

Relocation, Relocation

The impact of internal relocation
on women asylum seekers

Claire Bennett • November 2008



Asylum Aid
Protection from Persecution

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.

We provide legal advice and representation throughout the asylum process and use these experiences to identify the systematic shortcomings and failings of the UK asylum system and lobby for improvements.

The Refugee Women's Resource Project (RWRP) was set up in 2000 by Asylum Aid. RWRP provides free legal representation and advice to women asylum seekers. It aims to address the ingrained discrimination experienced by women seeking protection in the UK by providing a unique blend of gender specific legal casework, research, policy and campaigning work.



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*“[Immigration judges and the UK Border Agency] bring ... British images about ... ‘relocation, relocation.’ ‘I’ve decided I would like to move to Bristol, so...I shall buy a nice house in Bristol’, that is how they see it I think...But in reality, we’re talking about single women in refugee producing societies. The opportunities presented in a TV programme aren’t quite the same.”
[Legal representative]*

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Explanation of Terms and Acronyms

Explanation of terms

Internal Relocation: Many terms are used to describe the principle “Internal Relocation” including ‘Internal Flight Alternative (IFA) and Internal Protection Alternative (IPA). These terminologies are often used interchangeably and refer to the same concept. For the purpose of this research and to attain consistency, the term ‘Internal Relocation’ will be used throughout the research report.

Gender: Refers to the social construction of power relations between women and men, and the implications of these relations for women’s (and men’s) identity, status and roles. It is not the same as sex which is biologically defined ¹.

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 women².

Gender-specific Persecution: refers to forms of serious harm which are specific to women³.

Legal Representative, Immigration Judge and the UKBA personnel: The term “legal representative” within this report refers to the legal representatives interviewed for this research project only. Similarly, when the term “immigration judge” and “UKBA personnel” are mentioned this does not refer to all personnel but is intended as general reference only.

Acronyms

API Asylum Policy Instruction: policy guidance for the UKBA

CEDAW Convention for the Elimination of all forms of Discrimination Against Women

ECHR European Convention of Human Rights

EU Asylum Qualification Directive The Asylum Qualification Directive is a key element of Directive a package envisaged at the Treaty of Amsterdam (1997). The Treaty committed Member States to a range of measures designed to establish minimum standards for asylum procedures and policies across the European Union

¹ Crawley ‘Refugees and Gender’ p.7

² ibid

³ ibid

GED Gender Equality Duty: Introduced in the UK to address gender inequality

IAA Gender Guidelines These guidelines were devised to assist the judiciary in understanding and applying gender issues to the Refugee Convention. The guidelines have now been removed.

Immigration Rules Form immigration law in the United Kingdom

The Refugee Convention The 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol.

The UNHCR The United Nations High Commission for Refugees

The UKBA The UK Borders Agency (formerly the Home Office): The government body responsible for asylum and immigration issues

Chapter 1

Introduction

Refugee Women's Claims

Refugee women experience similar persecution to men's; however, women can also be disproportionately subjected to persecution and forms of harm for which they do not receive state protection. This can include trafficking for sexual exploitation, forced marriage, violence within the family, forced sterilisation and sexual violence. Women may also be subjected to persecution based on cultural practices because of their gender including: Female Genital Mutilation (FGM), honour killings or punished disproportionately for not obeying strict behaviour-relating codes (including being seen unaccompanied, not wearing a veil etc).⁴ In addition, in many refugee-producing societies women's presence is largely within the private sphere and any involvement in activities (including political) is primarily at a lower level. For example, women are more likely to hide people, or pass messages as opposed to be known public speakers. Women may also be specifically targeted and punished for the activities of male family members (imputed political persecution) because they are considered more vulnerable.⁵ Approximately a third of asylum applicants in the UK are women.

The Refugee Convention

The 1951 UN Convention Relating to the Status of Refugees (the Refugee Convention) was written after the Second World War and in response to the needs of people displaced by the conflict. In the Cold War period that followed the adoption of the Refugee Convention, refugees were principally conceived as male political activists who were persecuted by the state. At this time, women and children were regarded as passive dependents.⁶ Express reference to their needs and specific persecution are absent from the Refugee Convention. This historical background is important when assessing the absence of express reference to gender and the limitations of the Convention.

The 1951 Refugee Convention and the 1967 Protocol are the fundamental international human rights instruments that provide the basis on assessing whether an individual will be granted refugee status. The Refugee Convention sets out the legal parameters⁷ however each state party is responsible for designing and implementing their status determination procedures.⁸

4 Queens University, Canada: 'Seeing Refugee Women as Refugees'

5 Crawley, H. *'Refugees and Gender'* p.3 and p102-105

6 Siddiqui et al. *'Safe to Return?'* p.45 (2007)

7 *ibid Safe to Return?* p.43 (2007)

8 Ward, K. Navigation Guide- Key Issues: UK Asylum Law and Process. (update 2006)

As express references to gender are absent from the Refugee Convention, women who have experienced persecution because of their gender have to argue their claim in line with the existing definition.

Article 1(A) of the Refugee Convention defines a refugee as a person who:

“Owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular group, or political opinion, is outside the country of his 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 of the country of his former habitual residence is unable, or owing to such fear, unwilling to return to it.”⁹

Persecution

Part of a person’s claim for international protection means they must also prove they have a current ‘well founded fear of persecution’ where:

- *“The applicant has a subjective (personal) fear of persecution or harm; and*
- *Objectively there are reasonable grounds for believing that the persecution feared may occur”¹⁰*

Persecution has also been understood in the following expression:

Persecution = serious harm + the failure of State protection¹¹

Whether certain acts are considered to be persecution under the Refugee Convention is also dependent upon whether the harm is committed by state or non-state actors. Serious harm committed by state actors is considered persecution. Serious harm committed by non-state actors (including family members, community, local trafficking gangs etc) can be classed as persecution if it is proved to be ‘sufficiently serious’ and the appellant’s country of origin is not able, or unwilling to offer protection.¹²

9 The 1951 Convention relating to the Status of Refugees and its 1967 Protocol, Article 1 (A). 2

10 Rights of Women ‘Pathways to Justice’ p.85

11 Feller et al. ‘Refugee Protection in International Law...’ p.329 and Pathways to Justice p.86

12 Rights of Women ‘Pathways to Justice’ p.86

Internal Relocation

The terms Internal Relocation and Internal Flight Alternative (IFA) are often used interchangeably and refer to the same concept.

In circumstances where non-state agent(s) persecute an applicant, and their ‘well founded fear of persecution’ is perceived to be located in one area of the country, internal relocation will be considered in assessing whether the applicant is entitled to refugee status. Internal relocation is usually relevant to non-state persecution cases based on the assumption that non-state actors do not have the resources of the state to find a person and continue their persecution. Internal relocation was first applied in the UK in the 1980s and was used sporadically thereafter. More recently however, internal relocation has become a key issue in UK caselaw and is now applied in nearly all non-state persecution claims (the legal basis behind this principle will be addressed in more detail in Chapter 3).

Humanitarian Protection, the European Convention on Human Rights and Internal Relocation

In addition to the UK’s obligations under the Refugee Convention, European Community Law obliges the UK to grant international protection to those who are not refugees, but who face serious harm in their country of origin.¹³ This is reflected in the Immigration Rules,¹⁴ which were amended on 9 October 2006 to transpose the provisions of the EC Qualification Directive. Asylum seekers who are found not to be refugees but face a real risk of serious harm if they were to be returned to their country of origin must be granted what the Immigration Rules term “Humanitarian Protection.” To be entitled to ‘Humanitarian Protection,’ applicants must overcome the same internal relocation test applied in respect of claims under the Refugee Convention.¹⁵

A further source of obligations relevant to assessing claims for international protection is the European Convention on Human Rights and Fundamental Freedoms. The European Court of Human Rights (ECHR) has that Article 3 of the Convention prohibits state parties from expelling non-nationals where there are substantial grounds for believing that there is a real risk that they would be subjected to torture, inhuman or degrading treatment or punishment in the receiving state.¹⁶ The Court applied this protection to a woman who feared that if she was deported from Turkey to Iran she would be subjected to stoning to death, flogging or whipping as punishment for her adulterous relationship with a married man.¹⁷ In applying that test, the European Court

13 Subject to certain specified exclusions

14 Paragraph 339C, HC 395

15 See Chapter 3

16 E.g. *Chahal v UK* [1996] ECHR 54 (15 November 1996)

17 *Jabari v Turkey* [2000] ECHR 369 (11 July 2000)

of Human Rights also considered issues around internal relocation.¹⁸ Consequently, although it is not decided whether the legal tests in respect of internal relocation under the Refugee Convention and the ECHR are co-extensive, the concept of internal relocation is applied to claims under Article 3 ECHR.

Policy Instruments affecting women asylum seekers

Important provisions relating to gender and women asylum seekers within the UK context are the: UN Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) and the Gender Equality Duty (GED). In addition, the UKBA (then the Home Office) introduced an Asylum Policy Instruction (API) on gender to address specific issues relating to women's asylum claims.

