find that in this case it does not detract from the credibility of the Appellant or his claim.²⁶⁶

In 2010, the Upper Tribunal referred to the UNHCR Guidelines on Trafficking noting that “women may feel ashamed of what has happened to them or may suffer from trauma caused by sexual abuse and violence”. The Tribunal also noted that:

It is unlikely that the appellant would have been in a situation where only female officials would have been present and we find that the presence of male officials would have made it even less likely that she would have felt able to disclose her problems to the authorities. We note that the API gender guidelines advise Home Office caseworkers that such an applicant’s failure to disclose information relating to her claim should not automatically count against her as there may be many reasons for this including feelings of guilt and shame.²⁶⁷

Several medical researchers have demonstrated that undermining credibility cannot be justified by discrepancies and omissions and that there may be alternative explanations for these differences, such as PTSD, which should therefore be explored before a particular account of event is disbelieved.²⁶⁸

263 Asylum Instruction on *Gender Issues in the Asylum Claim*, para. 7.2.

264 *Ejon, R (on the application of) v Secretary Of State For Home Department* [1997] EWHC Admin 854 (9th October, 1997).

265 *FS (Camps-Vulnerable Group-Woman) Sierra Leone CG* [2002] UKIAT 05588, para. 7.

266 *HS (Homosexuals: Minors, Risk on Return) Iran* [2005] UKAIT 00120 (4 August 2005), para. 124.

267 *AZ (Trafficked women) Thailand CG* [2010] UKUT 118 (IAC) (23 April 2010), para. 116.

268 Cohen, J, ‘Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statement Reasonably be Said to Undermine Credibility of Testimony?’, in *Medico-Legal Journal*, 2001, 69(1). Eytan, A. *et al* ‘Consistency of Autobiographical

Sibel, a 36 year old asylum seeker from Turkey, was so terrified of her husband’s violence that she did not dare disclose information about his abuse to officials when she claimed asylum in 2009. She explained that she might have done so if she had trusted someone more – but there was never any opportunity to build up such trust with any of the officials.

One legal representative, interviewed for this research, felt that late disclosure had a huge impact on asylum seekers, in particular in sexual violence cases. The asylum procedure generally does not enable women to disclose sensitive information about rape and sexual violence. One legal representative explained that it is necessary to point out to the UKBA that late disclosure is a feature of gender-related persecution. An advocate explained that many asylum seekers did not know that sexual orientation could be a ground for asylum and therefore made up another story or they were too ashamed to talk about it. She also explained that some asylum seekers who had suffered ill-treatment from the authorities in their home country found it difficult to disclose information to someone in uniform and in a position of authority. One legal representative said that the UKBA had granted refugee status to an applicant who had failed to claim asylum for several years although this required a full statement explaining why she had not claimed asylum at the earliest opportunity.

3.5.3 Trauma and the Assessment of Credibility

Many asylum seekers who qualify as refugees are in a state of fear and most have undergone traumatic experiences. Trauma may seriously affect a person’s ability to give an accurate and chronological account of events without discrepancies.²⁶⁹ Those who experience gender-related persecution may often suffer from post-traumatic stress disorder and trauma.

The AI on *Gender* states that:

Women who have been sexually assaulted and/or who have been victims of trafficking may suffer trauma. The symptoms of this include persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, shame, a pervasive loss of control and memory loss or distortion. Decision-makers should be aware of this and how such factors may affect how a woman responds during interview.²⁷⁰

Legal representatives, interviewed for this research, agreed that confusion about dates and events usually damaged the credibility of applicants’ claims. One legal representative said that the UKBA did not understand the impact of trauma on memory. Another legal representative said that it was difficult to explain to the authorities how trauma would affect the evidence given. If they produced a medical report, they could at least point out the conclusions to the immigration judge although many applications for reconsideration will be based on the failure by the immigration judge to properly consider the expert evidence.

The Asylum Instruction on *Credibility* does acknowledge that:

In assessing the internal credibility of a claim, decision makers should be aware that there may be mitigating reasons why an applicant is incoherent, inconsistent and not able to provide detail, or delays in providing details of material facts. These reasons should be taken into account when considering the credibility of a claim and must be included in the reasoning given in the subsequent decision. Such factors may include the following (the list is not exhaustive): age; gender; mental health issues; mental or emotional trauma; fear and/or mistrust of authorities; feelings of shame; painful memories particularly those of a sexual nature and cultural implications.²⁷¹

Memories in Asylum Seekers’, in *American Journal of Psychiatry*, 2008, 165(6).

269 J. Herlihy and S. W. Turner, ‘The Psychology of Seeking Protection’, in *International Journal of Refugee Law*, 2009, 21(2), p.173.

270 Asylum Instruction on *Gender Issues in the Asylum Claim*, para. 7.2.

271 Asylum Instruction on *Credibility*, para. 15.

The UNHCR Note on the Burden and Standard of Proof in Refugee Claims states that:

Obviously the applicant has the duty to tell the truth. In saying this though, consideration should also be given to the fact that, due to the applicant’s traumatic experiences, he/she may not speak freely; or that due to time lapse or the intensity of past events, the applicant may not be able to remember all factual details or to recount them accurately or may confuse them; thus he/she may be vague or inaccurate in providing detailed facts. Inability to remember or provide all dates or minor details, as well as minor inconsistencies, insubstantial vagueness or incorrect statements which are not material may be taken into account in the final assessment on credibility, but should not be used as decisive factors.²⁷²

3.6 Internal Flight Alternative

The concept of Internal Flight Alternative (IFA) or Internal Relocation is not expressly provided for in the Refugee Convention and was developed after the Refugee Convention came into force which effectively adds another criterion to the refugee definition. An asylum seeker may have a well-founded fear of persecution in some parts of their country but the risk may not extend to the entire country, hence it is considered that asylum seekers can relocate safely and avoid the risk of persecution. If IFA is found to be reasonable the grant of refugee status will be denied by decision-makers.²⁷³ The legal test as to whether IFA is a viable option is to examine whether relocation would be unduly harsh.²⁷⁴ The guidance offered by UNHCR suggests a standard to assess the reasonableness of relocation by examining whether the claimant can “lead a relatively normal life without facing undue hardship”.²⁷⁵ IFA is more often although not exclusively applicable in asylum claims where the harm feared stems from non-state actors and as women asylum seekers often fear persecution at the hands of non-state actors the concept of IFA may affect them disproportionately. Furthermore, women asylum seekers are often refused on the basis that an IFA exists despite not being able in practice to relocate without male protection.²⁷⁶

When relying on IFA, case owners must consider whether new types of harm or persecution may arise in the relocation area and whether the route to the new area is safe. IFA is a complex concept which is not and should not be limited to whether the risk expressed by the asylum seeker is present in another area of the country. There are multiple factors that must be taken into account in order to determine whether IFA is a viable option for women asylum seekers, such as:

The means of travel and communication, cultural traditions, religious beliefs and customs, ethnic or linguistic differences, health facilities, employment opportunities, supporting family or other ties (including childcare responsibilities and the effect of relocation upon dependent children), and the presence and ability of civil society (eg non-governmental organisations) to provide practical support.²⁷⁷

In EU law, the principle of IFA is found in the EU Qualification Directive. The Directive stipulates that it is sufficient to reasonably expect the applicant to stay in that part of the country and that the individual circumstances of

272 UNHCR, *Note on the Burden and Standard of Proof in Refugee Claims*, 1998, para. 9.

273 Paragraph 3390 of the Immigration Rules (HC 395).

274 Lord Hope stated in *Januzi v Secretary of State for the Home Department* [2006] UKHL 5 at paragraph 41 that “the words ‘unduly harsh’ set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there.” This was re-iterated in *CM (Kenya) v Secretary of State for the Home Department* [2007] EWCA Civ 312 (13 February 2007) at paragraph 8.

275 UNHCR Guidelines on International Protection: “*Internal Flight or Relocation Alternative*, July 2003, in paragraph 7 II(a).

276 Claire Bennett, *Relocation, Relocation*, Asylum Aid, 2008, pp. 66-69.

277 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 5.2.

the applicant must be taken into account.²⁷⁸ The recast Qualification Directive requires that the applicant has access to protection against persecution or serious harm in the area of relocation and that she can “safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there”.²⁷⁹ However, as explained above, the UK is not bound by the recast Directive. The wording of the initial Qualification Directive has been transposed into the Immigration Rules. However, in practice the UKBA has adopted a simplistic approach to the IFA concept for asylum seeking women arguing that if their home country is large enough they can easily relocate and avoid persecution or serious harm without considering all the other aspects and implication of the actual relocation.²⁸⁰

The House of Lords stated that it is both the conditions in the country of origin as a whole and the place of habitual residence that form the starting point for an analysis of whether relocation is reasonable and none should be favoured.²⁸¹ Assessing the conditions of living in the relocation area in relation to the general situation of the country of origin is required by the EU Qualification Directive but fails to consider international standards of human rights and the personal circumstances of the applicant. Further, it fails to consider the effects of the living and humanitarian conditions on the applicant.

In the Asylum Instruction on *Internal Relocation*, case owners are instructed to consider the “general circumstances prevailing in that part of the country and the personal circumstances of the applicant”.²⁸²

The conditions in the area of relocation must be examined in light of the impact they will have on the applicant with her specific characteristics.²⁸³ There is a tendency in the UKBA and the Tribunal to request that asylum seeking women demonstrate their unique circumstances to find that internal relocation would be unduly harsh. Yet, the Court of Appeal noted that some conditions are unreasonable even if they are widespread in the place of relocation²⁸⁴ and the House of Lords noted that asking whether the applicant’s “circumstances will be worse than the circumstances of *anyone else* in that country” is incorrect.²⁸⁵

According to the Asylum Instruction on *Internal Relocation*, the UKBA must consider whether it would be unreasonable to expect the applicant to relocate provided there is no risk of harm in that area. The AI states more specifically that:

What must be shown to be lacking is the real possibility to survive economically, given the particular circumstances of the individual concerned (language, knowledge, education, skills, previous stay or employment there, local ties, sex, civil status, age and life experience, family responsibilities, health, available and realisable assets and so on).²⁸⁶

The AI on *Gender* contains a section on Internal Relocation and sets out the specific considerations to be taken into account in gender-related cases including that:

278 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Article 8.

279 Directive of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 2009/0164 (COD), article 8(1).

280 Claire Bennett, *Relocation, Relocation, Asylum Aid*, 2008.

281 *Secretary of State for the Home Department v. AH (Sudan) & Ors* [2007] UKHL 49 (14 November 2007), para. 12.

282 Asylum Instruction on *Internal Relocation*, February 2007, p. 2.

283 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 5.2.

284 *AA (Uganda) v. Secretary of State for the Home Department* [2008] EWCA Civ 579, para. 17.

285 *Secretary of State for the Home Department v. AH (Sudan) & Ors* [2007] UKHL 49 (14 November 2007), para. 27 and 43.

286 Asylum Instruction on *Internal Relocation*, February 2007, p. 2.

In certain countries, financial, logistical, social, cultural and other factors may mean that women face particular difficulties. This may be particularly the case for divorced women, unmarried women, widows or single/lone parents, especially in countries where women are expected to have male protection.²⁸⁷

Interestingly, the AI on *Internal Relocation* notes that “protection in that area must be effective and of a durable nature”. This effectively adds a significant criterion to determine whether relocation is reasonable, namely that the asylum seeker should be able to develop a life in the area of relocation and not simply find temporary shelter. It is the cumulative nature of the impact of relocation on women asylum seekers that must be taken into account.

The additional requirement of taking into account the personal circumstances of asylum seekers is to be welcomed for women seeking asylum as it may oblige the UKBA to consider how women may find it more difficult and consequently unreasonable to relocate elsewhere in their country of origin. However, it requires a subjective assessment of women’s capacity to cope and adapt to new situations and circumstances. The subjective criteria coupled with a lack of gender awareness by case owners can result in flawed decisions. In line with UNHCR Guidelines,²⁸⁸ the Court of Appeal has noted that surviving economically is a requirement of living a relatively normal life as an economic “operator” as opposed to a beneficiary of charity.²⁸⁹ This point is crucial as there is a tendency by the UKBA and the Tribunal to rely on minimal evidence of organisations that provide support. This further emphasises the need as expressed in the AI on *Internal Relocation* that relocation should be durable and not only a temporary solution for women to survive through charitable entities. The reliance on the availability of shelters by UKBA when finding that internal relocation is viable²⁹⁰ fails to recognise that women asylum seekers should be able to become financially independent before it can be reasonable to expect them to relocate.

Case owners fail to take into account the cultural aspects of relocation relevant to women.²⁹¹ Upon relocation, women are at risk of other forms of violence including prostitution, trafficking or other types of gender-based violence, a fact often ignored by the UKBA. What should be considered by the UKBA and the Tribunal in determining whether relocation would be unduly harsh for women asylum seekers is the cumulative effects of relocation itself in terms of social, cultural, economic, legal and psychological aspects.

One legal representative explained that the UKBA is now required to state where the applicant could relocate, and it is common to see refusal letters listing some towns in the country of origin where the applicant would allegedly be able to relocate, but with no reasoning to support this. Another legal representative said there is often a generic sentence used in refusal letters noting that the applicant is able to relocate internally. There is often a failure to appreciate the personal characteristics of the asylum seeker, including such factors as children, health or marital status. If asylum seekers are educated case owners often conclude that applicants will be able to find work. Also, case owners often state in refusal letters that applicants are perfectly capable of taking care of themselves as they managed to relocate abroad (in the UK), therefore they (and their children) would be able to relocate in another area of their own country. Another legal representative said the UKBA relied on illusory sources of support that have not been checked or supported by the country of origin information. Furthermore, they fail to consider how that person is supposed to physically access that

287 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 5.2.

288 UNHCR Guidelines on International Protection: “*Internal Flight or Relocation Alternative*, July 2003, state that: “conditions in the area must be such that a relatively normal life can be led in the context of the country concerned”.