CEDAW

CEDAW was adopted by the United Nations General Assembly in 1979 and came into force in 1981; the UK ratified it in July 1981. Ratifying CEDAW means the UK is legally bound to end discrimination against women in all forms. In addition, the UK is required to submit national reports discussing specific measures undertaken to fulfil CEDAW obligations at least every four years.¹⁹ In July 2008, the UK Government was formally examined at the UN CEDAW Committee's 41st session in New York on the progress made in implementing CEDAW. The UK Border Agency (UKBA) was the only agency not to participate in the meeting. The CEDAW Committee's concluding report relating to refugee and asylum seeking women stated:

"The State party keep under review the impact of its laws and policies on women migrants, asylum seekers and refugees

The State party take effective measures to eliminate discrimination against immigrant and refugee women

The State party pay specific attention to vulnerability of women asylum seekers while their claims are under examination and to ensure full implementation of the Asylum Gender Guidelines.²⁰

18 See Saleh Sheekh v The Netherlands [2007] ECHR 36 (11 January 2007)

19 RWRP 'Women's Asylum News' – Issue 77 – 'CEDAW Committee Criticises UK' (2008)

20 CEDAW report paragraph 48 see: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.GBR.CO.6.pdf>

The Government Equalities Office is responsible for producing an action plan to follow up the concluding observations, including those referring to refugee and asylum seeking women. They are expected to report back to the CEDAW Committee after one year.²¹

The Gender Equality Duty (GED)

The GED was brought in by the Equality Act (2006) and came into force in April 2007 as a general duty to eliminate unlawful sex discrimination and promote equality of opportunity for women and men. The GED applies to all public authorities, private and voluntary sector bodies implementing services with a public nature. The GED imposes a positive obligation on the public authority to identify issues for sex equality in their services, employment and policy making. Under the GED, public authorities are expected to produce an annual diversity scheme and action plan. Since GED came into force the UKBA have produced two reports, the latest of which was May 2008.²²

Gender Asylum Policy Instructions (API)

The UK Border Agency (formerly Home Office) incorporated gender guidance into its Asylum Policy Instructions in March 2004.²³ Entitled '*Gender issues in the asylum claim*' the API was intended to redress a disparity in the way women's experiences of persecution were interpreted under the Refugee Convention. The documents aimed to highlight the procedural and evidential barriers that undermine the fairness of decision-making on women's asylum claims. Research published in March 2006 identified that there was very little evidence of this gender guidance being implemented by the Home Office.²⁴ An API also exists on internal relocation offering guidance for UKBA personnel on the 'reasonableness test' and the circumstances to which internal relocation can be applied.²⁵

Immigration Appellate Authority (IAA) Gender Guidelines (2000)

The Immigration Appellate Authority devised the guidelines to provide a framework for the judiciary to understand and apply gender issues to asylum appeals. The Gender Guidelines outlined experiences specific to asylum seeking women, varying

21 RWRP '*Women Asylum News* – Issue 77 leading article 'CEDAW Committee Criticises UK (2008)

22 RWRP '*Women's Asylum News*' – Issue 77 'Equality Scheme' p.5

23 Asylum Policy Instruction: 'Gender issues in the asylum claim' (2004): <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary>

24 see: S. Ceneda and C. Palmer, *Lip service or implementation?* (2006) and H. Crawley and T. Lester, *Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe* (Geneva: UNHCR, 2004)

25 Asylum Policy Instruction: Internal Relocation (2007): <http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/internalrelocation.pdf?view=Binary>

forms of gender persecution and serious harm as well as procedural and evidential issues. These guidelines were also in-line with provisions relating to gender in international human rights law Conventions (including the UK obligations under CEDAW) and international frameworks regarding asylum and refugee protocols.²⁶ Criticism had been expressed with regard to the application of the guidelines and specifically their dissemination, relevant training and a perception that they were not considered part of the mainstream asylum process.²⁷ During calls for a greater application of the guidelines, the Asylum and Immigration Tribunal (AIT) replaced the Immigration Appellate Authority (IAA) and withdrew the Gender Guidelines and provided no replacement. Consequently, this means immigration judges currently have no existing guidelines on gender tailored to asylum claims in which to base their knowledge, application of law and decision-making. The CEDAW committee Shadow Report (2008),²⁸ along with RWRP at Asylum Aid and other NGOs, are calling for these guidelines to be reinstated and believe their removal instils a lack of confidence that gender is understood and prioritised within the asylum system.

Rationale for Research Project and information available

The Refugee Women's Resource Project (RWRP) was established in 2000 in recognition of the specific issues and disadvantages women face going through the asylum system in the UK. RWRP is committed to raising awareness and enhancing understanding and knowledge of issues that predominantly affect women asylum seekers.

The prominence of internal relocation within UK caselaw is hugely significant to women asylum seekers, as the women's asylum claims are more likely to be based on persecution committed by non-state agents than men's. For this reason, women are disproportionately affected by internal relocation. RWRP's experience of representing women illustrated that many women were being refused refugee protection on the basis of internal relocation arguments. Previous research by RWRP²⁹ also identified areas of concern regarding the issue of internal relocation and the circumstances to which women were being returned.³⁰

Significantly, there are no statistics available on the number of women whose asylum claims are refused on the basis of internal relocation and who are returned. Statistics produced and disseminated by UKBA demonstrate only the number of people returned but not on what legal grounds. Further information has been sought regarding how frequently internal relocation is applied and used as the main grounds

26 Other countries that adopted similar gender guidelines include: Canada (1993), the USA (1995) Australia (1996) and Sweden (2001)

27 Wallace, R et al. *'The application of Gender Guidelines within the UK asylum process'* (2005)

28 RWRP *'Women's Asylum News'* Issue 77 'CEDAW committee criticises UK'

29 S. Ceneda and C. Palmer, *Lip service or implementation?* (2006)

30 NAWO *'What practical steps need to be implemented..'* (2007) p.52

for refusal for a number of years. For example in 2005, John Bercow MP asked the Secretary of State for the Home Department the following two questions:

1) If he will list the countries from which asylum claims have been refused on the grounds of the internal flight alternative [internal relocation];

2) What proportion of asylum claims were refused on the grounds of the internal flight alternative [internal relocation] in the last period for which figures are available.

Tony McNulty (the then Minister of State, Home Office) replied during Parliamentary Questions that:

“Each asylum and human rights claim is considered on its individual merits in accordance with our obligations under the 1951 UN Refugee Convention and the European Convention on Human Rights (ECHR). Applications may be refused for more than one reason. We do not record on electronic databases whether refusals were related to the availability of internal relocation as a means of avoiding persecution in any particular country. The information requested could be obtained only at disproportionate cost by examination of individual case files.”³¹

31 Hansard source. Parliamentary Questions – Thursday 14th July (2005).

Chapter 2

Methodology

The Research Project

'Relocation, Relocation- the impact of internal relocation on women asylum seekers' is a qualitative investigation into how internal relocation is being interpreted and applied to women's asylum and human rights claims. The project provides an insight into legal representatives views and practical experiences of representing women asylum seekers where internal relocation is applied to their case. Alongside this, the research explores the perspectives of women asylum seekers and considers the impact internal relocation has upon their claims, emotional well-being and futures. This research report does not intend to represent all legal representatives and women asylum seekers and only claims to represent the views, perspectives and experiences of people interviewed for the research project.

Project Rationale

The project rationale was based on the practical experience of representing women asylum seekers going through the UK asylum system. As women's asylum and human rights claims are more likely than men's to be based on non- state persecution women are disproportionately affected by internal relocation. A literature review revealed that information available on internal relocation predominantly discussed the legal significance within an international context. There is a notable absence in research on how internal relocation was being applied to women's cases in the UK and the impact this has on women themselves.

Research Aims

- To analyse the interpretation and application of the legal principle of internal relocation
- To explore the impact internal relocation has on women asylum seekers whose asylum and human rights claims are based on a form of gender related persecution
- To generate further discussions and considerations regarding the interpretations and use of internal relocation as applicable to women's asylum and human rights claims

Research Methodology

In line with the aims and objectives of this research project a qualitative research

methodology³² was used. A case study analysis was also adopted as it permits an exploration of individual ‘cases’ and provides a “*richly detailed portrait*” of key events within a real life context.³³

It was intended that the following groups of people with knowledge and experience of internal relocation would be interviewed for this research project:

- Immigration Judges
- Legal Representatives
- Women Asylum Seekers (case studies)

Identifying the Sample and the Interview Process

Immigration Judges

As outlined above, the research planning stage envisaged interviews with immigration judges to discuss and understand their interpretation and application of internal relocation. Such interviews were considered a key component of the research in order to create a holistic understanding of the legal principle. The protocol of interviewing immigration judges is to get permission from the President or the Deputy President of the Asylum and Immigration Tribunal (AIT). A letter and brief proposal was submitted outlining the project and requesting permission to interview between five and ten immigration judges. Regrettably, the Deputy President of the AIT in his response stated: “*I am sorry to say that I am not persuaded that the Tribunal should afford you the assistance you seek.*” Without permission, no immigration judge could be interviewed for this research project and therefore, the views and perspectives of immigration judges are not contained within this report. This is a deeply disappointing aspect of the research process.

Ten legal representatives

The sample of ten legal representatives consisted of: five barristers, two caseworkers, two legal advocates and one solicitor.

Criteria for legal representatives were established outlining key experience and expertise required to participate in this research. The criteria was set against specific experiences of representing women asylum seekers whose claims are based around gender related persecution within the UK asylum system. A minimum of level 2 Immigration and Asylum accreditation qualification and two years experience was requested to ensure each interviewee had sufficient expertise.

32 Qualitative research methodology provides an in-depth investigation into individual perspectives, experiences and thoughts. Due to the thorough nature of qualitative research, this methodology tends to use a smaller sample base but focuses on a deeper analysis. See Bryman, A. ‘*Social Research Methods*’ (2001)

33 Hakim, C. *Research Design- Strategies and Choices in Social Research*’ (1992) p.61

A variety of approaches were used to help identify the sample. Key legal chambers, law centres and individuals across the private, public and voluntary sector with a reputation for representing women asylum seekers were contacted and encouraged to participate. An advertisement was posted on the Refugee Legal Group web site³⁴ outlining the research and requesting participation. In addition, in order to increase the number of solicitors within the sample, recommended individuals were approached. Unfortunately only one solicitor was available to be interviewed. It was intended to attract a sample from various UK cities, but only legal representatives from London and Manchester expressed an interest in participating. A questionnaire was devised³⁵ and piloted with Asylum Aid/RWRP legal caseworkers in January 2008. Between February and March 2008 structured interviews were conducted with all ten legal representatives.

Five case studies with women asylum seekers

The five case studies included

- A lesbian from Uganda who was raped by police officers
- Lesbians from Jamaica (group interview)
- A woman who experienced sexual violence from, Democratic Republic of Congo,
- A woman who experienced domestic violence (with children) from Yemen
- A woman who experienced domestic violence from Pakistan

Criteria for the women's case studies were established outlining key experiences and cases requested for the research project. The criteria included that all women asylum seekers' asylum or human rights claims must be based around a form of gender related persecution and that their asylum claims had (at some stage) been refused on the basis of internal relocation. Women who were at different stages of the asylum system including women who were refused with no further grounds for appeal, or women who now had refugee status, could participate.

The sample of women's case studies was identified using both gatekeeper and snowballing approaches.³⁶ A leaflet was produced and distributed to a number of Refugee Community Organisations (RCOs) and women's groups. An advertisement was placed in a RCO news bulletin to outline the project and encourage participation. Key legal chambers, law centres and frontline workers were contacted to inform clients of the research project. In addition, an informal discussion was held at the Refugee Council women's group (drop-in) where women were also encouraged to

34 The Refugee Legal Group (RLG) is an active google-group that provides legal advice and support to legal representatives working within the UK asylum sector. RLG has over 300 subscribers from across the UK.

35 With the support and expertise of the Research Advisory Group

36 Gilbert, N. *'Researching Social Life'* (2001)

discuss the project with their friends. The issue of internal relocation being applied to lesbian women arose during interviews with legal representatives. As a result, the UK Lesbian and Gay Immigration Group (UKLGIG) were contacted to discuss this further and they arranged a specific group interview with three lesbian friends from Jamaica. An additional person (friend) was due to attend this group interview, but unfortunately she was detained by Immigration Officers and taken to Yarl's Wood Immigration Removal Centre before the scheduled interview. Upon her release she was too traumatised to be interviewed, but forwarded her determination details and granted permission for it to be included in the analysis. This determination is quoted within this report. Similarly, two other women requested to be included in the case-study analysis. Unfortunately one woman was also detained and taken to Yarl's Wood IRC the night before the interview and one woman was removed from the UK and relocated before an interview was scheduled. These three cases highlight the distress and insecurity many women asylum seekers face going through the asylum system including that they can be detained at any point at UKBA's discretion.

Participatory process

Due to the level of trauma experienced by the women selected for the five case studies a participatory approach was developed for this research project. Feedback from legal representatives and front-line workers during the sample identification process emphasised the level of distress many women are experiencing going through the UK asylum system, along with coming to terms with their persecution. In addition, a participatory approach was considered necessary in order to create a very different atmosphere and interview setting and to move away from the type of interviews women asylum seekers have experienced going through the asylum system. Research suggests that the asylum interview process is extremely traumatic for asylum seekers, particular women disclosing rape, sexual violence and torture.³⁷ The use of participatory tools permitted a relaxed, informal ambience and encouraged an open dialogue for people to express their views in their own time and words. The participatory tools used for this research included a:

• Prompt board

The statement '*Things that worry me about Internal Relocation*' was written on a large piece of card and women were given several scenarios. Women were asked to place the scenario on the prompt board if it reflected their anxieties, experiences or thoughts regarding being returned and relocated. Upon placing all relevant cards on the prompt board, women talked about each scenario and discussed their concerns and views.

37 D, Bogner, J. Herlihy and C. Brewin 'The Impact of Sexual Violence on Disclosure in Home Office Interview's British Journal of Psychiatry 191:75-81 (2007)

- **Discussion Line**

A line was drawn with the terms 'Agree' and 'Disagree' on opposing ends of the line. Women were read several statements and were asked to place a card nearest to whether they agreed or disagreed with the statement. Upon placing the card discussions arose around why they agreed or disagreed with the statement, their experiences, thoughts and perspectives.

- **Statement Chart**

Several incomplete statements were placed on a large piece of card and women were asked to finish the statement. This proved a particularly useful tool to conclude the sessions and key issues discussed.

Ethical Principles and Practical Considerations³⁸

Ethical principles frame all social research, especially qualitative research. Given each case study involved working with women who had experienced gender related persecution, sexual and physical violence and the additional trauma of going through (or having been through) the UK asylum system, ethical issues formed a key part of the research. Below outlines the key ethical principles used for this qualitative social research project and the practical considerations are discussed.

- **Ensuring all participants give their informed consent**

The aims, objectives, intended outcomes and research process were explained to all interviewees. This was discussed when people expressed an interest in participating and at the beginning of the interviews. All women were given an 'Informed Consent Form' that was discussed and signed before all interviews.

- **Minimising harm and stress to participants throughout the research process**

Every effort was made to ensure women did not experience unnecessary harm or stress during the research process, especially during the interview. In order to make women feel more relaxed and comfortable, they were asked to nominate a suitable location for the interview³⁹ and to say whether they wanted additional support (in terms of friends i.e. Jamaican group interview and/or support worker).

- **Respecting participants' right to privacy**

All participants were assured that they had a right to privacy and did not have to disclose and discuss anything that they did not want to and this point was reiterated throughout the discussions.

38 Gilbert, N. 'Researching Social Life' (2001)

39 Three women chose to be interviewed in their homes and two women chose to be interviewed in a local NGO centre with a nominated support worker.

- ***Ensuring anonymity and confidentiality***

Every effort was made to ensure the anonymity and protect confidentiality of all participants including legal representatives and women asylum seekers. All names have been changed and identifying features have been removed.

Research Advisory Group

In order to provide additional guidance, support and to help steer the research project a Research Advisory Group (RAG) was formed from members of RWRP's Advisory Committee. The RAG consisted of research academics with expertise in gender and refugee issues, legal practitioners with experience of working on gender persecution cases and an expert on trafficking. Professor Eleonore Kofman, volunteered to be a technical advisor throughout the research process. The RAG provided an additional technical and ethical dimension to the project.⁴⁰

40 See Acknowledgements

Chapter 3

Internal Relocation – Legal Analysis

Background

The concept that asylum seekers are not usually entitled to international protection if it is considered that they can relocate to a different area to where they experienced persecution, has come to have huge legal significance within international refugee law and UK caselaw. This legal test which results in many asylum seekers being refused refugee status is not explicitly articulated within the 1951 Refugee Convention. Its origins are considered to be an area of contention amongst many legal representatives. Some legal representative believe the *Handbook on Procedures and Criteria for Determining Refugee Status* (The UNCHR Handbook) to be helpful in defining what internal relocation means, others dispute this. Paragraphs 90 and 91 of the Handbook state:

“As long as he has no fear in relation to the country of his nationality, he can be expected to avail himself of that country’s protection. He is not in need of international protection and is therefore not a refugee.”⁴¹

“The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so.”⁴²

The internal relocation test only emerged and started to be applied from the 1980s. At this time, alongside the legal debates regarding its scope within international refugee law, there was also a notable international political shift regarding the accessibility of international protection. From the 1980s onwards ‘asylum’ and mechanisms to ‘restrict asylum’ became key political issues in many western states.⁴³ Various nation states consequently interpreted and developed specific national caselaw that

41 UNHCR handbook paragraph 90

42 UNHCR handbook paragraph 91

43 See Chapter 4 ‘the application of internal relocation’ section c)

permitted the internal relocation test to be applied by immigration authorities in assessing claims for international protection. In reality, this saw the internal relocation test frequently being used to refuse international protection on the grounds of refuting individual fear of persecution across the entire country of origin. The analysis for this research is restricted to the jurisprudence in the UK. Internal relocation has been interpreted differently in different countries.⁴⁴ In order to contextualise how the UK has applied internal relocation, the current legislative framework and UK caselaw is outlined below.