289 *AH (Sudan) v. Secretary of State for the Home Department* [2007] EWCA Civ 297, para. 32. Although the Court of Appeal’s order was aside by the House of Lords, the analysis undertaken by the Court of Appeal remains relevant. Similarly, the Court of Appeal found that the conclusion of the AIT that the church would protect and provide support to the Appellant was perverse. *AA (Uganda) v. Secretary of State for the Home Department* [2008] EWCA Civ 579, paras. 12-13.

290 See for example *PO (Trafficked Women) Nigeria CG* [2009] UKAIT 00046 where the Tribunal found that the Appellant and her small child would be able to find suitable accommodation and would not be destitute if she accepted the help and assistance of Nigeria’s National Agency for the Protection of Trafficking in Persons. This finding has since been set aside by the Court of Appeal in *PO (Nigeria) v Secretary of State for the Home Department* [2011] EWCA Civ 132 (22 February 2011) although on the basis that the evidence regarding the availability of shelters had not been duly tested by the Tribunal.

291 Claire Bennett, *Relocation, Relocation, Asylum Aid*, 2008, pp. 66-69.

area. If the issue of gender is specifically mentioned in the OGN for that country, case owners might make reference to gender but otherwise generally no consideration is given to gender issues in the assessment of internal relocation. There appears to be a trend where case owners rely on the support from non-state actors when arguing that internal flight would not be unduly harsh. One legal representative spoke about an Albanian trafficking victim whom the immigration judge told she would get charitable assistance and that she would “encounter sympathetic, generous and kind persons in Albania”.²⁹²

An advocate explained that before the case of *HJ (Iran)*, case owners always relied on the concept of discretion in conjunction with an internal flight alternative.²⁹³ If case owners accept that the government in the country of origin is homophobic to the point of persecution then IFA is not generally an issue. If, on the other hand, LGBT persecution stems from non-state actors, such as in Pakistan for example, case owners often argue that applicants can relocate to a place where their family will not be able to find them without a sound consideration of how family networks function in that particular country despite recognition of this problem in gender-based violence cases in the UK. If extensive country of origin information is submitted at appeal showing the difficulties of single women (with children) immigration judges may accept it in some cases.

3.7 Country of Origin Information

The courts have long held that the assessment of an asylum claim should be made in the context of country of origin information (COI).²⁹⁴ COI is also essential when assessing the credibility of an asylum claim:

It is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing that claim into the context of the background information of the country of origin. In other words, the probative value of the evidence must be evaluated in light of what is known about the conditions in the claimant’s country of origin.²⁹⁵

Evidence related to gendered experiences of violence and the socio-cultural framework of the society in which asylum seeking women live in is not readily available in usual sources of COI²⁹⁶ and “women often constitute an invisible group in human rights and COI reports”.²⁹⁷

COI plays a critical role for example in helping to define a particular social group or to show that transgressing social norms may be the articulation of a political opinion.²⁹⁸ However, COI reports often evidence the human rights conditions in a specific country from a male perspective and there is often only a short section addressing women’s issues.²⁹⁹ A thematic review of the UKBA COI Service reports identified a number of gaps in the information on women and gender issues, including for example information necessary for the assessment of an internal flight alternative, health, internal/regional differences, and the risks on return and noted that in many reports the information on women and/or gender issues is not corroborated.³⁰⁰ The lack of accessible information on the status of women and the forms of persecution they may experience makes it more difficult for women seeking asylum to evidence their claim and may result in negative credibility

292 Application no. 49113/09, by L.R. against the United Kingdom, lodged on 9 September 2009, Statement of Facts.

293 *HJ (Iran) v Secretary of State for the Home Department* (Rev 1) [2010] UKSC 31 (07 July 2010).

294 *Manzeke v Secretary Of State for the Home Department* [1997] EWCA Civ 1888 (18th June, 1997).

295 *Horvath v. Secretary of State for the Home Department*, Appeal No: 17338, AIT/IAA, 28 September 1998, para. 21.

296 Collier, B., *Country of Origin Information and Women: Researching gender and persecution in the context of asylum and human rights claims*, Asylum Aid, October 2007.

297 Country of Origin Research and Information (CORI), *Gender and COI*.

298 B. Collier, *Country of Origin Information and Women: Researching gender and persecution in the context of asylum and human rights claims*, Asylum Aid, 2007, p. 9.

299 B. Collier, *Country of Origin Information and Women: Researching gender and persecution in the context of asylum and human rights claims*, Asylum Aid, 2007, p. 11. See also Nina Allen, *Analysis of the coverage of gender issues in country of origin information reports produced by COI Service for the Advisory Panel on Country Information*, August 2007.

300 Heaven Crawley, *Thematic review on the coverage of women in Country of Origin Information (COI) reports*, prepared for the Independent Advisory Group on Country Information (IAGCI), September 2011, pp. 136 and 142.

findings.³⁰¹ This problem has been highlighted by the UNHCR.³⁰²

Asylum Aid’s research report on the quality of decision-making in women’s claims for asylum found that “in most cases there was a significant failure to identify and consider COI that was relevant and appropriate, especially in relation to gender-related claims, and the choice of COI referred to in refusal letters was selective”.³⁰³ The research has shown a failure to identify relevant COI in women’s asylum claims, and where COI was available to case owners in the UKBA COIS report it was used selectively in order to justify a refusal ignoring available information that supported the applicant’s account. The research concluded that even when the information was available, case owners failed to use it accurately and appropriately.

The inspection into the use of COI in deciding asylum applications by the Independent Chief Inspector of the UKBA in 2011 found evidence that COI had been used selectively or otherwise inappropriately in decision making.³⁰⁴ It also found inconsistencies in the way case owners obtained information in the absence of a COIS report and how COI was referenced in reasons for refusal letters.³⁰⁵

The EU Asylum Procedures Directive states that “member states shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, member states shall ensure that applications are examined and decisions are taken individually, objectively and impartially”.³⁰⁶ The Directive also requires member states to ensure that “precise and up-to-date information is obtained from various sources [...] and that such information is made available to the personnel responsible for examining applications and taking decisions”.³⁰⁷ The Court of Appeal has established that “it is the task of the adjudicator not to select a particular evaluation without placing it side by side with others in order to make a qualitative assessment and arrive at a balanced overview of those materials”.³⁰⁸

The Asylum Instruction on *Gender Issues in the Asylum Claim* provides that:

An understanding of the country of origin information relating to the position of women is essential to the effective conduct of interviews and to making correct decisions.³⁰⁹

Case owners should, prior to the interview, have familiarised themselves with country of origin information on the role, status, and treatment of women in the country from which a woman has fled.³¹⁰

The decision-maker needs to assess objectively whether there are reasonable grounds for believing that the applicant would, if returned to the country from which they seek refuge, face persecution. It is important to consider fully relevant objective evidence including any medical evidence and the objective country of origin information. The absence of objective information to corroborate a claimant’s account may be an important factor, but should not necessarily be taken to mean that human rights abuses do not occur. For instance, systematic abuse of a certain group would usually be documented, but isolated acts of ill treatment perpetrated by one person on another would not.

301 B. Collier, *Country of Origin Information and Women: Researching gender and persecution in the context of asylum and human rights claims*, Asylum Aid, 2007, p. 11.

302 UNHCR *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, para. 37.

303 Asylum Aid, *Unsustainable: The quality of initial decision-making in women’s asylum claims*, January 2011, p. 59.

304 Independent Chief Inspector of the UK Border Agency, *The use of country of origin information in deciding asylum applications: a thematic inspection*, October 2010-May 2011, para. 4.

305 *Ibid.*, para. 3 and 6.

306 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Article 8(2)(a).

307 Article 8(2)(b).

308 *Pajaziti v Secretary of State for the Home Department* [2005] EWCA Civ 518 (24 February 2005), para. 22.

309 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 1.3.

310 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 7.1.

Where relevant information cannot be obtained from Country of Origin Information Service country reports or COIS compilations, decision-makers should consult a senior caseworker and send a case specific research request to the Country of Origin Information Service.³¹¹

In his inspection into the use of COI by case owners, the Independent Chief Inspector of the UKBA found that the UKBA had issued instructions to highlight that the absence of COI did not necessarily mean that an event had not occurred. However, the inspection concluded that as the UKBA “did not collect information based on the particular nature of asylum claims, there was a risk that where no information was included in a [COIS] country report, case owners might make an assumption that an applicant’s evidence was not credible”.³¹² The inspection noted that this was a particular problem for some of the most vulnerable applicants such as those fearing FGM or claiming asylum on the grounds of gender or sexual orientation.³¹³ Legal practitioners, interviewed for this research, also said that if there was no COI on a particular issue case owners would conclude that the background evidence does not support the claim as opposed to stating that there is no information on this particular issue. Therefore lack of objective evidence or case law makes it difficult for cases to succeed at initial stage. In general, it is more difficult to show that lesbians are at risk because there is less COI about sexual orientation but the Operation Guidance Note on Jamaica for example now recognises that lesbians in Jamaica are at risk of persecution.³¹⁴

There are specific challenges when researching COI relevant to gender-related claims because amongst other things the forms of persecution women suffer from are often hidden and take place in private. There is simply less public information about gender-related persecution and it is therefore more difficult to access. This is why even statistics published in the public domain may not accurately reflect the real extent of a particular problem, such as domestic violence. There are difficulties in finding relevant information for gender-related cases which require more time and effort for legal representatives and which is not reflected in the provision of legal aid.

3.8 Operational Guidance Notes

The UKBA publishes Operational Guidance Notes (OGNs) on most refugee-producing countries. The UKBA describes the OGN as summarising “the general, political and human rights situation in a particular country, and describe common types of asylum claim. They aim to provide clear guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave”.³¹⁵ The OGNs are essentially UKBA’s policy documents that should provide case owners with general guidance on a limited number of asylum claims. Several of the OGNs now contain sections relating to women/gender-related claims or LGBT claims.

- The OGN on Afghanistan recognises that women in Afghanistan are members of a PSG and a grant of asylum may be appropriate if they have a well-founded fear of persecution and internal relocation is not available (March 2011).
- The OGN on Albania considers that the state is able to provide protection to victims of trafficking, that a grant of asylum is not appropriate to women who claim asylum on the basis of domestic violence (July 2010).³¹⁶
- The OGN on India recognises that some women (more likely to be from the rural area and illiterate) may find it difficult to seek state protection and may therefore be entitled to the grant of humanitarian protection (April 2008).

311 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, p. 19.

312 Independent Chief Inspector of the UK Border Agency, *The use of country of origin information in deciding asylum applications: a thematic inspection*, October 2010-May 2011, para. 3.

313 *Ibid.*, para. 6.13.

314 UKBA, Operational Guidance Note: Jamaica, May 2011.

315 See www.ukba.homeoffice.gov.uk/policyandlaw/guidance/csap/.

316 At the time of writing the LGBT section was being updated.

- The OGN on Iran recognises that adulterers may be at risk of persecution and therefore that men may be granted humanitarian protection and women may be granted asylum as they are members of a PSG. It also recognises that gay rights activists who come to the attention of the authorities are in danger of persecution and should be granted asylum. If there is a real risk that LGBT persons come to the attention of the authorities there is a risk of persecution and they should be granted asylum as they are members of a PSG. Those actively involved in women's rights organisations are at risk of persecution and should be granted asylum because of their imputed political opinion. Women who have a well-founded fear of gender-related persecution may be granted asylum as they are members of a PSG and there is no state protection (November 2011).
- The OGN on Iraq states that applicants who can establish that they are at risk of honour killing or honour crimes in either central or southern Iraq or the Kurdistan Region are unlikely to receive effective protection from the state and may need international protection. Men may therefore be granted humanitarian protection and women asylum as they have been recognised as members of a PSG. Internal relocation is not generally available for lone women (November 2011).
- The OGN on Jamaica recognises that LGBT claimants or those perceived to be LGBT may be granted asylum; women who make claims due to the fear of domestic violence may be granted asylum or humanitarian protection in certain circumstances provided there is no internal relocation available (May 2011).
- The OGN on Kenya does not consider that FGM claims warrant the grant of asylum as there is state protection although if the claim relates to the Mungiki sect, the individual circumstances of the applicant should be considered (April 2011).
- The OGN on Nigeria states that if claimants fear FGM, internal relocation is generally an option and that victims of trafficking can access state protection (April 2009).
- The OGN on Pakistan notes that authorities do not provide LGBT claimants with effective protection and that there are likely to be difficulties in finding safety through internal relocation. If LGBT claimants can show a real risk of persecution they should be granted asylum. The OGN recognises that women who have a well-founded fear of domestic violence should be entitled to asylum if internal relocation is not an option as they are members of a PSG; if women who have been raped and fear ill-treatment from their families are unable to relocate and access state protection they should be entitled to asylum; depending on the circumstances, women who fear honour crimes may be entitled to asylum if there is no state protection and internal relocation is unduly harsh; and a grant of asylum or humanitarian protection will not generally be warranted for women accused of adultery although this will depend on the circumstances of each case (August 2011).
- The OGN on Somalia concludes that given the generalised discrimination against women and the inability of the state to provide protection in many areas of south central Somalia, some women may be able to show a need for international protection as they are members of a PSG. Despite finding that "taking into account the general position of women in Somalia, who may not be able to survive economically or not able to depend on clan or family for economic support, internal relocation may be unduly harsh for some women", the OGN advises case owners to contact the COIS unit. The OGN also states that a grant of asylum for women at risk of FGM will depend on whether they have the support of their husbands/families and whether internal relocation is viable (October 2011).
- The OGN on South Africa states that there is generally state protection and internal relocation available for victims of domestic violence (June 2009).