Legislative Framework

1) EU Asylum Qualification Directive 2004/83/EC of 29 April 2004⁴⁵

Article 8

Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.

2) Immigration Rules⁴⁶

Para 339O (ii) and (iii) provides:

- (i) The Secretary of State will not make:
- (a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country;
- or
- (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

44 for a recent international overview see: Refugee Appeals number 76044 [2008]

45 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

46 HC 395

- (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
- (iii)(i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

UK Caselaw

The legal test of internal relocation continues to develop and evolve within UK caselaw. Chapter 4 of this report covers legal representatives' views regarding various aspects of how the application of internal relocation has changed within the UK. This section will briefly outline some of those key cases and highlight their legal significance.

Robinson⁴⁷ [1997]

The Court of Appeal in Robinson considered the scope of the legal test of internal relocation by looking at different approaches that other national courts had taken including:

The Australian approach:

*“If it is not reasonable in the circumstances to expect a person who has a well-founded fear of persecution in relation to the part of a country from which he or she has fled to relocate to another part of the country of nationality it may be said that, in the relevant sense, the person’s fear of persecution in relation to the country as a whole is well-founded.”*⁴⁸

The Canadian approach:

*“Would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?”*⁴⁹

47 Robinson, R (on the application of) v Secretary of State for the Home Department & Anor [1997] EWCA Civ 3090 (11 July 1997)

48 paragraph 17- Federal Court of Australia in Randhawa- Robinson, R (on the application of) v Secretary of State for the Home Department & Anor [1997] EWCA Civ 3090 (11 July 1997)

49 In *Thirunavukkarasu*, Linden JA, giving the judgment of the Federal Court of Canada, said at p 687- Robinson, R (on the application of) v Secretary of State for the Home Department & Anor [1997] EWCA Civ 3090 (11 July 1997) para 18

Other Approaches⁵⁰:

The Court of Appeal identified other approaches asking:

- (a) *practically (whether for financial, logistical or other good reason) is the 'safe' part of the country reasonably accessible?*
- (b) *will the claimant be required to encounter great physical danger in travelling there or staying there?*
- (c) *will he or she be required to undergo undue hardship in travelling there or staying there?*
- (d) *will the quality of the internal protection meet basic norms of civil, political and socio-economic human rights?*

Having considered the international interpretation, the Court analysed the UK position. It concluded that both initial decision makers and the appellate authority had to ask: “*can the claimant find effective protection in another part of his own territory to which he or she may reasonably be expected to move?*” Following this, the test “*would it be unduly harsh to expect this person to move to another less hostile part of the country?*” had to be applied. They held that the use of the words “unduly harsh” fairly reflects the issue of whether a person-claiming asylum can reasonably be expected to move to a particular part of the country.⁵¹

Karanakaran [2000]⁵²

The Court of Appeal considered what standard of proof ought to be applied in assessing the internal relocation test. It concluded that decision makers had to ask, taking all relevant matters into account, would it be *unduly harsh* for the applicant to settle in the proposed area of internal relocation?

AE and FE [2003]⁵³

The Court of Appeal reconsidered its conclusions in Robinson⁵⁴ in light of the Human Rights Act 1998 coming into force. They held that decision makers “*should distinguish clearly between (1) the right to refugee status under the Refugee Convention, (2) the right to remain by reason of rights under the Human Rights Convention and (3) considerations which may be relevant to the grant of leave to remain for humanitarian reasons.*” The Court of Appeal held that consideration of the *reasonableness* of internal relocation should focus on the consequences to the asylum seeker of settling

50 Paragraph 18- Robinson, R (on the application of) v Secretary of State for the Home Department & Anor [1997] EWCA Civ 3090 (11 July 1997)

51 Robinson paragraph 29

52 Karanakaran [2000] 3 All ER 449

53 AE & Anor v Secretary of State for the Home Department [2003] EWCA Civ 1032 (16 July 2003)

54 Robinson, R (on the application of) v Secretary of State for the Home Department & Anor [1997] EWCA Civ 3090 (11 July 1997)

in the place of relocation instead of his previous home. The Court of Appeal clarified that the comparison between the asylum seeker's situation in the UK and what it would be in the place of relocation was not relevant when considering asylum but may be when considering the impact of the European Convention of Human Rights, or the requirements of humanity.⁵⁵ In reality, the effect of this decision was to make the internal relocation test significantly more challenging.

Januzi [2006]⁵⁶

The House of Lords sought to clarify further the test for internal relocation. The appellants had been denied refugee status on the “*grounds there is another place (the place of relocation), within the country of the appellant’s nationality, where he would have no well-founded fear of persecution, where the protection of that country would be available to him, and where in all circumstances he could reasonably and without undue harshness be expected to live.*”⁵⁷ Lord Bingham held that there was no presumption that internal relocation could not take place where the persecution feared emanates from the state.⁵⁸ He referred to the test set out in *Thirunavukkarasu*⁵⁹ and to issues such as ‘safe haven,’ ‘internal protection,’ ‘respect for human rights’ and ‘economic survival’ which need to be considered in assessing internal relocation. He also clarified certain conditions that would be deemed as ‘unreasonably harsh’ including that: “*one cannot reasonably expect a city dweller to go to live in a desert in order to escape persecution.*”⁶⁰ Lord Bingham found assistance in UNHCR’s Guidelines on internal relocation in particular, for their focus on the standards prevailing generally in the country of nationality and for the manner in which the reasonableness question is framed: “*Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there.*”⁶¹

AH (Sudan) [2007]⁶²

The case of AH (Sudan) revolved around three non-Arab Darfurian men, two of whom were subsistence farmers. All men had experienced severe forms of persecution by militias in Darfur. The House of Lords ruled that it would be ‘reasonable’ and not ‘unduly harsh’ for Darfurians to relocate to Khartoum. Baroness Hale of Richmond stated that although the conditions to which the Darfurians would be returned to

55 para 67- *AE & Anor v Secretary of State for the Home Department* [2003] EWCA Civ 1032 (16 July 2003)

56 *Januzi v SSHD* [2006] UKHL5 [2006] 2AC 426

57 *Ibid* Januzi paragraph 1

58 *Ibid* Januzi paragraph 21

59 In *Thirunavukkarasu*, Linden JA, giving the judgment of the Federal Court of Canada, said at p 687- *Robinson, R (on the application of) v Secretary of State for the Home Department & Anor* [1997] EWCA Civ 3090 (11 July 1997) paragraph 18

60 *Ibid* Januzi paragraph 13

61 Goodwin-Gill, et al. ‘The Refugee in International Law’ (2007) p126

62 *AH, IG and NM (Sudan), SSHD* [2007] EWCA Civ 297

within Khartoum could be ‘appalling’ they would be “no worse than those faced by other Sudanese IDPs [Internally Displaced Persons] [and] it would not be unduly harsh to expect them to return.” This clarified that conditions must be compared against ‘normal’ life standards within the country of origin.

AA (Uganda) [2008]⁶³

AA (Uganda) is the most recent significant women’s case on internal relocation. AA (Uganda) was a female who was born in Northern Uganda. The Lords Resistance Army (LRA) killed both her parents when she was very young. AA lived consecutively with aunts and an uncle who abused her and then came to the UK to live with another aunt whose husband raped her.⁶⁴ The Court of Appeal assessed the original decision by the AIT that it would be ‘reasonable’ to return and relocate AA to conditions of ‘enforced prostitution, homeless and destitution’ on the grounds that “there are however many young women in that situation.”⁶⁵ The Court of Appeal however rejected and overruled this decision stating:

*“Even if that is the fate of many of her fellow countrywomen, I cannot think the AIT or the House of Lords that decided AH (Sudan) would have felt able to regard enforced prostitution as coming within the category of normal country conditions that the refugee must be expected to put up with. Quite simply there must be some conditions in the place of relocation that are unacceptable to the extent it would be unduly harsh to return the applicant to them even if the conditions are widespread in the place of relocation...”⁶⁶
...It would be unduly harsh to return AA to Kampala.”⁶⁷*

To conclude, internal relocation has taken a key role in international refugee law and UK caselaw since the 1980s. As caselaw is a continuing process, the issue of internal relocation will undoubtedly develop and new legal parameters and interpretations will emerge.

63 AA (Uganda) [2008] EWCA Civ 579

64 Women’s Asylum News ‘AA (Uganda) v Secretary of State for the Home Office [2008]’ Issue no76 June/July 2008

65 AA (Uganda) and The Secretary of State for the Home Department’ [2008] EWCA Civ 579

66 ibid AA (Uganda) paragraph 17

67 ibid AA (Uganda) paragraph 18

Chapter 4

The application of Internal Relocation

This chapter draws on the experiences of legal representatives to reveal how they perceive internal relocation is currently being applied within the UK asylum system in relation to women's asylum and human rights claims.