- The OGN on Syria recognises that women who have gender-related claims may be entitled to humanitarian protection in the absence of state protection and without the possibility of internal relocation. The current situation of civil unrest further reduces the likelihood of state authorities being willing or able to provide effective protection (November 2011).
- The OGN on Uganda recognises that LGBT persons continue to be subject to societal harassment, discrimination, intimidation and threats to their wellbeing and that in individual cases this may amount to persecution. In general the state does not provide effective protection. If LGBT persons are at real risk of persecution due to their sexual orientation they should be granted asylum as they are members of a PSG.
- The OGN on Vietnam notes that the forced recruitment of women for the purpose of forced prostitution or sexual exploitation is a form of gender related violence and may amount to persecution. Trafficked women face serious repercussions on return, including reprisals from trafficking rings or discrimination from their community and families and there might be a risk of re-trafficking. Support and protection from the government and non-governmental sources are generally available and internal relocation is generally a viable option. If there is no sufficiency of protection and internal relocation is not viable, the grant of humanitarian protection may be appropriate (November 2011).
- The OGN on Zimbabwe does not recognise that LGBT claimants are generally at risk of persecution and should be able to internally relocate but if it can be shown that they have a well-founded fear of persecution and they cannot relocate they should be granted asylum as members of a PSG (April 2011).

The COI content of the OGNs and the resulting conclusions have been the subject of extensive critique in various commentaries.³¹⁷ The Upper Tribunal has noted that OGNs should not be regarded as country information because they are in essence policy statements.³¹⁸ In his inspection on the use of COI in deciding asylum applications, the Independent Chief Inspector of the UKBA found that the purpose of OGNs, namely to provide policy advice, was not understood by case owners and that the information contained in them sometimes contradicted information found in the COIS reports and at times contained different sources of COI.³¹⁹ The inspection also highlighted concerns that the inclusion of COI in the OGNs "means case owners will use information selectively in individual decisions based on an overall policy position and will also use the OGN as the primary source of country information rather than referring to the COIS report or other available sources. [...] Any shortcomings in OGNs would therefore translate into shortcomings in decision making".³²⁰

Despite falling within a category considered by the OGNs or the case law, applicants must still show that their claim is credible and each case is considered on its own merits.

317 Commentaries on the UKBA's Operational Guidance Notes, <http://stillhumanstillhere.wordpress.com/resources/>.

318 *MD (Women) Ivory Coast CG* [2010] UKUT 215 (IAC), para. 264-265.

319 Independent Chief Inspector of the UK Border Agency, *The use of country of origin information in deciding asylum applications: a thematic inspection*, October 2010-May 2011, para. 5.

320 *Ibid.*, para. 8.2.

Conclusion

In the UK, women have constituted one third of all main asylum applicants since 2003. In the last few years, most women asylum seekers came from Zimbabwe, Pakistan, China, Nigeria, Iran, Sri Lanka, Somalia and Eritrea.

Whereas the rate of refusal by the UKBA is the same between men and women, women were more likely to be granted refugee status by the UKBA in 2009 than men although the differential rates decreased in 2010. Further comparative research would need to be undertaken to understand the reasons for differential recognition rates. This could partly be explained by the fact that men and women seeking asylum in the UK come from different countries and may have different types of asylum claims. Gender-disaggregated statistics at asylum appeals were only made public in November 2011. Although this is a welcome development, the provision of this essential information despite clear EU law obligations to this effect was delayed. The failure to analyse this relevant data to ensure the refugee determination process and the asylum procedure is applied in a non-discriminatory manner for one third of all asylum applicants suggests that the asylum system in the UK is not fully gender-sensitive.

Since the Asylum Instruction on *Gender Issues in the Asylum Claim* was adopted by the UKBA in 2004 and twice revised in 2006 and 2010, numerous research projects have shown that there is a problem of implementation of the guidance. At asylum appeals the Joint Presidential Guidance Note on *Child, vulnerable adults and sensitive appellant* does not adequately address the deletion of the Immigration Appellate Authority's Asylum Gender Guidelines from the Tribunal's policies.

Jurisprudence in the UK generally recognises various forms of gender-specific harm as amounting to persecution and this is reflected in the AI on *Gender*. Nevertheless, the application of case law in practice by UKBA case owners has been shown to be inconsistent and not always in line with established understandings of gender-specific persecution.

Despite an extensive number of recognised gender-based particular social groups, the failure by the UKBA and the Tribunal to follow the House of Lords' decision in *Fornah* has resulted in a discriminatory approach to the definition of PSG where the group is defined by gender. More specifically, by requiring that the PSG be defined by both an immutable characteristic *and* that it is set apart from the rest of society and that where the group is gender-based, discrimination in the wider sense of the word must be shown, the UKBA and the Tribunal are failing to abide by the decision of the highest judicial authority in the country and are adopting a more stringent test where the PSG is gender-based.

Credibility assessments by the UKBA remain one of the most important issues in quality of decision making. In gender-related claims, the failure to understand how trauma and vulnerability may affect the manner in which asylum seekers put their claim forward and how it affects memory result in negative credibility findings. Reliance on late disclosure of gender-specific persecution to reject the credibility of an asylum claim is also against established policy and case law.

Finally, interviews with women asylum seekers and legal representatives highlighted the failure to consider how gender may affect the viability of an internal flight alternative and the subsequent rejection of an asylum claim. The research also highlights the difficulties in accessing country of origin information relevant to gender-related claims and the selective use and reliance on this information by UKBA case owners.

Kim-Ly's Story

Kim-Ly is a 29 year old refugee from Vietnam. A victim of trafficking for sexual exploitation, Kim-Ly claimed asylum in the UK in 2010. She described her asylum screening interview as terrifying. Frightened that she might be detained, Kim-Ly brought her two and three year old children with her to the asylum screening unit in Croydon, including her sick daughter. She explained to officials that she had been brought to the UK to work as a prostitute, but she was especially embarrassed to talk about this in front of other Vietnamese people in the queue. When her interpreter, apparently also very stressed, shouted at her to speak more loudly, Kim-Ly was so scared she burst into tears.

Kim-Ly was interviewed by a female UKBA officer at her substantive interview, but the interpreter was a man in spite of her specific request for a female interpreter. The interviewing officer asked Kim-Ly if she wanted to proceed with the male interpreter. Kim-Ly agreed only because she had already turned up, and had had to prepare her thoughts. She had also arranged for someone to take care of her children - if the interview had been postponed, she would have to do go through all the stress again.

The UKBA refused Kim-Ly's asylum claim because, although her story was believed, it was not considered that she would be at risk of persecution on return to Vietnam. The UKBA refusal letter also stated that the Vietnamese authorities would provide her with assistance and support on her return. Kim-Ly, who was still represented by her solicitor, appealed the decision and submitted further evidence, including a country report, a report from the Helen Bamber Foundation, and an expert report from the Poppy Project. Kim-Ly had requested and received an all female hearing at the Tribunal.

Kim-Ly described how the Home Office Presenting Officer submitted that she did not believe her story, and questioned the accuracy of the reports submitted. Kim-Ly was very scared of the Officer, who pointed at her during aggressive cross-examination. She explained that "at that moment I just wanted to disappear from that trial". The Officer insisted that, because Kim-Ly had not attended a sexual health clinic after escaping from her traffickers, it showed that she did not care about her own body. This made Kim-Ly burst into tears at the hearing. Although the interpreter could only summarise the Officer's submissions, Kim-Ly understood that she was questioning her credibility. She was very upset that the Officer should point at her, which placed Kim-Ly under great pressure and left her feeling that the Officer had no respect for her at all. She suffered from insomnia for the week after the hearing.

Kim-Ly's asylum appeal was allowed by the immigration judge on asylum and human rights grounds. The immigration judge found that she and her children would be at risk from her traffickers on return to Vietnam.

Kim-Ly noted that it was difficult for her to meet her parenting responsibilities and claim asylum at the same time. She was required to report every two weeks, and noted the difficulty created by needing to bring her children with her every time.

Asylum Procedure

4

4.1 Access to Information

Asylum seekers who claim asylum as main applicants are informed about the asylum procedure through a leaflet entitled “Important information about the UK asylum process” (point of claim leaflet) received at the Asylum Screening Unit (ASU) which contains information about international protection claims; the asylum screening interview; the asylum process and what to expect; asylum support; legal advice; rights and responsibilities; and travel abroad and assisted voluntary return. In the current leaflet asylum seekers are informed that they may request a male or female case owner and will be asked their preference during the screening interview. However, advocates interviewed for this research, noted that in reality there were very few asylum seekers who had this leaflet with them when they arrived in initial accommodation. In any case, it raises issues about the usefulness of written literature and the fact that language and illiteracy must be taken into account. Furthermore, given the complexities of the asylum system, a leaflet cannot replace an advocate providing the necessary information and explanations. It is also worth noting that people who do not claim asylum at the ASU, such as ports (some airports, and via enforcement units), will never have (or have not in the past) had access to the leaflet.

At the time of writing³²¹ the UKBA was revising the leaflet to include information about domestic violence and trafficking as well as general gender issues following the revised September 2010 Asylum Instruction on *Gender Issues in the Asylum Claim*. The draft point of claim leaflet does not reflect that gender based violence may be relevant to their claim despite assurance that the revision would include topics that are gender specific and topics which are gender neutral but which affect women more prevalently.³²²

Further information is given at different points in the asylum procedure. The information given depends on the individual circumstances. For example, where the applicant requires accommodation there are briefings by wraparound service providers explaining the process. The UKBA have also stated that gender issues are covered in the briefings given in initial accommodation.³²³ However, different service providers operate in the different regions and the minimum requirements and guidelines from the UKBA in the contract with accommodation providers do not mention anything about gender issues. For those who go into private accommodation, there is effectively no explanation of the asylum system. Thus, overall the amount and type of information that asylum seekers receive will very much depend on where they are dispersed to and who is managing the accommodation. Advocates noted that they came across asylum seekers who did not know that the UKBA was providing accommodation and had become homeless. Furthermore, recent cuts to the providers of wraparound services in initial accommodation mean that the availability of relevant information for asylum seekers will decrease.³²⁴

If women asylum seekers are dependent on someone else's claim, they might not be given the point of claim leaflet as the leaflet is given to main applicants when they claim asylum.³²⁵ The UKBA does not currently explicitly inform women that gender-based violence may be relevant in a claim for asylum. Asylum seekers may be informed of this by their legal representative, if they find one before claiming asylum and the legal representative recognises any gender-specific issues. The UKBA informs women who are dependants that they can claim

321 January 2012.

322 UKBA Draft Point of Claim Leaflet, 7 December 2011.

323 Email from Sandra Wray, NAM+ Operation Co-ordination, UKBA to Christel Querton, Asylum Aid, 8 June 2011.

324 See below chapter 5 on Reception Conditions.

325 Email from Sandra Wray, NAM+ Operation Co-ordination, UKBA to Christel Querton, Asylum Aid, 8 June 2011.

asylum in their own right in private at the screening unit. This is a requirement according to the AI on *Gender*.³²⁶ The point of claim leaflet informs applicants that their asylum claim will remain confidential meaning that the UKBA will not inform their country of origin that they have claimed asylum. The UKBA Protocol governing the conduct of substantive interviews and the roles of interviewing officers, representatives and their interpreters states that the interviewing officer will “inform the applicant of our confidentiality obligation at the start of the interview”.

4.2 Interviews

Screening Interview

Previously asylum seekers were allowed to claim asylum at the Asylum Screening Unit (ASU) in Croydon and in Liverpool without making appointments. In October 2009, the ASU in Liverpool became the Further Submission Unit (FSU) for asylum seekers who wished to make further submissions (fresh claims) and had made their initial claim for asylum before March 2007. Whereas previously fresh claims could be submitted by post, asylum seekers who have initially claimed asylum before March 2007 wishing to make fresh claims must now make an appointment at the FSU in Liverpool to submit their further submissions. Other asylum seekers would have to liaise with their case owners to make representations locally. The ASU in Croydon is now the only place in the whole of the UK where asylum seekers can claim asylum.³²⁷ Many problems have been reported about the practical difficulties faced by women asylum seekers, including those with children, who have had to travel long distance, without financial support, to arrive early enough at the ASU to be screened on the same day.³²⁸

In April 2011, the UKBA piloted the collection of bio data over the phone before attendance at the ASU to reduce waiting times. Since July 2011, anyone wishing to claim asylum must first arrange an appointment by phone. Legal representatives have complained to the UKBA that it was almost impossible to get through to make an appointment. There are strong concerns that this will impact on asylum seekers’ ability to claim asylum “as soon as reasonably practicable” and also means that access to asylum support is delayed.³²⁹ The UKBA have advised that when asylum seekers call “they should ideally be somewhere quiet and be free to speak for up to 40 minutes. [The UKBA] will ask them for their name and contact phone number, and whether they will need an interpreter to answer some questions. [The UKBA] will then phone them back, ask some simple questions about them and their family and give them an appointment. They will not be asked why they are claiming asylum”.³³⁰ The telephone appointment system however may be impossible to access for trafficked women, women suffering from domestic violence or other forms of gender-based violence. Legal representatives have pointed out the difficulties in convincing the ASU that their clients would become destitute in order to arrange an early appointment so that they can apply for asylum support without delay. Asylum seekers without legal representation and without support may find it even more difficult to ensure swift access to essential support.

When Lalelani, a 35 year old asylum seeker from Zimbabwe, claimed asylum in 2008, she met with an extremely aggressive screening officer who questioned her motives for being there and called her a liar. Lalelani described visiting the Asylum Support Unit as the hardest part of the whole process, as she had never before been treated so badly.

The UKBA have noted that there would still be capacity to deal with people on the day who are “destitute and in genuine need”. However, it is unclear who will be screening this and what the definition of “genuine

326 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 7.2.

327 There are limited circumstances where asylum seekers can be screened in Scotland. The process however is not defined by policy and unless persons wishing to claim asylum are visibly pregnant with medical evidence, have children or are victims of torture or human trafficking, have disclosed this information and benefit from an advocate supporting them, they are unlikely to be able to do so.

328 See for example ‘Lodging a Claim for Asylum under the New Procedures: A First-Hand Account’ in *Women’s Asylum News*, Issue 95, September 2010, pp. 1-4.

329 The Guardian, *Asylum seekers ‘prevented from lodging cases’*, 29 September 2011.

330 Email from the Asylum Screening Unit to legal representatives, 13 July 2011.

need” is. Advocates noted that asylum seekers who went to the ASU without an appointment were rarely allowed in. In this context, advocates and legal representatives noted that it was very rare to see disclosure of rape, trafficking or even self-identification by vulnerable asylum seekers at the ASU.

Rachel from DRC and Estelle from the Congo were pregnant when they claimed asylum in 2010 and 2009 respectively. They were both given priority to enter the Asylum Screening Unit but once inside were required to wait like everyone else. Rachel had arrived from DRC two days earlier and was tired and uncomfortable as her back was painful. Estelle had to wait the entire day at the ASU before she was taken to emergency accommodation.

Asylum seeking women, interviewed for this research, said they were held back from talking to the interviewing officers at the ASU because of the lack of privacy. They explained how they had to lean over to talk to the interviewing officers through a screen in a booth that was situated between other booths and where they were able to hear what the person next to them was saying.³³¹

“You don’t know what to say because when you see that room it kind of holds you back”.

Nyasha, 36 year-old HIV positive refugee from Zimbabwe commenting on the lack of privacy at the ASU

A legal representative, interviewed for this research, noted the lack of privacy at the ASU as a reason why asylum seekers are unable to disclose their specific needs.

Nyasha was particularly affected by the lack of privacy at the Asylum Screening Unit in 2010. She wasn’t comfortable speaking in public about her HIV-positive status, and she was deeply distressed at the prospect of doing so in the presence of so many people. The conditions at ASU were so bad that Nyasha asked for paper on which to write down her medical conditions, rather than discuss it in front of strangers.

Identification of Vulnerable Applicants

There are no specific provisions in legislation or policy that recognise that asylum seekers with gender-related claims are part of a “vulnerable group”. However, the AI on Gender recognises that gender-related claims for asylum may warrant specific consideration.

The screening review undertaken by the UKBA during 2011 took gender issues into account. The ASU appointed a women’s champion in December 2011 and a trafficking champion in the summer of 2011, managers who are the focal points for these issues. However, it will take time before the actual impact of these operational efforts can be assessed. The UKBA now provides women interviewing officers at the ASU for women asylum seekers although this cannot always be guaranteed as this is subject to staff availability. Yet, these operational changes need to be considered in light of the difficulties of accessing the ASU, as explained above.

When Esther, an asylum seeker from Kenya who had suffered from domestic violence, attended the Asylum Screening Unit in 2009, she was forced to wait from 8am until 2pm before being called into a private room. The woman interviewing her implied that Esther had misled the consulate in order to come to the UK as she had initially entered the UK as the dependant of her husband, and made Esther feel shameful as if she had committed a serious crime. Esther felt intimidated and likened the whole process to a criminal interrogation.

The screening interview may be an opportunity for victims of trafficking to be identified as all staff in the ASU

331 See also the Independent Chief Inspector, *Liverpool Asylum Screening Unit, Unannounced Inspection* (London: OCIUKBA, 2009); Independent Chief Inspector of the UK Border Agency, *Croydon Public Enquiry Office: Unannounced Inspection*, 4 February 2010, para. 5.18. *Women’s Asylum News*, no. 95, September 2010, pp. 1-4.

should complete the e-learning training package “Human Trafficking – the National Referral Mechanism (NRM) Process”.³³² The Asylum Process Guidance on Trafficking notes that:

There are many barriers for victims to come forward such as fear of reprisals against them or their families, fear of removal and/or being treated as an immigration offender, or the situation of dependency in which they find themselves. As a result when deciding whether someone may be a potential victim of trafficking, staff should not rely on the applicant to explicitly identify themselves as a victim of trafficking. [...]

Where appropriate, Screening Officers should make use of the individual Screening Rooms available.³³³

An advocate providing services in initial accommodation noted that most of the women that were dispersed to initial accommodation did not know what the NRM was even when they had been referred into it at screening and even at interview stage. It appears that victims of trafficking are not properly explained the implications, consequences and the purpose of being referred to the NRM. Neither is it certain that they are always asked consent before being referred into the NRM.

The decision to route asylum applicants into the DFT is taken by the Fast Track Intake Unit (FIU) immediately after screening at the ASU. All asylum cases are referred to the FIU. FIU Officers are responsible for assessing the suitability of cases referred for DFT, operational factors relevant to entry into the DFT and for selecting cases for entry into the process.³³⁴ A referral into the DFT is made on the basis that the asylum applicant has a claim that can be the subject of a “quick decision.” The Suitability Exclusion Criteria include:

Women who are 24 or more weeks pregnant; family cases (families with at least one minor child, where that child is solely or principally dependent on the main applicant); those who are unaccompanied asylum-seeking children, whose claimed date of birth is accepted by the UK Border Agency (see Age Dispute Cases section, below); those with a medical condition requiring 24 hour nursing or medical intervention; those presenting with physical and/or learning disabilities requiring 24 hour nursing care; those with a disability, except the most easily manageable; those presenting with acute psychosis, e.g. schizophrenia, who require hospitalisation; those with an infectious/contagious disease which cannot be effectively and appropriately managed within a detained environment; those for whom there has been a reasonable grounds decision taken [and maintained] by a competent authority stating that the applicant is a potential victim of trafficking or where there has been a conclusive decision taken by a competent authority stating that the applicant is a victim of trafficking; and those in respect of whom there is independent evidence of torture.³³⁵

However, the decision to actually route cases into the DFT is made on the basis of very limited information on the substance of cases and without clear guidance of what constitutes cases where a quick decision can be made.³³⁶ It is also almost practically impossible for victims of trafficking to have been the subject of a reasoned decision maintained by the competent authority because reasonable grounds decisions take time. Similarly, victims of torture are unlikely already to have independent evidence of torture at the asylum screening stage. The exclusion criteria are not realistic and as such fail to provide the necessary safeguards to ensure that victims of trafficking and asylum seekers who have been tortured are not detained.

332 Asylum Process Guidance on *Victims of Trafficking: Guidance for Frontline Staff*, p.18.

333 Asylum Process Guidance on *Victims of Trafficking: Guidance for Frontline Staff*, p.18.

334 UKBA, DFT & DNSA – Intake Selection (AIU Instruction), April 2009, para. 1.1.

335 UKBA, DFT & DNSA – Intake Selection (AIU Instruction), April 2009, para. 2.3.

336 UKBA, DFT & DNSA – Intake Selection (AIU Instruction), April 2009.

Substantive Interview

Different family members will have separate interviews if they claim asylum separately but dependants are usually not personally interviewed unless they claim asylum in their own right.

Child care during substantive interviews is available in all the regions except London.³³⁷ The AI on *Gender* states that:

For those without satisfactory childcare arrangements of their own, each UK Border Agency regional office has its own arrangements in place to ensure that children are not present when parents are interviewed about their reasons for seeking asylum. This can include rescheduling the asylum interview date to accommodate childcare arrangements, or the provision of childcare at or near UK Border Agency premises.³³⁸

Advocates noted however that invitation letters to substantive interviews still told applicants not to bring their children to their interviews.

The AI on *Gender* and the AI on *Interviewing* note that the UKBA should as far as possible accommodate the request for a gender-specific interviewing officer and/or interpreter for the substantive interview. A recent research report showed that within the sample requests for women interviewing officers were complied with in all cases. However, the amount of requests was small because some of the women asylum seekers explained that when asked they did not understand the full implications of the request and did not want to appear “difficult” and with hindsight they would have preferred being interviewed by a woman.³³⁹

Heather, a 25 year-old asylum seeker from Kenya explained that she was unable to disclose the torture, ill-treatment and sexual violence she suffered in the past or the future risk of FGM because her interview in 2007 was conducted by a man.

The AI on *Gender* notes as a key point that “an understanding of the country of origin information relating to the position of women is essential to the effective conduct of interviews and to making correct decisions”. Legal representatives, interviewed for this research, felt that in practice interviewing officers were not always familiar with the country history, politics or gender issues relevant to a particular asylum seeker although some legal representatives had witnessed examples of good practice. One legal representative explained that the questions asked during interviews show some knowledge about the country in question but are often aimed at verifying the applicants’ nationality and whether they are from a specific ethnicity/tribe/clan or religion.

Heather explained how during her substantive interview, the interviewing officer went to print out some information about the Mungiki sect and then checked her knowledge of the cult against it. She described her substantive interview at Lunar House as “very intimidating”.

337 At the time of writing childcare during interviews had been discontinued in Yorkshire and Humber because the UKBA is ‘tendering’ again but have made no arrangements to tie the issue up. Advocates are concerned that it may be discontinued due to the falls in numbers.

338 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 7.1.

339 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, pp. 35-36.

The AI on *Gender* also states that:

A reassuring environment will help to establish trust between the interviewer and the claimant, and should help the full disclosure of sensitive and personal information.³⁴⁰

The Asylum Process Guidance on *the Asylum Interview* states that:

The Interviewing officer should ensure that he/she is aware of gender related issues because this may affect how the applicant responds during interview.³⁴¹

One legal representative, interviewed for this research, said it was important to alert the interviewing officer of any issues relating to gender-based violence prior to the interview while others stated that the guidance on interviewing was often not followed. One legal representative said her Kenyan client recently had a sympathetic case owner who offered appropriate breaks and re-assurance.

The Asylum Instruction on *Interviewing* includes a short specific section on victims of torture stating that:

Victims of torture may face particular difficulties in recounting their experiences, both because of the nature of the experiences to be recounted and because of their previous experience of officials.³⁴²

The AI on *Gender* notes that “interviewers should be ready to ask searching questions while being sensitive to the difficulties an applicant may have in disclosing all the relevant information”.³⁴³ Interviews are often stressful for applicants and legal representatives, interviewed for this research, have been told by their clients that the interviewing officers were sometimes confrontational, bored or asking inappropriate questions. Asylum seekers may request the interview be tape-recorded but if no equipment is available on the day of the interview, interviewing officers ask whether applicants wish to proceed anyway. Some legal representatives said that some applicants felt they had to respond to questions even if they did not know the answer. This sometimes created credibility issues at a later stage in the procedure. A legal representative explained that applicants often got confused during the interview about which events were under question if the questions did not follow a chronological order.

As the opportunity for a second interview is rarely offered, the substantive interview is the only opportunity for asylum seekers to put forward their claim directly to the UKBA. Whilst UKBA policy documents recognise the impact of trauma on disclosure and the need for an environment of trust, the majority of women who participated in this research said that they found the substantive interview the most traumatic element of the asylum procedure. This would suggest that the manner in which interviews are undertaken fails to enable asylum applicants to present their claim and disclose all the relevant facts. This has a knock-on effect on the assessment of credibility, which was found to be at the core of the decision to refuse women’s asylum claims.³⁴⁴

340 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 7.1.

341 Asylum Process Guidance on *The Asylum Interview*, last reviewed July 2011, para. 2.6.

342 Asylum Instruction on *Interviewing*, December 2008, para. 15.2.

343 Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 1.3.

344 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011, p. 51.

4.3 Reporting

“How can I disappear because I cannot go home?”

Nyasha, 36 year-old refugee from Zimbabwe commenting on the need to report weekly

If granted temporary admission, asylum seekers may be asked to report to UKBA offices. The majority of asylum seekers find reporting a disruption to their life. Most individuals report once a month, but reporting conditions can vary from fortnightly to twice a week if there are any concerns regarding compliance. An advocate, interviewed for this research, said that for women, it is especially disruptive if they have children as it is difficult to manage reporting requirements with the school routine. Some women may find it difficult to report frequently as this may cause distress and lead to anxiety. Parents find it difficult to report with their children, they may have to queue in bad weather conditions and some asylum seekers fear being identified when they report.

“It is another horrible place that I hate in my life. Even to see the building would make me faint: seeing the security and people wearing uniforms, waiting for you, searching your bag as if you are a criminal, as if you have committed any crime”.

Emiola, 32 year-old victim of trafficking and asylum seeker from Nigeria

An asylum seeker from Zimbabwe, interviewed for this research, who was required to report weekly witnessed many incidents when she went to report where she described the staff being aggressive and asking those who were reporting why there were still in the UK. It appeared from the interviews undertaken for this research that the process of reporting is being used to ask additional questions or get more information from asylum seekers.

4.4 Legal Aid

Many of the women asylum seekers and refugees interviewed for this research explained the difficulties they had faced in finding legal representation. They explained how some solicitors only made appointments with them after they had attended their substantive asylum interview and thus did not front-load cases, including preparing statements, which might have assisted case owners in conducting interviews and making decisions. The women asylum seekers were often told their solicitor could no longer represent them after the UKBA refused their claim. For example, Rachel and Emiola’s solicitors told them they could no longer represent them because there was not sufficient evidence and Grace’s solicitor stopped representing her because Grace had not insisted on getting her substantive asylum interview tape recorded. Swana’s second solicitor lodged further submissions for her but when these were refused by the UKBA, the solicitor chose not to challenge this in the High Court despite the strength and implication of the new evidence. Many of the women asylum seekers interviewed said they were not always informed that they could appeal the decision by their solicitor to refuse them legal aid. This resulted in many women asylum seekers going through the asylum process without adequate representation and thus could only later make further submissions on the basis of evidence that could have been submitted earlier. Swana had to submit two applications for permission to appeal to the First-Tier and Upper-Tier Tribunals on her own. As Swana’s fresh claim for asylum is based on information that she only disclosed much later in the procedure when she finally found a new solicitor who agreed to take on her case, having gone through part of the asylum procedure without legal representation clearly affected her opportunity to be granted protection in the UK.

The proposed legal cuts in the Legal Aid, Sentencing and Punishment of Offenders Bill will make the availability of good quality legal representation even sparser, in particular because they are not gender-neutral.³⁴⁵ For example, in 2005/2006, 62.2% of applicants who applied for legal aid in family matters were

345 For more information on the impact of the Bill on women, see ‘Accessing justice in the age of austerity: what legal aid reform

women³⁴⁶ but women generally remain economically disadvantaged, and therefore less likely to be able to pay a solicitor for legal advice.