The themes that emerged from the interviews with legal representatives were:

- a) Understanding of issues that affect women
- b) The impact of internal relocation on the decision-making processes
- c) The politicisation of refugee law, the judiciary, and the impact this politicisation has on the internal relocation test
- d) The relationship between the application of internal relocation by the Judiciary and the UNHCR guidelines
- e) Practical implications for legal representatives

a) Understanding of issues that affect women

Legal representatives noted that in many refugee-producing societies women's social position is unequal to men's and consequently women can become vulnerable to further abuse and exploitation. Legal representatives were troubled that subjecting women to internal relocation was a complex process that involved understanding layers of social and cultural norms and the practical realities of gender in each society. Legal representatives were however concerned that some immigration judges and UKBA personnel did not necessarily engage in the complexity of these issues and in some instances, did not differentiate between relocating a man and a woman. A recent case of an Indian girl (minor)⁶⁸ illustrates this point regarding UKBA's position. The Indian minor was originally granted a successful outcome from the Asylum and Immigration Tribunal (AIT); however, UKBA appealed this decision and a reconsideration was called. UKBA believed the client's case should have been more closely considered alongside an Indian Country Guidance Case for an adult Sikh male. The client's legal representatives argued in the appeal that the circumstances of a female minor with no family in India are substantially different to those of an adult male.⁶⁹ The immigration judge at the reconsideration hearing agreed with the client's legal representatives and the original decision was upheld. This case highlights how some UKBA personnel pursue and apply internal relocation without taking into account distinct gender issues.

Patriarchal frameworks

Heaven Crawley discusses a similar lack of understanding of gender issues throughout the asylum process. For Crawley, decisions are *"interpreted through a frame-work of male experiences"*⁷⁰ and the asylum system, law and processes are based upon traditionally male perspectives. Crawley, was talking about the asylum system as a whole; however, similar analysis can be seen with regard to the application of internal relocation. The quote below, from a legal representative demonstrates how the cultural constraints many women face in their country of origin are perceived to be not sufficiently understood by decision-makers. The interviewee believed a patriarchal framework was present in the application of internal relocation as decision-makers are infused with different experiences, social codes, norms and values which could affect their ability to understand the complexity of social mores and gender perspectives.⁷¹

"What this means is decision-makers have to look at the cold hard reality of a woman's life were they to relocate. That's very difficult for decision-makers"

68 For full details of this case see: 'Women's Asylum News' 'Home Office Appeals: Dubious Grounds in April 2008 - Issue 74 p.1-3

69 Country Guidance Case: LS India CG [2002] UKIAT 04714

70 Crawley, H. 'Refugees and Gender – Law and Process' (2001) p.35

71 also see: Graycare, R. 'The Gender of Judgements: An introduction' (1995) p266

to look at because it's so distant, not just geographically but it's distant from, given the types of people who make the decision, their class, background, their age, their education. It couldn't be more different." [Legal Advocate, London]

This view represents how the application of internal relocation can be seen within a patriarchal-framework and how decision-makers are perceived to have a limited understanding of gender issues. Legal representatives also expressed grave concerns at the lack of analysis regarding logistical issues women experience if relocated, especially the impact of social mores, cultural codes and assumptions. The quote below illustrates the view that internal relocation is perceived to be applied to women's cases without sufficient assessment or understanding of gender issues and the practical realities women face if returned and relocated.

"So they [Immigration Judges and UKBA] bring ...this remarkable disposition to decision making, and, the things that they never ever, give proper regard to is,... the cultural assumptions of the societies, from which .. women come from, and the cultural assumptions about whether or not single women can live alone. And what would be assumed if they do live alone. And whether or not they have a capacity to live alone, I mean whether any landlord would ever let them...so, I think there's a real lack of understanding that if you as a strange person turn up, in a city, everyone will be curious, everyone will be asking questions, your background soon gets known." [Barrister, London].

Risks and assumptions

Legal representatives interviewed for this project also discussed issues around the nature of societal and personal risks women may face of further violence, persecution and discrimination if returned and relocated. The legal representatives argued that the complex nature and likelihood of risk was not given due consideration and investigation when issues of internal relocation were discussed in courts. Overwhelmingly, the legal representatives believed issues of risk were regarded very simplistically and were based on extremely unsound assumptions. To illustrate this point, one legal representative talked through the determination details of one of her clients where internal relocation had been applied to her case.⁷² Her client was born in Afghanistan but was sold by her father to a man from Pakistan as a child. After 20 years of working and living with this man she was 're-sold' and forcibly married to another man in Pakistan. Throughout this 'marriage' she was continually abused, beaten and threatened that the children she had had with him would also be 'sold'. The immigration judge at the AIT regarded the appellant's account as credible and

⁷² This is an unreported case

stated “it seemed to me the appellants account is inherently plausible...no material inconsistencies emerged. I find the appellant is a credible witness with regard to the core of her account and I accept the actual account.’ However with regard to the decision the immigration judge ruled: “Pakistan is a very large country with a population of over 140 million. It would be very difficult for her husband to find her in a different part of Pakistan... The appellant gives no evidence at all that her husband in Pakistan will seek her out in another part of Pakistan⁷³.’

The application of internal relocation in this particular example illustrates the immigration judge’s belief and assumption that relocation deters further persecution. If this assumption is misplaced then relocation in this instance could potentially be placing the women at risks. Other legal representatives raised similar concerns regarding the level of assumptions and discussed similar cases.

“Are they going to reach you if you move, often that question isn’t asked, its just assumed if you’re in a different area they won’t reach you.”
[Legal Advocate, London]

The level of perceived access to protection and assumptions concerning women who have experienced trafficking, rape, domestic violence and abuse and who are psychologically traumatised are different when juxtaposed to the situation of women with similar experiences from the UK. Legal representatives argued that different assumptions and assessments of risks are applied between women asylum seekers and British citizens. A legal representative quoted below suggests that access to support, secure housing, legal safeguards and/or standards of care that are in place in the UK are not considered necessary for women asylum seekers. This could imply that risks of further attacks and an adequate assessment of sufficiency of state protection are not always thoroughly considered in the application of internal relocation. This raises two questions: whether a different set of standards and safeguards are applied and deemed appropriate for women asylum seekers; and whether the potentially over-simplified assumptions are being misplaced. Consequently, failing to consider either of these two questions within the context of pursuing internal relocation could place women at additional risk of further reprisals or attacks.

“So with victims of domestic violence, they [UKBA & immigration judges] just say she’s at risk in her home area and will say she can relocate. There would be an expectation in non-state persecution that the perpetrator would not be

73 Quoted from the unreported case

able to find her, as they don't have the strength of the state....But look at it here, if you have a domestic violence case, you report it to social services and they move you, you can get an injunction, they take you from that address and there's procedures to keep you hidden. There, internationally, are we putting in the same safeguards that we advocate for women in the UK. I suspect not". [Barrister, London]

Further discussions emerged regarding how some UKBA personnel and immigration judges view women's asylum claims around cases of abuse, trauma and sustained violence.⁷⁴ Harsh scepticism of individual accounts of persecution, yet a simultaneous over-optimistic belief that the women are able to quickly resume and rebuild a life in places of relocation, were believed to be applied. This perceived dichotomy is best summarised in a quote below from a barrister who believed this approach would not be applied to women in a UK context who have experienced the same level of violence. For this particular barrister, the implied doubt in women's claims, yet a simultaneous belief that women can relocate given the high levels of trauma, persecution and violence experienced, is at times inappropriate.

"The immigration judges and Court of Appeal judges ... and almost certainly the Home Office [now UKBA] people... they go in and out of what I call a 'perverse altruism'..... They live in a ... extraordinary world I must say, because .. at the same time, its incredibly sceptical about truthfulness, but it is also extraordinary optimistic about .. people's capacity to deal with difficulties." [Barrister, London]

Similarly, issues of assumed resourcefulness and an ability of women to cope, rebuild a life and quickly reintegrate into a new areas of relocation arose in several other discussions with legal representatives. This fits into an analysis regarding a perceived over-simplification of the complexity of needs and socio-cultural issues women would face if they were to be relocated in their country of origin.

"The system is just not hands on, they will just say, you'll be safe in that area, it's reasonable to relocate you, off you go, go and sort yourself out'. There's very much a mentality where they will say 'well you've found your way here, find your way back.'" [Barrister, London]

74 also see BWRAP and WAR: 'Misjudging rape: breaching Gender Guidelines and international law in asylum appeals' (2006)

Some legal representatives also discussed how the standard of women's education contributed to their perceived 'resourcefulness' and abilities to find a job and relocate in a new area. One barrister discussed that her client had gained a GCSE whilst going through the asylum system and this was subsequently applied to her case as a reason for making internal relocation more feasible due to her apparent 'resourcefulness.'

"He [the immigration judge] used the fact that she's got a GCSE...He just said 'oh well, she's now very well educated compared to other women who aren't very well educated in Senegal, she can go back to Dakar and get a job' and that of course is rather problematic...He's using the fact that she gained a few advantages whilst here against her, and having accepted the truth of what has just happened to her, of what was done to her and caused her to flee, which was truly appalling.... It's very concerning really...I'm worried about this aspect of internal flight."
[Barrister, London]

Alongside this perceived over-simplification of women's ability to relocate, to find employment and secure livelihoods, legal representatives also discussed how they believe there is a lack of evidence-based analysis when issues of internal relocation are discussed in many women's asylum and human rights claims. As well as assessing level of risks on return, sufficiency of protection also has to be taken into consideration. Legal representatives however expressed concerns that issues of the likelihood of risks are minimised and access to protection is assumed to exist without sufficient assessment on the ground. One legal representative highlights below how in her experience both UKBA and immigration judges have implied that if policies exist or International Conventions⁷⁵ are signed, that alone demonstrates sufficient protection without any assessment of its implementation or monitoring.