The Legal Aid, Sentencing and Punishment of Offenders Bill proposes to retain legal aid funding for asylum cases but the proposal to remove immigration work from the scope of legal aid will undermine the availability of vital legal representation for asylum seekers. The present legal aid scheme is based on the assumption that complex asylum work is cross-subsidised by profits from less complex immigration work. Taken together with the 10% cut in remuneration proposed for all legal aid work, this will call into question the viability of many law firms and NGOs that do both immigration and asylum work.

The proposed cuts will have a particular affect on women in the UK with complex immigration and protection needs. As demonstrated recently, women who are victims of human trafficking, domestic violence or honour-based crimes, are systematically disbelieved by the UKBA when claiming asylum.³⁴⁷ This makes the availability of high quality legal representation for women all the more critical.

Conclusion

The research showed that the information received by asylum seekers does not comprehensively include gender-related concerns and that the amount of information received and at which stage of the process it was received depends very much on whether asylum seekers claim asylum support and accommodation and to which areas they are dispersed. The lack of consistency in the provision of information relevant to gender-related claims for asylum is something that the UKBA must address to enable asylum seekers to discharge their burden of providing all elements of their claim as soon as possible.

The procedure for claiming asylum raises serious concerns about whether asylum seekers are given a reasonable opportunity to claim asylum. The problems are both logistical and geographical. The limited privacy at the ASU in Croydon is one of the main issues identified by women asylum seekers in their ability to put their claim forward in a fair manner. This has a knock on effect on UKBA officers’ capacity to make appropriate decisions on routing into the detained fast-track due to the limited amount of information provided. This may also create credibility issues at a later stage in the procedure.

Legal representatives and advocates noted that despite the availability of childcare or the possibility to re-arrange the substantive asylum interview, notification letters still advised asylum seekers not to bring their children and women asylum seekers interviewed said they were not aware of childcare facilities. Despite asking at the screening interview whether asylum claimants would prefer men or women interviewing officers at the substantive interview, it has come to light that some women asylum seekers do not wish to appear difficult or do not understand the reason for the question.

Overall, there is a real and pressing concern that the availability of good quality legal representation for asylum seekers will further diminish with the passing of the Legal Aid, Sentencing and Punishment of Offenders Bill. With the complex asylum procedure in place, the lack of consistent and relevant information to asylum seekers and the adversarial asylum determination process, asylum seekers’ right to access the asylum procedure and have their claim decided in a fair manner is impeded.

means for women seeking asylum’, in *Women’s Asylum News*, Issue 103, July 2011, pp. 1-6.

346 Legal Services Commission, *Annual Report 2005/06*.

347 Asylum Aid, *Unsustainable: the quality of initial decision-making in women’s asylum claims*, 2011.

Emiola's Story

Emiola is a 32 year old asylum seeker, and a victim of trafficking from Nigeria. She came to the UK after having been trafficked for sexual exploitation to Italy, and claimed asylum in another EU member state. After being deported to Nigeria, she was again targeted by her traffickers. When Emiola fled to the UK and claimed asylum immediately upon arrival at Heathrow airport, she was detained at Yarl's Wood Immigration Removal Centre. She was interviewed by a male asylum screening officer in detention. Emiola was detained for one month at Yarl's Wood, during which time she felt really unwell, and suffered from fainting fits and regular nose bleeds. After seeking care from the nurses in the Immigration Removal Centre, she eventually stopped seeking help because she was always told that there was nothing they could do for her. Commenting on her detention, Emiola said that she never wanted to experience it again, and that the experience was horrible.

Emiola's substantive asylum interview took place after she was released from detention and dispersed to another region. She was interviewed by a female officer, who explained the purpose of the interview and told her that it was important that she disclose everything. Emiola explained that the interviewing officer kept repeating the same questions. She was asked how many men she had slept with in Italy, for example, and whether she liked working as a prostitute. Emiola responded that she would rather die than continue being a prostitute. Explaining how she felt during the interview, she said: "I was so scared at the beginning because I thought they would take me to detention and that they would take me back to Nigeria, so I was very afraid". After her interview, Emiola was taken to hospital by ambulance because she fainted. She has since been receiving counselling, which she says she could not have coped without.

Her asylum claim was refused by the UKBA, and Emiola appealed to the Tribunal. The immigration judge at her appeal believed her story, but told her that there is an organisation in Nigeria that would help her on her return. The immigration judge concluded that she would be safe on return to Nigeria, even though her traffickers had pursued her when she was removed from another EU member state, members of her family had been killed as a reprisal, and no organisation had provided her with support when she had needed it before. Emiola fainted up to three times during her appeal hearing, but the Home Office Presenting Officer wished to continue her cross-examination. The Officer did not believe that her family had been killed, and asked Emiola to provide hard evidence of this fact. The immigration judge implied of Emiola that "even if I am fainting that I am pretending, even when I am really sick she said I am pretending ... I don't know how one can pretend with sickness, something that is disturbing me". She thought that she had to kill herself so that the judge would believe her: "I was so bad". The worst experience for Emiola during the asylum procedure was the appeal hearing: even after fainting fits the judge "is not satisfied, she said I am pretending, telling the doctor take her out for a walk and then come back to continue". "If not because of the problems I have back home, I don't think that I would go through this. But I don't have a choice".

Emiola's asylum appeal was refused because the immigration judge did not believe her family had been killed in the circumstances as described, even though the rest of her story was believed. Emiola pointed out that it was impossible for her to provide evidence of this specific fact as there was no-one in Nigeria that wanted to help; there wasn't even the possibility of gathering that evidence. After the refusal of her appeal, Emiola's solicitor stopped representing her. She was sick, confused, and very depressed. Emiola tried to kill herself several times.

Her fresh claim was again refused by the UKBA, although Emiola does not know why. She is now waiting to hear from her new solicitor regarding the outcome of her second fresh claim. She says: "I am so scared of calling my solicitor - I'm so scared of everything".

“I thought that if I told them everything that happened to me they will be of help but they are torturing me more and more, making it worse and worse every day”. Her health has deteriorated since she arrived in the UK and sometimes she asks herself “what I am living for?” “I don’t have any future, no home, rather they will bring another letter today, tomorrow, even if I am trying to pick up, they will bring another letter and make me come flat down again”.

She didn’t consider the procedure in her case to have been too long because she heard of people that stayed years without status. “The main point is that I am still alive, that is the main thing”. She added: “Even if it stays very long, it doesn’t make anything to me as long as I am safe and I am alive, that is all ... But if I am given the opportunity I would like to be free, now I am so scared of making much friends, I don’t know what to do, I don’t know when they will pick me up, I don’t know, I can’t walk, it’s just like I’m stuck, I don’t know what is happening. Sometimes I keep feeling that I am hopeless and that I am useless, I can’t do anything, I depend on people”. When she claimed asylum she had no idea of what it was going to be like. “I was just thinking when I claimed asylum, I was thinking that maybe everything is ok, at least I will see people that will save my life, I will see people that will help me.”

“I never believed I would be tortured again, killing me slowly, making everything worse”.

Reception Conditions

5

“It was just survival, just living for today and not knowing what is going to happen tomorrow”.

Thandiwe, 40 year-old asylum seeker from Zimbabwe describing relying on friends for support

The UK is bound by the minimum standards for the reception of asylum seekers set out in the EU Reception Conditions Directive of 2003.³⁴⁸ The Reception Conditions Directive (RCD) establishes that the UK “shall ensure that material reception conditions are available to applicants when they make their application for asylum”³⁴⁹ and more specifically, the UK:

Shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.³⁵⁰

Whilst a recast version of the Directive is currently being debated in the European Parliament and the European Council, the UK has noted its intention not to opt-in to the instrument and will thus continue to be bound by the Directive adopted in 2003.³⁵¹ The RCD sets out in its preamble that member states are bound by obligations under instruments of international law to which they are party and which prohibits discrimination with respect to asylum seekers covered by this Directive. The RCD applies to asylum seekers with an outstanding asylum claim at the initial stage or at appeal. Since the case of *ZO (Somalia)*, the Supreme Court clarified that the provisions of the RCD also apply to asylum seekers who have submitted further submissions, irrespective of whether the UKBA has accepted that these amount to a fresh claim.³⁵²

5.1 Support Entitlements

Once an asylum claim has been lodged at the Asylum Screening Unit (ASU) in Croydon or at port of entry, asylum seekers with no alternative source of accommodation can request support and accommodation from the UKBA. New requirements to make an appointment at the ASU before claiming asylum and resulting delays³⁵³ have affected asylum seekers’ ability to receive timely support. If they “appear to the Secretary of State to be destitute” they should be granted temporary support. This is usually provided for one night near the ASU in emergency accommodation. Asylum seekers are then dispersed to one of the five “initial accommodation” centres around the UK.³⁵⁴ This is provided by the UKBA on a no-choice basis and is intended to be for a short period of a few weeks. Voluntary sector providers offer wraparound independent advice for asylum seekers in this accommodation, and assist them to apply for UKBA support and accommodation under Section 95 Immigration and Asylum Act 1999.

348 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

349 Article 13(1) Reception Conditions Directive.

350 Article 13(2) Reception Conditions Directive.

351 Written Ministerial Statements, Thursday 13 October 2011.

352 *ZO (Somalia) & Ors, R (on the application of) v Secretary of State for the Home Department* [2010] UKSC 36 (28 July 2010). See also case summary in Women’s Asylum News, Issue 94, August 2010, pp. 9-10.

353 See above section 4.2 Screening Interviews.

354 Section 98 Immigration and Asylum Act 1999.

Thandiwe had lived in Cardiff for 8 months while her asylum claim was examined. During that time she had made friends and started a relationship. Her support and accommodation were discontinued after she refused to move to Newcastle because she felt settled in Cardiff. Relying on friends for support was very hard and she used to be grateful for a cup of tea and a slice of bread.

The UKBA should grant Section 95 Immigration and Asylum Act 1999 support if the Secretary of State believes the applicant is “destitute” and has applied for asylum “as soon as reasonably practicable”. This requirement stems from the RCD which states that the UK “may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival”.³⁵⁵ Section 95 support consists of smaller scale accommodation within the same region, and a low level of financial support. Asylum seekers are entitled to receive Section 95 support whilst their claim for asylum, under both the Refugee Convention and/or Article 3 ECHR is being considered by the UKBA or the courts as long as the appeal was lodged on time. Individuals who have somewhere to stay can opt to have the cash side of support only. Section 95 support is available until 21 days (if refused) or 28 days (if granted) after the asylum claim is decided/the appeal is determined. The only exception is where asylum seekers have a dependent child in their household, and that child was living with them before they exhausted their appeal rights. This group will continue to qualify for support for as long as they remain in the UK or until the youngest child turns 18.

Those with no outstanding representations with the UKBA are subject to removal from the UK but may be entitled to section 4 Immigration and Asylum Act 1999 support in certain circumstances. Most asylum seekers entitled to support will be dispersed to regions outside London and this practice of offering accommodation on a no-choice basis has a detrimental impact on asylum seekers’ ability to maintain existing support networks. This has resulted in destitution for many asylum seekers who favour the need for community support above accommodation and financial support. This is particularly the case for asylum seekers who might have been in the UK for some time before claiming asylum as a result of changes taking place in their country of origin.

Yemi, a refugee from Nigeria, refused supported accommodation outside London because she would no longer be able to receive support from LGBT organisations. It was more important for her to maintain the support networks she had in London than moving into her own accommodation.

The UKBA provides financial support to asylum seekers and additional payments for women who are pregnant or new mothers. These are significantly lower than mainstream welfare benefits. The current provisions leave pregnant women and new mothers living in poverty. Since April 2011, the current weekly rates of support for asylum seekers are:

- **Qualifying couple (married or in a civil partnership): £72.52**
- **Lone parent aged 18 or over: £43.94**
- **Single person aged 18 or over, excluding lone parent: £36.62**
- **Person aged at least 16, but under 18 (except a member of a qualifying couple): £39.80**
- **Person aged under 16: £52.96.**

Pregnant women can apply for an additional £3 per week and a maternity grant of £300 if on Section 95 support and £250 if on Section 4 support.³⁵⁶ A woman with a child under 1 can apply for £5 extra per week, and if she has children aged 1-3 she can apply for £3 extra per child per week.³⁵⁷ However, the restrictive timeframe for applying for a maternity grant, which only allows women asylum seekers to claim

355 Article 16(2) Reception Conditions Directive.

356 Asylum Support Policy Bulletin 37: Maternity Payments, last updated July 2011. See also Asylum Support Partnership, Your inflexible friend: The cost of living without cash, November 2010.

357 Asylum Support Policy Bulletin 78: Additional payments to pregnant women and children aged under 3, August 2004.

their maternity grant over a period of fourteen weeks, results in many missing out on this form of financial support.

Estelle, an asylum seeker from the Congo, finds it difficult financially to make ends meet at the end of the week. She tries her best to make do with the minimum. She has to buy nappies, clothes, milk, food for her child and what she receives is not sufficient to meet that need.

If asylum seekers have exhausted their rights of appeal, they may be entitled to support and accommodation under Section 4 of the Immigration and Asylum Act 1999. Support under section 4 amounts to £35.39 a week through the Azure payment card with no cash support.³⁵⁸ To be entitled to Section 4, failed asylum seekers must be destitute or likely to be destitute within the next 14 days and satisfy one of the following conditions: take all reasonable steps to leave the UK or place themselves in a position in which they are able to leave the UK; they are unable to leave the UK because of a physical impediment to travel or for some other medical reason; there is no viable route of return; they have applied for judicial review of the decision on their asylum claim and they have been granted permission to proceed;³⁵⁹ or the provision of accommodation is necessary to avoid breaching their human rights.

It is the policy of the UKBA to consider that women in late stages of pregnancy, generally six weeks before expected due date, or those with a baby under six weeks old are unable to travel. This means that current policy allows women to be dispersed even if they are up to 36 weeks pregnant.

Grace, a 23 year old asylum seeker from DRC and single mother, explained how she was struggling to buy warm clothes for the winter as the Azure card did not allow her to buy clothes.

5.2 Accommodation and Gender

There are special accommodation provisions for victims of trafficking. Victims of trafficking should normally be given a choice whether to access those services. However, advocates noted that this does not happen in practice as they had found that women are routed into initial accommodation without having had a choice even if there was disclosure of trafficking. The UKBA has awarded a contract to the Salvation Army which subcontracts providers across the country to provide accommodation for women victims of trafficking. However, there are real concerns about the limited amount of bed spaces and some providers having conditions of access to their services such as cooperating with the police and having had a reasonable grounds decision from the National Referral Mechanism. Furthermore, the grant of the contract to a new provider has led to the loss of expertise from the leading agency that was previously granted the contract. Another concern is the lack of transparency as to what services are being offered to victims of trafficking and whether these are standard across all providers in the UK.

Dispersed with her young family to a dirty house in a city she did not know, Sibel, an asylum seeker from Turkey, was so scared that neither she nor her two children left the house for three days.

If asylum seekers need asylum support and accommodation at the point of claiming asylum, they are referred to the routing team for the allocation of initial/emergency accommodation. A Service Commission Form is sent from the routing team on the basis of the information received at the screening interview to the accommodation providers. It is a very simple form which sets out the applicant’s name, date of birth, gender, language spoken, religion and any special needs or specific requirements. Voluntary sector service providers, interviewed for this research, expressed concerns at the manner in which the information is

358 UKBA, Section 4 Support, www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/.

359 This condition does not apply in Scotland.

presented in the form and the lack of confidentiality, for example where information regarding domestic violence and HIV status had been disclosed in this manner. The RCD provides that “persons working in accommodation centers shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work”.³⁶⁰ The form is faxed to the accommodation provider who will check if they have the appropriate bed space. Asylum seekers can also raise their specific needs with the organisation providing wraparound services in the accommodation or with the onsite medical service.

The gender ratio of staff in supported accommodation is not set out as a requirement in the specification of the contract between the UKBA and housing providers.³⁶¹ On the basis of interviews held for this research, it is believed that the female to male staff ratio in the emergency accommodation is 50:50 and the ratio in UKBA-subcontracted accommodation providers to be 40% female. In dispersal accommodation, men and women are placed in different houses and share the facilities with other asylum seekers of the same sex. There are more serious concerns about the arrangements provided in the initial accommodation where men and women are placed on the same corridor and communal bathrooms have shower cubicles only closed by curtains. Bedroom doors have locks but if the room is shared then individual asylum seekers may find it difficult to lock the door when they wish to do so. Although arrangements for the separation of men and women depend on the accommodation, men and women generally have to share common areas.

Rachel from the DRC was seven months pregnant when she was dispersed to initial accommodation. She had to get up several times during the night to use the separate bathroom accessible only through the common corridors and she described feeling unsafe.

All supported accommodation is open although permission to visit family members outside the accommodation overnight is often refused.³⁶² The Reception Conditions Directive provides that the UK “shall pay particular attention to the prevention of assault within the premises and accommodation centers”³⁶³ and:

Shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.³⁶⁴

One of the organisations providing wraparound services in initial accommodation, interviewed for this research, has its own protocol to address gender-based violence as an advice agency but they were not aware of any operating procedures in the UKBA-subcontracted accommodation itself or of any screening being carried out by accommodation providers to detect victims of gender-related persecution.

One of the wraparound service providers, interviewed for this research, said there were many instances of sexual harassment in initial accommodation. An advocate knew of instances of sexual harassment between the male staff and female asylum seekers or bullying, raising real issues of abuse of power. There are also concerns about housing officers entering unannounced into women’s rooms which raise serious issues of privacy. Accommodation providers have general complaints mechanisms but these are not specific to gender-based violence. If there are allegations of rape, the victim will be asked whether she wants to call the police. The UKBA is under a duty to investigate if the abuse is reported and the investigation team is trained on issues such as domestic violence.

360 Article 14(5) Reception Conditions Directive.

361 Home Office, National Asylum Support Service, Accommodation 2005 Project – Target Contracts, Schedule 3, Statement of Requirements.

362 The guidelines stipulate that if asylum seekers are absent from the centres for over 24 hours, they are then to be put down as ‘non compliant’ or as ‘absconded’.

363 Article 14(2) Reception Conditions Directive.

364 Article 24(1) Reception Conditions Directive.

The UKBA Policy Bulletin 70 gives guidance to UKBA staff when they receive a report of domestic violence in connection with a UKBA accommodated asylum seeker.³⁶⁵ It sets out the role of the accommodation provider including the need to have a statement on domestic violence policy and procedure and the role of the voluntary sector providing advice in the accommodation. The Policy Bulletin sets out the procedure to be followed when a complaint of domestic violence is made, which includes the provision of alternative accommodation and that the UKBA will pay for accommodation in a woman’s refuge. One of the organisations providing services in initial accommodation said that some of the UKBA housing officers have now been re-trained on domestic violence issues but that most of them were men. An advocate expressed the opinion that the substance of Policy Bulletin 70 was good but there were problems with its interpretation and the fact that it fails to cover certain issues such as trafficking and that it should acknowledge that in some instances specialist refuge accommodation for domestic violence would be most appropriate as opposed to an alternative accommodation with the UKBA.

The Reception Conditions Directive provides that the UK:

Shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.³⁶⁶

Under Regulation 4 of the Asylum Seekers (Reception Conditions) Regulations 2005 (SI 2005, No. 7) the UKBA must take into account the special needs of asylum seekers and their family members who are vulnerable persons when providing or considering support under Section 95 or Section 98 of the Immigration and Asylum Act 1999. For this purpose the definition of a vulnerable person include: a minor, a disabled person, an elderly person, a pregnant person, a lone parent with a minor child or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence who has had an individual evaluation of her situation that confirms she has special needs. However there is no obligation on the UKBA to carry out or arrange for the individual evaluation of a person’s situation to determine whether she has special needs.³⁶⁷

5.3 Health Care and Social Support

Various organisations funded independently or through local or central government offer services to asylum seekers ranging from counselling, community women’s support groups, English classes or specialist services for victims of torture in supported accommodation. Some of these services may be available to women or LGBT claimants only and will be sensitive to the needs of women. One of the organisations offering wraparound services initial accommodation refer asylum seekers who have suffered from gender-related violence to appropriate support agencies, solicitors or health providers.

Thandiwe, an asylum seeker from Zimbabwe, has been waiting for seven years for her asylum claim to be resolved. She explained that waiting with nothing to do is the worst part of the asylum process, “just sitting with nothing, it affects you psychologically because you lose your own self of being because you have nothing, no finances, nothing to live for, you’re just there, you could just be worse than dead”. “After certain years of sitting and doing nothing you lose it. Sometimes I think they just want to psychologically frustrate you and then you say I’ve had enough and you want to go back. But it’s harder to think that if I do go back I won’t live, I’ll die, so you’re just stuck”.

365 Asylum Support Policy Bulletin 70: Domestic Violence, last reviewed October 2009.

366 Article 17(1) Reception Conditions Directive.

367 Guidance on applying this Regulation is provided in Policy Bulletin 83.

Health care is available in initial accommodation and provided by a mixture of male and female nurses. GPs visit initial accommodation regularly and their role is to assess the care needs of those who present with physical or mental health problems. This would include women who are pregnant or those with a physical disability. Asylum seekers whose initial claim is still outstanding can access medical care provided by the NHS in the UK. This covers both primary and secondary care. At the moment refused asylum seekers on section 4 support are eligible for primary care but are being charged for secondary care. The Department of Health has recently proposed to exempt refused asylum seekers on Section 95 and Section 4 support and unaccompanied children in England³⁶⁸ from charges for secondary healthcare and ensure that those who have started free treatment will continue even if their status changes or they become eligible for charging.³⁶⁹ The Government is expected to lay regulations shortly.

In the meantime, all maternity care, including routine antenatal care, is classed as “immediately necessary” and should not be withheld pending clarification of entitlement to free care or if women are unable to pay in advance. Other forms of treatment considered “immediately necessary” include that required to save their life, prevent a condition from becoming immediately life threatening or needed promptly to prevent serious damage from occurring. Treatment considered “urgent” should also be provided irrespective of patients’ ability to pay.³⁷⁰ This is treatment which is not immediately necessary but cannot wait until asylum seekers can reasonably be expected to return home because for example of the pain or disability a condition is causing, or the likelihood of a condition deteriorating to an extent to which it can become life threatening. Asylum seekers entitled to this treatment are still liable to pay charges but treatment cannot be withheld because they are unable to pay and cannot be delayed while asylum seekers’ chargeable status is established.³⁷¹ Other NHS services are free to all, irrespective of residency status; this includes accident and emergency services, family planning services, treatment of certain communicable diseases, treatment for sexually transmitted diseases and treatment required under mental health legislation or by order of a court.³⁷²

Compliance with the regulations is variable. The Joint Parliamentary Committee on Human Rights found evidence in 2007 of women who were entitled to free NHS care being asked to pay; women refused maternity care if they were unable to pay in advance; and women who were aggressively pursued for payment in advance during their pregnancy. Maternity Action showed evidence in 2010 that charging practices have resulted in women giving birth alone and unattended, “disappearing” from maternity services, commencing care late in their pregnancy or receiving no antenatal care.

Estelle, an asylum seeker from Congo refused asylum by the UKBA, was sent her refusal letter to her home while she was in hospital after giving birth. This meant she failed to appeal the UKBA decision in time and her asylum support was stopped.

The maternal health outcomes for asylum seeking women are extremely poor. Between 2003 and 2005, refugee and asylum seeking women made up 12% of all maternal deaths despite constituting less than 0.5% of the population.³⁷³ There were also concerns about difficulties in accessing effective interpretation in the context of ante-natal services and maternal deaths among women asylum seekers.

368 The regulations in Wales, Scotland and Northern Ireland are different. In Wales, refused asylum seekers are exempt from charges for NHS hospital treatment through Regulations. In Scotland, there are no specific exemptions but guidance in place states that failed asylum seekers should remain in NHS care. There are no specific regulations or guidance in Northern Ireland thus entitlement to NHS hospital treatment is on the basis of the “ordinary residency” criteria.

369 Department of Health, *Review of access to the NHS by foreign nationals – Consultation on proposals*, February 2010, p. 11.

370 British Medical Association, *Access to health care for asylum seekers and refused asylum seekers – guidance for doctors*, January 2012.

371 *Idem.*

372 *Idem.*

373 Centre for Maternal and Child Enquiries, *Saving Mothers’ Lives: reviewing maternal deaths to make motherhood safer (2003-2005)*, 2007.

There are no psychotherapeutic interventions available in initial accommodation.³⁷⁴ In cases of mental health problems asylum seekers are referred to specialists by their GP. A service provider in initial accommodation, interviewed for this research, explained how some GPs refused to make referrals because asylum seekers would be dispersed to another region within 3 weeks and they believed it would make more sense for the person to start treatment once they were settled in their dispersal accommodation. The Reception Conditions Directive establishes that the UK:

Shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts.³⁷⁵

The Government has also cut 50% of the funding for providers of wraparound services in 2011 so providers have had to restructure their services. They were already the subject of a 17-23% cut in August 2010. This is likely to further affect the provision of services they are currently offering by limiting the effectiveness of signposting to counselling organisations and to other specialist services that may not be identified.

Sibel, an asylum seeker from Turkey, said that if there was someone helping or assisting her it would be easier to know what to do. She highlighted that every day is a problem, including the language barrier, the environment, the responsibility of two children and the fears she has. She finds the asylum process very difficult and believes she is perceived as vulnerable because she is woman.

5.4 Asylum Support Legal Aid

The destitution of asylum seekers is an increasingly pressing problem and fair access to support is critical to prevent this. Legal aid for asylum support applications is already severely restricted. There is no funding for legal representation at appeal before the Asylum Support Tribunal where support has been refused or discontinued, and the Legal Aid, Sentencing and Punishment of Offenders Bill proposes to end legal aid funding for preparing cases where someone has accommodation and is applying for subsistence-only support. This means that 14% of all those living with Section 95 support, or just over 3,000 people³⁷⁶ at risk of destitution, will be excluded from legal aid for asylum support entirely.

Entitlement to asylum support has generated a complex area of law, as is clear from the fact that the UKBA has published over thirty separate pieces of policy guidance on support matters. For example, the test of what amounts to “destitution” is a complex legal argument that requires legal representation. The Ministry of Justice considers that asylum seekers are too vulnerable to represent themselves at their asylum appeal and yet this rationale has not been applied to their claims for support. There may also be additional barriers to accessing justice such as language and cultural differences. As asylum seekers may be traumatised and vulnerable, it is unlikely that they will feel sufficiently confident to appeal a refusal of asylum support by themselves. Research has shown that if asylum seekers are represented when they appeal a refusal of asylum support they are 32% more likely to have a positive outcome.³⁷⁷ Where asylum seekers were represented at the Asylum Support Tribunal, 82% of UKBA decisions were overturned on appeal.³⁷⁸

For more than 3,000 asylum seekers, this Bill would leave these basic needs increasingly out of reach and may affect women asylum seekers disproportionately as destitution is linked to greater risk of exploitation and sexual violence.

374 But see NHS Wakefield District/Refugee Council, *Pilot Mental Wellbeing Groups: An Evaluation of Mental Wellbeing Groups in an Asylum Seeker Initial Accommodation Centre*, May 2009.

375 Article 20 Reception Conditions Directive.

376 Home Office, *Control of Immigration: Quarterly Statistical Summary United Kingdom, Quarter 1 2011 (January – March)*, p. 20.

377 Citizens Advice Bureau, *Supporting Justice: The case for publicly-funded legal representation before the Asylum Support Tribunal*, June 2009.