"You're talking about a country where a state is unwilling, or where they have laws and it's not implemented...I've had arguments where they [immigration judge/UKBA personnel] will say 'well they're a signatory to CEDAW so they're trying' but for women on the ground being a signatory doesn't have any meaning to women...It can look in theory if a country is able to protect women from violence, but in reality it doesn't happen." *[Caseworker, Manchester]*

⁷⁵ Convention for Elimination of All Forms of Violence Against Women (CEDAW). For further information see Chapter 1. CEDAW is signed by 185 countries.

Similarly, the immigration judge in the determination case above for the woman from Pakistan who experienced trafficking, forced marriage, domestic servitude and violence also cited existence of polices. Her determination states that *“as the law [in Pakistan] provides that trafficking is an offence then the state, in my view is able to provide protection against that offence.”* An appreciation that the laws mentioned had not protected her in the past or an adequate assessment of how they would protect her in the future was not evaluated within the determination. There was no further evidence or analysis provided alongside this statement by the immigration judge.

Many legal representatives cited cases where the existence of a particular agency was interpreted by UKBA and immigration judges as sufficient protection without any investigation into accessibility and security mechanisms in place. The difference between availability and accessibility of services in specific countries involves a complex layer of social, cultural and organisational analysis. South Manchester Law Centre explores and evaluates the accessibility of service provision for women fleeing domestic violence in Pakistan⁷⁶. Their research includes provision of shelters by government, NGO and private agencies and reveals the level of support and legal assistance provided alongside admission procedures, conditions and accessibility of protection. The findings revealed that government run refuges usually provided women with shelters for a maximum of three months. In addition, interviews with women and staff revealed there were deteriorating and cramped physical conditions, limited access to communal grounds and exercise and rigid restrictions were placed on women travelling outside the shelters.⁷⁷ Criticism of the diverse nature of private and NGO shelters included over-crowding, insufficient resources and religious restrictions. The project concluded that the provision of refuges and shelters were perceived as a temporary solution for women and offered little protection, rehabilitation, mental health provision or after care support. In addition, women who have been through experiences of abuse and brutality, may have a further heightened sense of shame⁷⁸ which can prevent them accessing help and can also be compounded by social stigma placed upon women in Shelters (especially in Pakistan and Afghanistan).⁷⁹

The South Manchester Law Centre’s research project exemplified the complexity and adequacy of service provision available for vulnerable women in Pakistan. The multifaceted nature of accessibility of services including the provision of care, rehabilitation and protection should also be considered for women fleeing violence

76 Siddiqui et al. *Safe to Return?* p.110-126 (2008)

77 Travel outside the shelter for women was usually restricted to court appearances and medical attention only.

78 Bogner, D. *‘What prevents refugees and asylum seekers exposed to violence from disclosing trauma?’* (2005)

79 Women are often considered to be to blame and a ‘bad wife’ for being in shelters – see Siddiqui et al, *‘Safe to Return?’* (2008) p.95

and seeking protection in other countries. Significantly, legal representatives believed that this level of understanding and analysis regarding accessibility of service provision is largely non-existent when UKBA and immigration judges apply internal relocation. All legal representatives interviewed stated they had regularly experienced UKBA personnel and immigration judges stating that the mere existence of a shelter, refuge or specific agencies was considered sufficient to support the feasibility of internal relocation. This view questions what information and the appropriateness of sources immigration judges and UKBA personnel rely upon to make their decision. Legal representatives were gravely concerned that the lack of investigation and safeguards in place to protect women from future violence and persecution could be placing women at risk in the future.

“It’s the simple fact that it exists. They [UKBA and Immigration Judges] infer durable safety from the fact that they have a refuge. They don’t look at things like access, reputation, what it’s like. The decision can be irreversible. It’s signing off a woman’s safety.” [Legal Advocate, London]

Case examples

A recent example of an ‘unreported case’ regarding a women fearing FGM in Kenya illustrates this point further.⁸⁰ For this case the female appellant fled the Kikuyu tribe in Kenya and was granted Discretionary Leave to Remain (DLR) until she was 18. After her 18th birthday the UKBA refused to grant further leave to remain as they believed internal relocation was a suitable option, hence if the appellant moved to an area where the Kikuyu and her father were not present she would be safe from harm. The Immigration Advisory Service (IAS) appealed this decision and investigated UKBA’s assertions and assumptions regarding FGM and the agencies available for support and protection. The AIT immigration judge at the appeal agreed with the appellant’s representatives (IAS) and dismissed claims that internal relocation would not be unduly harsh. The judge firstly criticised UKBA’s representatives for refusing further leave to remain based on the age of the appellant and cited that: *“there is no evidence contained in the objective information that FGM is limited to girls under a certain age.”* With regard to agencies, the IAS contacted all agencies UKBA had mentioned in their refusal letter as being able to provide support and protection to enquire whether this was possible in practice. The IAS found that none of the agencies listed by UKBA could provide the level of practical support and protection required. Based on these findings submitted by IAS the Immigration Judge ruled that:

⁸⁰ For summary of case see: Women’s Asylum News Issue number 70 November/December 2007 ‘An Unreported Case: FGM in Kenya’

“There is evidence in the Appellant’s bundle that reliance on those groups [agencies] is shown to have been misplaced. Enquiries have been made by the Immigration Advisory Service ...which have yielded no positive responses on the issue of practical support and help for a young woman who is fleeing from FGM. ...The conclusions therefore on which the Tribunal placed their reliance upon do not appear from the evidence before me to be in a position to provide the type of practical support that the Tribunal considered would be available to the Appellant.”⁸¹

This unreported case demonstrates how the existence of agencies is often used by UKBA in the application of internal relocation to support the notion that refusing the claim and relocating the appellant would not be unduly harsh. However, as the IAS proved in this case, UKBA’s assertions were based on assumptions and not evidence. In addition, this case also exemplifies the level of work involved by legal representatives to counter internal relocation arguments and rebuff assumptions made about agencies. This level of investigation is arguably difficult within the Legal Aid criteria and therefore it is essential that misconceptions surrounding internal relocation and sufficiency of protection are addressed. Issues around the additional workloads internal relocation has on legal representatives will be discussed in more detail in section e) of this chapter.

Subsequent to interviews with legal representatives, the case of AA (Uganda) was decided.⁸² This case raises key issues with regard to the assumptions placed upon entities in the relocation area. For this case, the UKBA personnel and the AIT judge believed that a local church in Kampala would be able to support and protect AA from enforced prostitution. This decision was based purely on an assumption as no evidence was submitted or received indicating that any church in Uganda could provide the level of sustained support and protection implied. For this particular case at the AIT, the feasibility of internal relocation was presented very simplistically and without any evidence-based assessment. The assumptions placed on the church in AA’s relocation area were later rejected at the Court of Appeal and the original decision was overturned. The example of AA (Uganda) also illustrates how the application of internal relocation can differ between immigration judges at the AIT and Court of Appeal. The Court of Appeal immigration judge ruled in the appeal hearing of AA that:

“The conclusions reached on the role of the church both by immigration judge Denson and by immigration judge Coker were not based on relevant evidence, and were perverse. If the support of the church in Uganda was to

81 Directly quoted from unreported case determination details

82 Also see chapter 1

offset the dangers otherwise facing AA, the church would have to provide accommodation; employment; and protection from sexual exploitation...the evidence went no further than that she attends the church and has friends and associates in the congregation [in the UK].⁸³

Women's emotional well-being

Alongside assumptions regarding the existence of entities and assumed sufficiency of protection, legal representatives also believed some UKBA personnel and immigration judges also made assumptions about women's emotional well-being and the ability to recover from the trauma they experienced. One legal representative discussed an example where assumptions were made about her client based solely on observations in court:

"For my client, the outcome of her case, we won at first instance but then we lost at the home office appeal and we are now going to the court of appeal. I was very disappointed with the outcome. The tribunal concluded when they refused the appeal that they recorded in their determination that they 'observed the appellant and they were quite sure that she would be able to cope with life in Addis Ababa.' Part of our appeal was, during the course of the hearing, she was so badly shaken by having to re-live what she been through, that she was shaking in the witness box and we had to remove her to the back of the court. When she got the determination through, she had to be sectioned as a result of her very strong reaction to it."
[Barrister, Manchester]

The above quote raises concerns regarding the appropriateness of placing assumptions on a person's 'ability to cope' on mere observations in court. In addition, the accuracy of those assumptions is extremely questionable given the lack of medical and psychiatric knowledge of the tribunal to make this medical assessment. Psychologists have also argued that a growing body of scientific evidence is available and needs to be taken into account by the courts, in place of assumptions.⁸⁴ Perhaps the lack of judgement of the appellants 'ability to cope' is further exemplified by the fact she was sectioned immediately after receiving her determination decision.

83 AA (Uganda) and The Secretary of State for the Home Department' [2008] EWCA Civ 579

84 Herlihy and Turner 'Editorial: Asylum Claims- Are we sharing our knowledge? (2007)

Moreover, some legal representatives expressed concerns that returning and relocating people could psychologically damage women and detract from any progress they may have made accessing treatment and counselling in the UK. It has long been established that in order to be successfully treated, including for Post Traumatic Stress Disorder (PTSD),⁸⁵ the individual needs to be in a place of safety and have a level of stability.⁸⁶ Some legal representatives believed returning vulnerable women to their country of origin could incite psychological triggers and memories of their persecution and this issue is not given adequate attention by UKBA and some immigration judges.

*“The judge simply did not understand the fact that the woman had psychologically improved in the UK, was based on her being away from the area of persecution and triggers that reminded her of how she was persecuted in the past. For her to go back to Addis Ababa, even though not her own area, would still provide all those triggers that would cause flashbacks and the difficulties that she faced before hand. That was simply brushed aside”
[Barrister, Manchester]*

Summary

The legal representatives interviewed believed many UKBA personnel and immigration judges failed to acknowledge and engage in gender issues and over-simplified the risks on return many women may face. In addition, significant issues regarding basing sufficiency of protection and access to support on assumptions and not evidence emerged from the interviews. Some legal representatives also feared the psychological impact of relocating some women was not given adequate attention. Consequently the issues outlined above indicate that the application of internal relocation could be placing women at further risk.

85 PTSD is present for a high number of people who have experienced interpersonal trauma. See Ehlers and Clark (2000)

86 see: Blackburn, Herlihy and Turner (2003) and Herman (1992)

b) The impact of internal relocation on the decision making process

The legal representatives all expressed varying concerns that they believed internal relocation was being used increasingly and arguably unfairly as the grounds for refusing women refugee status. Many legal representatives raised anxieties over what they perceived to be: arbitrary decision-making; the lack of knowledge regarding the application of the internal relocation test and a limited understanding of how decisions impact on women.

Discussions arose from legal representatives regarding the perception that internal relocation was regarded as an additional ‘hurdle’ within the complicated and restrictive UK asylum system. For the legal representatives, internal relocation was presented as an additional layer to the 1951 Refugee Convention or the European Convention of Human Rights (ECHR) for which they had to present, evidence and argue in courts. As the Introduction (Chapter 1) of this research report charts, gender related persecution is not explicit within the Refugee Convention and consequently many women’s claims are argued under the category of a ‘particular social group (PSG).’⁸⁷ The quote below illustrates where internal relocation is perceived to be situated within this process:

“If you get past credibility, if you get past well founded fear, if you get past real risk of persecution to the woman, if you get past all of those things, then sufficiency of protectionIFA, it’s like the last hurdle that’s dealt with. Often you’ll find with women’s cases, who have gone through all of these hurdles, and then, well the BIA [now UKBA] will just apply the IFA and that’s it.” [Caseworker, Manchester]

Other legal representatives discussed similar concerns regarding how they believed internal relocation was arguably given increased legitimacy with the decision making process. Many legal representatives implied how internal relocation was potentially now applied to cases in order to refuse refugee status on claims that could have traditionally been granted status under the 1951 Refugee Convention.

“Of course we have to go through a court processes but the decision-making is completely appalling and one sided. We would have got leave without the internal flight argument, is like a whole, huge new add on.. There’s so many cases we’re now losing just on IF [Internal Relocation]. It’s a real get out clause. In effect it’s a ‘yes we think you’ve risked your life and proved you’re

87 Some legal representatives believe the PSG category of the Refugee Convention is the most complex of the convention grounds. See Rights of Women *Pathways to Justice* p. 86

a refugee but, ha, you can't prove that there's nowhere else you can go in that huge country you have come from'." [Barrister, London]

The notion that some women in theory, could be granted international protection within the 1951 Refugee Convention or ECHR and are being refused solely on the grounds of internal relocation raises concerns about the accessibility of international protection and nation states' responsibilities. As internal relocation was not part of the 1951 Refugee Convention this current usage presents a worrying trend within UK asylum law. The use of internal relocation as the main grounds of refusal suggests a diversion from international legal frameworks. Moreover, the quote below suggest there are moral questions that need also to be considered regarding how internal relocation is applied within the decision-making process.

"I find IFA [internal relocation] very frustrating. You can win a case in terms of establishing their well-founded fear of persecution... but lose solely on the issue of IFA, and in some ways it seems very unfair just to lose on that ground. Because however big the country, if your client has been particularly traumatised by their past experience and that's been accepted by the courts, and even the home office here, it just seems, essentially morally wrong to send that person back to that same country unless, you can prove almost beyond reasonable doubt that there is no risk to them anymore. But I don't think we can do that." [Barrister, London]

There are however differences in the interpretation of internal relocation amongst immigration judges. This report does not suggest that all immigration judges use internal relocation as a means of refusing credible women refugee status, but legal representatives did imply that some immigration judges apply internal relocation too restrictively to influence decisions negatively. For some legal representatives, the differences in immigration judges moved beyond interpretations and applications of the law, but were perceived to be at times random, based solely on the individual judge's assumptions of the internal relocation test. Many legal representatives discussed how in their experience, this left the decision-making around internal relocation arbitrary.

"A lot of the judges, you just know from as soon as they walk in, that it will be dismissed. You know that before you've even put your foot in the door." [Caseworker, Manchester]

It also emerged from discussions with legal representatives that inconsistencies in decision-making has left a common assumption amongst some legal representatives that certain immigration judges interpret the law too narrowly and selectively apply it in order to refuse asylum and human rights claims. This implies not all immigration judges apply the law objectively, and illustrates a perception amongst some legal representatives that certain cases may be unfairly refused and to an extent, predetermined based on the individual immigration judge.

“I do believe that if a judge wants to dismiss your appeal they will do it for whatever reason, he or she will find something. Your only hope is to try and go to reconsideration and say look they didn’t take this into account for adequate reasons and to try and get it overturned and start again.”
[Barrister, London]

The above quote also demonstrates how some legal representatives are left to strategise and manoeuvre within asylum law and the different level of courts in order to win their case. For one legal representative, pre-empting and planning around negative decisions and initial refusals is a reality even if she perceives her case to be strong.

“I find with asylum I’m almost thinking right from the start, when this goes to appeal, which expert will I use, I mean this is before they’ve even had their interview for God’s sake. That’s the stage in which it’s got to.” *[Caseworker, Manchester]*

These points argued by the legal representatives present disturbing implications in terms of both the quality of decision-making within the asylum system (especially at the initial stage) and crucially the impact on women. If some legal representatives even if a small proportion, have experiences of internal relocation not being fairly applied or understood by decision makers, it has huge consequences for asylum seekers. This includes the personal impact, access to services and psychological trauma of forcing a woman through the appeals process unnecessarily.

As all immigration judges interpret and apply the same legal test regarding internal relocation and work within the same guidelines, diversions or arbitrary applications of internal relocation present a worrying picture. To add to this perception, many legal representatives also questioned the level of understanding, knowledge and training immigration judges had on the application of current asylum law, internal relocation and gender issues.

“I come across judges very often they don’t understand the law. Not all of them, but some just don’t understand it properly, which given their level of responsibility is very worrying.” [Caseworker, Manchester]

This perceived inconsistency at a decision making level questions whether an accurate and fair decision-making process is accessible and whether all people who need international protection are able to receive it. For some legal representatives, their experiences of submitting evidence to immigration judges and the determinations they receive outlining the judge’s decisions has often left them questioning what training is available, including the frequency and content.

“You know some of these judges, do they have training and where do they have training? Sometimes they come out with such rubbish and I don’t think some of them know the law. I don’t know what is happening with their training, I think it’s appalling.” [Caseworker, Manchester]

This perceived lack of understanding of the law did not just include immigration judges but also some UKBA case-owners and other legal representatives. This noted lack of knowledge across the professions suggest that good legal representation, availability of sufficient in-depth information on internal relocation, accessibility to a fair hearing and the quality of decision-making within UK asylum process; may not always be accessible.

“Immigration judges don’t understand the law... .. they can just put 2 or 3 lines about internal flight and they’ll say ‘yes but Nigeria is a big country... so she can then internally relocate. BIA [now UKBA] case-owners... there are good ones but not the majority...they don’t engage with any intelligent discussion... from the Home office, the refusal letters I read are ludicrous....I think also many legal reps, don’t necessarily understand it either.” [Barrister, London]

The above discussions illustrate how the legal representatives interviewed for this research project believed some individuals who have responsibility for applying the law fail to understand it properly. This also further demonstrates an apparent lack of standardised knowledge and application of the law, within and amongst immigration judges, UKBA personnel and legal representatives. This lack of standardised approach that is particularly apparent in the application of internal relocation appears to be more significant than personal differences in interpretation. These variations

raise the question of what training immigration judges, UKBA personnel and legal representatives receive on internal relocation, current case law and specific gender issues.

Legal representatives also expressed additional concerns for women, notably the removal of the IAA Asylum Gender Guidelines (2000) (see Chapter 1). For legal representatives, the removal of the guidelines contributes to concerns that there is a lack of commitment and engagement to understand gender issues and the impact of internal relocation on women, at both a decision-making and a policy level.