378 Asylum Support Appeals Project, *No credibility: UKBA decision-making and Section 4 support*, April 2011.

Conclusion

Overall, there are a limited number of policies or Operating Standards that reflect gender issues in relation to asylum support and accommodation. This affects women asylum seekers’ privacy and safety in supported accommodation. The limited amount of asylum support, in particular when only accessible through the Azure card, fails to ensure a dignified standard of living for women seeking asylum in the UK. The further limitation on access to legal aid for asylum support will affect women asylum seekers significantly and may result in increased vulnerability to exploitation and abuse.³⁷⁹

379 Crawley, H. Hemmings, J. and Price, N. *Coping with Destitution: Survival and livelihood strategies of refused asylum seekers living in the UK*, Centre for Migration Policy Research (CMPR), Swansea University, February 2011.

Detention Conditions

6

“I will never experience it again, I don’t like it, and it’s horrible”.

Emiola, 32 year-old victim of trafficking and asylum seeker from Nigeria, describing her detention in Yarl’s Wood

Women asylum seekers may be detained in Immigration Removal Centres (IRCs) such as Yarl’s Wood IRC (single women, couples and families with adult children), Tinsley House IRC (families) and Dungavel IRC (single women and couples). They are also detained in Short Term Holding Facilities (STHF). There are three residential STHF in the UK, one at Manchester Airport (Pennine House) and one at Colnbrook (in the same building as the IRC) and both hold women and men. The third STHF was opened in summer 2011 in Larne, Northern Ireland. Women may also be detained under immigration powers in non-residential short term holding facilities at ports, police cells and in prisons. Some women asylum seekers are held in prison on remand or as sentenced prisoners while their asylum claim is being considered, often convicted of immigration offences.

Some asylum seekers may be detained at port of entry or when claiming asylum in-country at the ASU, including victims of gender-related persecution. They may be detained immediately after the screening interview or asked to report back later and then detained. If detained straight away, this could be in a Short Term Holding Facility for shorter periods of up to 7 days. The length of detention varies for asylum seekers routed into the detained fast-track (DFT). Asylum seekers routed into the DFT may wait several weeks before meeting their allocated solicitor and having their initial interview. Some may be released at this stage if arrangements have been made for a medico-legal report to evidence torture while other may have to continue through the DFT process. There are serious concerns with the UKBA’s capability to take good quality decisions in the DFT, in particular for gender-related claims which may present more complex issues.³⁸⁰ There are concerns about holding women in STHF, where often they are held in the same area as men. Her Majesty’s Inspectorate of Prisons has recorded various problems with keeping women in the same facility as men as this could be intimidating for the women and marginalise them.³⁸¹ The family unit in Yarl’s Wood IRC (families with adult children over 18) is separate from the rest of the centre and meals are taken separately but some recreational activities are held jointly.

6.1 Identifying Vulnerable Asylum Seekers

In detention there is no specific screening to detect victims of gender-based violence but on arrival in detention all detainees have to be medically screened within two hours as per the Operating Standards for IRCs. This screening must include an assessment for risk of self harm and suicidal behaviour. They must also have a physical and mental examination by a medical practitioner within 24 hours. This assessment is supposed to identify any immediate healthcare needs, but is also to detect whether individuals may have been victims of torture. Rule 35 of the Detention Centre Rules (2001) requires that a GP shall report to the UKBA “any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention” and any detainee “he suspects of suicidal intentions” or who s/he is concerned “may have been a victim of torture”. Rule 35 is a mechanism which, if properly implemented, allows asylum

380 Independent Asylum Commission, *Deserving dignity*, 2008, p. 42. UNHCR, Quality Initiative Project Fifth Report to the Minister, March 2008, para. 2.3.42. Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, February 2010. Yarl’s Wood Detained Fast-Track Compliance with the Gender API: A Report by the NAM Quality Team’, Home Office August 2006. See section 3.2.2 Gender Guidelines for Initial Decisions above.

381 HM Chief Inspector of Prisons, *Report on a full announced inspection of Tinsley House Immigration Removal Centre*, 10-14 March 2008.

seekers who are victims of torture to be released from detention in accordance with the UKBA’s policy not to detain victims of torture. NGOs and visitors have reported concerns about the implementation of Rule 35,³⁸² highlighting that often, people have been detained despite suffering from obvious injuries and illnesses. Given the sensitivity of gender-based violence, and that it is unlikely that a woman will disclose this on arrival to a stranger, this is unlikely to be identified. It would also depend on whether GPs recognise gender-based violence as a form of torture in order to benefit from the application of Rule 35.

There are other “safeguards” that are supposed to ensure particularly vulnerable people do not end up in detention. The UKBA Enforcement Instructions and Guidance (EIG) sets out categories of people who would normally be considered “suitable for detention only in very exceptional circumstances”.³⁸³ An independent association visiting detainees, interviewed for this research, has expressed concern that it is not clear what is deemed to be “exceptional circumstances” and this lack of definition is problematic. The EIG includes within this list of persons, pregnant women (unless removal is imminent and medical advice does not suggest confinement before the due removal date, or, for pregnant women of less than 24 weeks gestation, at Yarl’s Wood as part of a fast-track asylum process) and persons identified by the Competent Authorities as victims of trafficking. The EIG on Identifying Victims of Trafficking sets out guidance to “be followed during all operations where individuals who may be victims of trafficking are encountered, so that potential victims are handled in a consistent and sensitive manner” and notes that “officers should be aware that victims of trafficking are likely to be classified as vulnerable persons and detention will not normally be appropriate”.³⁸⁴

These safeguards are insufficient because victims of trafficking and gender-based violence continue to be detained. This affects their well-being and limits their opportunity to effectively put their asylum claim forward because the shorter time frames to prepare their cases combined with the difficulties in gathering evidence that is relevant to gender-related claims does not allow for a fair consideration of their claim.

6.2 Detention Policy and Operating Standards

The Detention Service Operating Standards contain all the standards by which IRCs must operate.³⁸⁵ Although there are no references to gender-based violence, it includes one page on female detainees:

- **Female detainees must only be housed in accommodation certified as suitable**
- **Women must be informed that they have the right to be examined by a female doctor or nurse**
- **Women are not required to undress in the sight of another detainee or a male member of staff – except where the woman detainee has consented to be examined by a male doctor/nurse**
- **Women must be provided with a dedicated female dining area but may wish to eat in association with men if they prefer**
- **Women must be accompanied by at least one female escorting officer when being escorted to or from the removal centre**
- **The female population must have equal access to all activities within the centre**
- **Women must be provided with the option of single-sex gym sessions and other activities appropriate to their needs and interests. Use of such sessions must be monitored to assess use**
- **Female detainees must be involved in the process of identifying activities**
- **Women and girls must only be searched by a member of staff of the same sex**³⁸⁶

There are also references to women elsewhere in the Operating Standards stating that “strip searching will only be conducted if there are reasonable grounds of suspicion and must only be conducted by members of the same sex as the detainee”.³⁸⁷

382 Joint Committee on Human Rights, *The Treatment of Asylum Seekers*, March 2007, p. 75. The Guardian, *UK ‘ignoring’ systemic evidence of torture among asylum seekers: Charities say reports of abuse being routinely ignored is a ‘systemic and increasing problem’*, 14 March 2010.

383 Enforcement Instructions and Guidance, Chapter 55: Detention and Temporary Release, last revised March 2011, para. 55.10.

384 Enforcement Instructions and Guidance, Chapter 9: Identifying Victims of Trafficking, undated, para. 9.1.

385 UKBA, Detention Services Operating Standards manual for Immigration Service Removal Centres, January 2005.

386 *Ibid.*, Female Detainees.

387 *Ibid.*, Security: Searching, para. 6.12-6.13.

The UKBA Detention Service does not have a policy on male/female staffing ratios in the same way as the Prison Service does. The Prison Service's policy states that an appropriate ratio is generally considered to be 60:40 female to male staff because "women who have been abused by men may feel safer in a predominantly female environment" and "there are also issues of decency and security that need to be dealt with by women staff".³⁸⁸ None of the stakeholders contacted for this research knew how the shift pattern was devised nor the actual staff gender ratio in order to ensure that there is always a minimum number of female staff available on the premises. HM Chief Inspector of Prisons recommended that there should be a considerably higher proportion of female staff at Yarl's Wood IRC,³⁸⁹ because "the proportion of male-to-female residential staff was too high for a predominantly female establishment, at around 50/50".³⁹⁰ More specifically, the issues identified were that "for a largely female population, the proportion of male residential staff was too high. Staffing levels were low, particularly at night, and sometimes male officers were left to manage units alone"³⁹¹ and that "there were too few female staff for a largely female establishment, and detainees complained that staff often entered rooms too quickly after knocking".³⁹²

UKBA Detention Services have stated that in Yarl's Wood, Serco considers the allocation of staff within the IRC on the basis that only female officers are permitted to search female detainees. Consequently, the visits hall, reception and legal visits areas all require at least one female officer at all times. Other work by staff is flexible, thus where a target room search is required but there are two male officers on the unit, one of the male officers would be switched for a female officer from elsewhere. Room occupants are invited to be present for room searches and these searches commence with a rub-down search of the detainee. As rub down searching of female detainees can only be carried out by female staff, a female member of staff has to be present for the room search.³⁹³ However, HM Chief Inspector of Prisons recommended that "both members of staff present at a rub-down search of a woman should be female".³⁹⁴

Yemi, who was fast-tracked in 2009, was concerned about the manner in which some of the staff talked to her. She noted in particular that while she was being transported, the staff were rude and made racial derogatory comments. Her room was searched twice during her stay at Yarl's Wood, only once when she was present. At the time, Yemi thought to herself: "who am I? I don't have anything". Yemi stated that "in the UK a dog is sometimes treated more nicely than people who are foreigners. The animosity, the hatred, it's sometimes something you can't help but feel it".

Women who are detained are often separated from their children outside detention.³⁹⁵ Women who have served a prison sentence are often transferred to Yarl's Wood IRC after their criminal sentence has been completed and continue to be separated from their children. It is often difficult for families to visit because of the remote location of the IRC in Bedfordshire. A voluntary group of befrienders, interviewed for this research, explained that they regularly see women who are separated from their children for up to two years or more. The Government has also put in place a new end-to-end process for families with children, designed to improve the quality of decision making on their asylum claims and to raise the level of trust and confidence that families have in the decision making process. The new process involves early access

388 *Establishing an Appropriate Staff Gender Mix in Establishments*, Prison Service Order number 8005, 30/05/2001; also referred to in *Women Prisoners*, Prison Service Order Number 4800, 28/04/08. For more information see Asylum Aid, *Every Single Woman: A comparison of standards for women in the asylum system with standards for women in the criminal justice, prison and maternity systems in the UK*, December 2009, Extended Briefing, pp. 10-11.

389 HM Chief Inspector of Prisons, *Report on an announced inspection of Yarl's Wood Immigration Removal Centre*, 4-8 July 2011, para. 2.22.

390 *Ibid.*, para. 2.20..

391 *Ibid.*, HE.23.

392 *Ibid.*, para. 2.17.

393 Email from UKBA, Detention Services Policy Unit to Asylum Aid, 22 August 2011.

394 HM Chief Inspector of Prisons, *Report on an announced inspection of Yarl's Wood Immigration Removal Centre*, 4-8 July 2011, para. 10.48.

395 On this particular issue see Bail for Immigration Detainees, *Fractured Childhoods: Families separated by immigration detention*, forthcoming, January 2012.

to legal representation, support from key workers, family conferences with all parties involved and family specialist decision makers within the UKBA who are familiar with child protection issues, as well as other arrangements designed to encourage families who have been refused protection to leave the UK voluntarily. For those who decline to leave voluntarily, the Government has developed, as an alternative to detention, Pre-Departure Accommodation close to Gatwick airport, in which families can be held for up to 72 hours before their deportation.³⁹⁶ However, though the pre-departure accommodation has been operational since May 2011, the ‘upstream’ elements of the new end-to-end process will take considerably longer to be put in place, which creates the risk that, as with many of the families formerly detained in IRCs, the families in the new pre-departure accommodation will not have had their refugee, human and child protection rights adequately assessed or properly determined.

Yemi from Nigeria was fast-tracked at Yarl’s Wood IRC after she claimed asylum on the basis of her sexual orientation. When she arrived she was accommodated in a room with another Nigerian woman despite specifically requesting not to because she was afraid other Nigerian detainees would ill-treat her if they found out about her sexuality. Only after she insisted was she transferred to another room.

Some visitors to IRCs have reported anecdotally about gender-based violence in the centres, including bullying of lesbians in Yarl’s Wood although the extent of the problem was not known. There are standard UKBA complaints procedures in place in the IRCs for detainees to report general complaints to the management. In Yarl’s Wood use is also made of country focus groups to address specific problems.³⁹⁷ However, despite this, Her Majesty’s Inspectorate of Prisons noted issues around the lack of specific policies to address the needs of women in Dungavel³⁹⁸ as visitors reported that women who are bullied and/or the subject of sexist comments are scared to report it in case they are moved. There have been no equality impact assessments of any of the IRCs that hold men and women together.

6.3 Health Care and Social Support in Detention

Heather from Kenya was detained at Yarl’s Wood IRC for 9 days. She described how she was not given her high blood pressure medicine from her suitcase, and when complained was told by the nurse that she did not think she needed it.

The UKBA Enforcement Instructions and Guidance states that “pregnant women should not normally be detained. The exceptions to this general rule are where removal is imminent and medical advice does not suggest confinement before the due removal date, or, for pregnant women of less than 24 weeks gestation, at Yarl’s Wood as part of a fast-track asylum process”.³⁹⁹ If pregnant women are detained the UKBA state that the level of care provided to them is of “NHS equivalent”. However, because the IRCs are run by different private contractors (or the UK prison service) each centre’s healthcare provision is different.

In Yarl’s Wood, the healthcare is run by Serco Health and pregnant women are seen by community midwives and for routine scans or appointments at Bedford Hospital. The basic level of healthcare is set out in the Detention Centre Rules, which states that healthcare must meet the same standards as available under the NHS in the community. This is underpinned by a basic healthcare operating standard to attempt some consistency between providers. However, NGOs are concerned about its scope and scale. There is no set staffing ratio for the provision of healthcare staff, and services vary significantly between centres. A revised Healthcare Operating Standard has been in development for some time. This would address the issues of

396 UKBA, Latest News: *New family returns process begins*, 28 February 2011.

397 HM Chief Inspector of Prisons, *Report on an unannounced full follow-up inspection of Yarl’s Wood Immigration Removal Centre*, 9 – 13 November 2009.

398 HM Chief Inspector of Prisons, *Report on an announced inspection of Dungavel House Immigration Removal Centre*, 21 – 25 June 2010, para. HE. 21, HE. 42, 4.20 and 10.30.

399 Enforcement Instructions and Guidance, Chapter 55: Detention and Temporary Release, last revised March 2011, para. 55.9.1.

inconsistency and allow for healthcare audits. In Tinsley House, there is an on-site medical centre which deals with all health issues. However, advocates interviewed for this research report, said that it is often criticised for the level of care both by detainees and independent doctors.

Female detainees can request female doctors but there were varying reports on how widely this is made known. There is usually a female GP at least one day a week in Yarl’s Wood. Interpretation is a major issue and it is not always provided. In Yarl’s Wood telephone interpretation is available although it was unclear how often it was used. Fellow detainees are sometimes used to interpret in medical appointments, something which has been criticised by NGOs and medical professionals.

Two counsellors are available in Yarl’s Wood, one male and one female. Detainees can be referred by staff members, healthcare staff or GPs, and detainees can refer themselves. It is not considered that any in-depth counselling is attempted. Use of “sleep tea” is regularly recommended. Psychological care is also dependent on the manager/contractor of the IRC. In Yarl’s Wood referrals are made to Psychiatric Secondary care when necessary but there is no routine service except an internal counselling service. In Tinsley House, provision of psychological care is limited but there are some mental health nurses who work in the centre and a female psychotherapist is available to visit once a week to see a limited number of detainees.

Social support is provided in some immigration removal centres but the level of support varies significantly depending on the centre manager which has been contracted by the UKBA. For example, some IRCs, such as Dungavel, run buddying schemes. Welfare provision is also a major issue, as some centres have sufficient staffing for this and others do not. As yet, there is no welfare operating standard to regulate this and external provision varies. The Samaritans operate in some centres, and the Red Cross runs tracing service in others. There is no consistency in terms of what detainees have access to. Social support is also provided via the network of local visitors groups.⁴⁰⁰ They provide welfare, practical advice as well as emotional support. There are visitors groups in all IRCs but they vary in size and type of provision.

6.4 Legal Aid

There are legal advice services available in immigration removal centres although the provision of legal advice is very limited. There is a Detention Duty Advice Scheme run by the Legal Services Commission (LSC) in each IRC where legal representatives are contracted by the LSC to deliver legal advice twice a week. The sessions are short and always over-subscribed. Access to legal representatives is worse in areas outside the South-East. In Yarl’s Wood each surgery accommodates 10 detainees. Once legal representatives have taken on a client, they may visit them in detention from Monday to Friday between 9am to 9pm. There is no equivalent to the Detention Duty Advice Scheme in short term holding facilities. Asylum seekers in the DFT are allocated a legal representative the day before their substantive interview with the UKBA and they are not guaranteed legal representation at appeal. In prisons there is no legal advice provision other than support for bail applications in relation to criminal charges. Prisons provide a list of solicitors who offer support on immigration matters. However, most asylum seekers in prison rely on advice offered by workers in the voluntary sector working for organisations such as Hibiscus and the Detention Advice Service. This makes it difficult for women asylum seekers in prison to build trust and disclose sensitive information which may be relevant to their claim.

400 www.aviddetention.org.uk/.

Conclusion

Overall, there is no standardised level of treatment in the different immigration removal centres in the UK because management is sub-contracted. There are limited references to gender in the Detention Service Operating Standards and there is only a basic Healthcare Operating Standards, the scale and scope of which is insufficient. This has resulted in an absence of consistency in detention conditions and poor safeguards for women's health and well-being. The absence of clear guidance on gender-related issues also means that women asylum seekers who are detained are not aware of their entitlements for fair treatment while in detention. The difficulties of asylum seekers accessing adequate and quality legal advice in detention and the very short time frames in the DFT are a serious impediment to asylum seekers' access to justice and a fair decision-making process.

Conclusion

7

This report provides an analysis of UK asylum law, policy and practice from a gender perspective. As women have constituted one third of all main asylum applicants since 2003, there are considerable implications when gender issues are not taken into account as part of the decision-making process and asylum procedure, including reception and detention conditions. This failure may seriously impede women asylum seekers and those with gender-related claims for asylum from accessing a fair determination process without discrimination. The failure to analyse gender-disaggregated statistics at appeal for example, despite a clear obligation under EU law to collect and disseminate such data, suggests that policy makers lacked the tools necessary to understand the needs of women seeking asylum in the UK and have not considered strategically how the asylum system in the UK may have a differential impact on women asylum seekers. Furthermore, despite numerous domestic commitments to improve the gender-sensitivity of the asylum system, the government's repeated refusals to sign up to binding European legal standards makes it more difficult for women asylum seekers to enforce their rights in the UK.

This analysis has found that there is very little consideration of gender in existing legislation. The UKBA has policy documents which provide guidance on how to determine gender-related asylum claims and ensure that the procedure is sensitive to asylum seekers who have suffered from gender-related persecution and/or who are vulnerable. This report brings together these policies and relevant jurisprudence for the first time. The policy most relevant to women seeking asylum is the Asylum Instruction on *Gender Issues in the Asylum Claim* which, while comprehensive on some issues, still fails to interpret the Convention ground of a particular social group in a gender-sensitive manner.

In this context, regular research and audits since the Asylum Instruction on *Gender Issues in the Asylum Claim* was adopted, including by the UNHCR and UKBA themselves, show that there are problems of implementation and that the decision making in gender-related claims continues to lack quality. The research demonstrates that existing policies are not always implemented in practice but also that there are insufficient guarantees to ensure a truly gender-sensitive asylum system “so that women and girls who have been persecuted through violence and/or discrimination can have every opportunity to make their case and to have their asylum application considered as fairly as possible”.⁴⁰¹ Stakeholders in the refugee sector, and asylum seeking and refugee women, regularly raise concerns about the gender-sensitivity of the asylum procedure.

Particular issues of concern relate to the quality of decision-making in gender-related claims for asylum and the implementation of the UKBA Asylum Instruction on *Gender Issues in the Asylum Claim*. The lack of gender guidance for immigration judges at the Immigration and Asylum Chamber is of particular concern as well. Overall, the proposed amendments to the scope of legal aid, their effect on the availability of good quality legal advice for asylum seekers, and the disproportionate impact they will have on women asylum seekers suggest that any operational improvements to recognise gender-related claims for asylum will be negated in the absence of quality legal representation in an adversarial asylum system. The quality of decision-making by the UKBA is further affected by the problems associated with the UKBA's auditing criteria and marking standards, which the UKBA Quality Audit and Development Team has recognised as failing to identify gender-related issues.

More specifically, the UKBA and the Tribunal's interpretation of the Convention ground of a particular social group which is not in accordance with the House of Lords' decision in *Fornah* results in a discriminatory approach to asylum claims based on the Convention ground of particular social group where the group

401 Home Office, Call to End Violence Against Women and Girls: Action Plan, March 2011, para. 45.

is defined by gender and fails to ensure that protection is granted to those who have a well-founded fear of persecution because of their gender. In terms of credibility assessments, the report showed that UKBA case owners fail to consider how trauma may affect disclosure and the ability to provide a consistent account of events. The failure by UKBA case owners to consider the viability of an internal flight alternative comprehensively by taking into account all the personal characteristics of the applicant, including their gender, was also highlighted and again affects women’s ability to gain refugee protection in the UK. The difficulties in accessing country of origin information relevant to gender-related claims for asylum and the tendency by UKBA case owners to refer to country of origin information selectively also negatively impacts on the quality of decision-making in gender-related claims for asylum.

In the asylum procedure, the failure by the UKBA to provide sufficient, timely and understandable gender-relevant information to asylum seekers means that asylum seekers may not know that certain facts are relevant to their claim and may therefore fail to disclose this at the earliest opportunity. The lack of privacy at the Asylum Screening Unit was one of the most significant issues identified by women asylum seekers interviewed for this research. This created high anxiety levels and prevented them from feeling confident about putting their asylum claims forward despite bearing the burden to present all elements of the claim as soon as possible. The timing of a decision to route asylum seekers into the detained fast-track, which is currently taken immediately after screening, is of real concern because the UKBA does not have enough information at that point to accurately consider whether a claim can be the subject of a quick decision. The report further notes the serious impediments in the detained fast-track system for asylum seekers making gender-related asylum claims in putting their claims forward. The women asylum seekers and refugees interviewed for this research described their substantive interviews as very traumatic and gave examples of being asked inappropriate questions. This seriously affects their ability to provide the UKBA with all the necessary information relevant to their claim at this crucial moment in the asylum process. Women asylum seekers interviewed for the research also highlighted the significant effect of regular reporting on their well-being and noted that this was a considerable disruption to their lives.

This report identifies the precarious privacy and safety afforded to women asylum seekers in supported accommodation and the payment of asylum support through the Azure card, which fails to ensure a dignified standard of living, as some of the most serious issues in reception conditions in the UK which could lead to abuse and exploitation. The analysis of detention conditions found the lack of gender-sensitive Detention Service Operating Standards, which would help ensure consistency of treatment across the detention estate, a serious impediment to the gender-sensitive treatment of asylum seekers detained in the UK.

It is hoped that by providing a broad overview of the UK asylum system from a gender perspective, this report will assist policy and decision-makers in thinking strategically about how to improve the gender-sensitivity of the system and ensure that women and asylum seekers with gender-related claims are provided with a fair opportunity to have their asylum claim determined and a safe and dignified standard of living.

Appendix:

Asylum Procedure Fact Sheet

An asylum seeker may make a claim for asylum at the border or in-country within the United Kingdom (UK). If wishing to claim asylum while in the UK the person must make their claim at the Asylum Screening Unit (ASU) in Croydon, South London. As of May 2011 a system of appointments is in place whereby asylum seekers are asked to make an appointment before being screened.

Asylum seekers will be screened and they will be asked questions regarding their travel history and documentation, health, family background, last address and the basis of their claim for asylum. At the ASU they will also be photographed, fingerprinted, issued with an Asylum Registration Card (ARC) and be asked whether they need accommodation and support.

Immediately after the screening interview a decision will be made on whether to route applicants into the Detained Fast Track (DFT) process or the regular procedure under the New Asylum Model. Women in the DFT will be detained at Yarl's Wood Immigration Removal Centre (IRC) and men at Harmondsworth IRC. Each asylum seeker should be allocated a case owner after the screening interview who will be responsible for their case, including undertaking the substantive asylum interview, making the decision on the asylum claim and taking decisions regarding asylum support and reporting conditions.

They will later be invited for a substantive interview by letter. The timing is variable but the interview could take place a week after the screening interview. This will be the opportunity for asylum seekers to explain why they are seeking asylum and establish all the facts of their case.

The case owner will then make a decision and send it in a letter to the applicant (or her legal representative if she has one). Grants of refugee status are not generally reasoned. Reasons for Refusal Letters should give reasons why the applicant has been refused asylum and/or other subsidiary forms of protection such as humanitarian protection or discretionary leave to remain. Applicants have a right of appeal within the UK and must lodge their appeal within 10 days of the decision (5 days if in detention).

The appeal will be considered by an immigration judge of the First-tier Tribunal Immigration and Asylum Chamber. If the appeal is dismissed, it can be appealed to the Upper Tribunal Immigration and Asylum Chamber but only on a point of law. Either party to an appeal can apply for permission to appeal the decision of the First-tier Tribunal to the Upper Tribunal. The initial application must be made to the First-tier Tribunal. If this application is refused then a further application can be made to the Upper Tribunal. If the Upper Tribunal deems that an error of law has been made in the decision of the First-tier Tribunal, it can substitute its own decision in place of it, or order the First-tier Tribunal to rehear the initial appeal. If the Upper Tribunal dismisses the appeal, an appellant may first make an application to the Upper Tribunal for leave to appeal to the Court of Appeal on a point of law. If this is refused, an appellant may make a request for leave to appeal to the Court of Appeal directly. If this is granted, a hearing will take place before the Court of Appeal. A final appeal can then be made to the Supreme Court.

In the DFT process in operation in Harmondsworth IRC and Yarl's Wood IRC, initial decisions on asylum applications are taken in 2 to 5 days. Once a decision has been reached the applicant has two days to lodge her appeal. The DFT in Harmondsworth and Yarl's Wood IRC should not be mistaken for the Detained Non-Suspensive Appeal (DNSA) process where applications can be certified as clearly unfounded (including those from nationals of countries designated by the Home Office as generally safe for return). The

estimated time scale between entry into the DNSA and decision is between 10 to 14 days.

An asylum seeker may make a fresh claim for asylum after having exhausted her appeal rights. For this purpose the applicant must make further submissions that will amount to a fresh claim if they are significantly different from the material that was previously considered. The submissions will only be significantly different if the content (i) has not already been considered; and (ii) taken together with the previously considered material, creates a realistic prospect of success, notwithstanding its rejection.⁴⁰² If the further submissions are not considered by the UKBA to amount to a fresh claim, applicants may apply for judicial review of the decision to the High Court. If the UKBA considers that the further submissions amount to a fresh claim but refuses the claim, applicants have a right of appeal to the First-tier Tribunal.

Asylum seekers may apply for asylum support if they are destitute or likely to become destitute and they made their claim as soon as reasonably practicable under s. 95 of the Immigration and Asylum Act 1999. If failed asylum seekers are unable to return to their country of origin they may be entitled to support under s. 4 of the Immigration and Asylum Act 1999 if they are destitute, meet one of the five criteria for support or are applying for accommodation to support an application for bail from immigration detention.

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Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad.

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