“There should be a correct understanding in relation to women’s experiences, we are still fighting for the basics in relation to gender especially since the courts have taken away their own guidance which could suggest that they know everything, but that’s not true. Day after day, I see decisions where the basic principles are not being followed. There should therefore be a resurrection of the gender guidance in order to ensure judges make a fair decisions based on policy, which is accountable.” [Barrister, London]

These issues regarding perceived understanding of the law, training and the removal of the Gender Guidelines illustrate the need for a transparent decision-making process. As outlined in Chapter 1, there are no statistics available regarding the number of cases internal relocation is applied to, how many initial decisions of internal relocation are successfully appealed and how many women are returned on this principle. Monitoring the use and outcome of internal relocation and providing statistics specifically relating to women’s claims and individual refusal rates of immigration judges in the UK would ensure a more transparent process.

In addition to a greater accountability of the decision making process, legal representatives also called for transparency regarding the selection criteria for Country Guidance and ‘reported and unreported cases.’ Many legal representatives discussed how they believed increasing precedence was being placed on Country Guidance cases for women’s claims within the UK asylum system. The Country Guidance system applies to several countries of origin for women with similar persecution grounds. For example, Country Guidance cases exist for women fleeing domestic violence from Pakistan⁸⁸ and women fearing FGM in Kenya.⁸⁹ Therefore, if a current Country Guidance case exists relating to the country of origin and claim of the appellant, their case will be closely linked to the Country Guidance findings and decisions. Some legal representatives discussed a lack of understanding and transparency over the criteria on which specific cases are selected for Country

88 FS (Pakistan CG) [2006] UKAIT 00023

89 VM (Kenya CG) [2008] UKAIT 00049

Guidance. A few legal representatives interviewed were concerned that some cases selected were either not strong, not representative and largely had unsuccessful decisions, which potentially hampered decisions for their appellant. In addition, country evidence presented in country guidance cases is often also used for later cases relating to the same country. This can be extremely restrictive for the appellant's legal representative as it limits further issues and evidence for the case to be explored. Similar concerns were expressed regarding why certain cases were reported and others 'unreported.'

"We don't really know, that is a bone of contention for immigration lawyers. It's the tribunal that decides what is going to be a country guidance case and it's the tribunal that decides whether to report a case as such.... There's no criteria that I'm aware of, I'm not sure. I've certainly had cases of mine where at one hearing I was told 'right, your case is going to be a country guidance case' and then you think 'why, because a fundamental part of my case was that nobody believed my client, so it seemed ridiculous to make a country guidance case... As it turned out it was never the country guidance case.... I've certainly known legal reps that have been told two weeks before a hearing that their case is going to be a country guidance case, and you don't want to know two weeks before, you want to know a minimum of six weeks before, because it does change, how you represent the case.'" [Solicitor, London]

Summary

Drawing from discussions with legal representatives interviewed for this research project, this section has outlined perceptions that internal relocation is being used as an additional hurdle on which to refuse some women international protection. Legal representatives outlined a lack of engagement and understanding of gender issues and the impact internal relocation has on women, which is compounded by the withdrawal of the IAA Gender Guidelines (2000). Together these present a decision making process that lacks transparency and is likely to have a detrimental impact on women who have experienced gender based persecution.

c) The politicisation of refugee law, the judiciary and the impact on internal relocation

The UK was one of the first signatories to the 1951 Refugee Convention and has traditionally offered international protection to refugees.⁹⁰ Although some sympathy was expressed towards some refugees public hostility began to develop during the 1960s and 1970s.⁹¹ Asylum remained a relatively low political issue until the late 1980s⁹² when numbers of asylum seekers dramatically increased in line with international conflicts.⁹³ In the early 1990s the then Conservative government began to portray asylum seekers as *“cheats – a drain on the public purse”*⁹⁴ and introduced legislation specifically to reduce the number of asylum applicants in the UK.⁹⁵ During the Labour government since 1997, asylum has remained a key political issue and asylum, as part of immigration controls, has seen unprecedented legislative changes, more than any other social policy area.⁹⁶ In government, the Labour party introduced even tougher legislation regarding asylum procedures and restrictions including criminalising people with false entry and restricting welfare benefits.⁹⁷ Political negative rhetoric also increased. In 2003 the Prime Minister Tony Blair stated at the Labour Party conference: *“we have cut asylum applications by half. But we must go further. We should cut back the ludicrously complicated appeal process, de-rail the gravy train of legal aid, fast track those from democratic countries, and remove those who fail in their claims without further judicial interference.”*⁹⁸ Currently, key political targets and UKBA's ‘success’ are measured solely on decreasing the number of asylum applicants and increasing the number of removals. This has created a political backdrop whereby *“the belief that liberal democracies have a moral and international obligations seems no longer to be part of the discourse.”*⁹⁹ The popular press has also mirrored and fuelled political rhetoric, almost exclusively portraying asylum negatively.¹⁰⁰ Combined, this has arguably created a tense and hostile public reaction and cynicism to asylum seekers and refugees.¹⁰¹

90 Chilean and Vietnamese refugees were met with some sympathy within the UK

91 Public hostility was often directed at refugees from East Africa

92 Bohmer, C. and Shuman, A. *‘Rejecting Refugees – Political asylum in the 21st century’* (2008) p. 21-

93 Including: Bosnia, Albania, Kosovo, Somalia, Afghanistan and Iraq

94 Schuster, L and Solomos, J. *‘The politics of refugee and asylum policies in Britain: historical patterns and contemporary realities’* (1999) p.51

95 The Asylum and Immigration Appeals Act came into effect in 1993 and was updated in 1996 by the Asylum and Immigration Act. At the time, the Labour party was opposed to this act and the restrictions it enforced

96 Somerville, W. *‘The Immigration Legacy of Tony Blair’*, (2007)

97 Hayter, T. *‘Open Borders – The Case Against Immigration Controls’* (2004) p.77

98 Hatton, T. *‘The Rise and Fall of Asylum: What Happened and Why?’* (2008)

99 Bohmer, C. and Shuman, A. *‘Rejecting Refugees – Political asylum in the 21st century’* (2008) p.32

100 Mollard, C. *‘Asylum: The Truth Behind the Headlines’* (2001)

101 The Independent Asylum Commission *‘Saving Sanctuary’* (2008) p.14-18

Perhaps unsurprisingly within this context, refugee law has also evolved and the legal principle of internal relocation exemplifies this. As discussed in Chapter 3, internal relocation was not in the 1951 Refugee Convention. *"With the arrival during the 1980s of increasing numbers of refugees from countries that were politically, racially, and culturally "different" from Western asylum countries, the historic openness of the developed world to refugee flows was displaced by a new commitment to exploit legal and other means to avoid the legal duty to admit refugees. The IFA [internal relocation] emerged from this context, and has played a major role in justifying negative assessments of refugee status."*¹⁰² For Hathaway, this change in caselaw was largely based on the numbers of refugees fleeing regional conflicts. This led to questions regarding the role of international law in providing surrogate protection if a form of national protection could be accessed in a different region. *'The Michigan Guidelines'* addresses this political balance while producing scope and rules for its usage.¹⁰³ In practice, *'The Michigan Guidelines'* together with the UNHCR *'Guidelines on Internal Flight or Relocation Alternative'*¹⁰⁴ (addressed in more detail in section d), gave the use and application of internal relocation further legitimacy within international refugee law. The political drive and development of refugee law and principally, internal relocation continues to this day and is illustrated in recent caselaw including Januzi, AH (Sudan) and AA (Uganda) (see Chapter 3).

Within this context, many legal representatives interviewed believed the interpretation and application of internal relocation has noticeably changed and what circumstances are considered to be 'unduly harsh' to return people to (the legal test), are now being applied more restrictively. The increasingly narrow application within courts and by UKBA was for legal representatives, inextricably linked to the international political context and national government drives as outlined above.

"I suppose in those early days, I had a simplistic understanding of the test... you would just look at whether it was unduly harsh to send somebody back to their country.... In relation to gender cases, it would have been a hell of a lot easier to argue.....Six years ago, I didn't find IFA [internal relocation] to be the problem that it is now. More recently things have rapidly changed with the understanding that, certain factors can not be considered such as human rights factors, in the same way. The situation now, is incredibly complicated... and it's without doubt related to the politics of the whole thing. Now its just about the numbers." [Barrister, London]

102 Hathaway, J. and Foster, M *'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination'*. p.360 (2003)

103 Hathaway, J, et al. *'The Michigan Guidelines on the Internal Protection Alternative'* (1999)

104 UNHCR *'Guidelines on Internal Protection: Internal Flight or Relocation Alternative'*... (July 2003)

Reducing Numbers of asylum seekers

There is a clear political push in many western countries including the UK to reduce the numbers of people claiming asylum and being granted refugee status. This can be seen in relation Bohmer et al, discussions regarding the difference between asylum law as written and the practice. For Bohmer, unlike other areas of law where *'the practice is more liberal than the law,'* she states that for asylum law it is the *'exact opposite'*. She concludes that *'The Home Office [now UKBA]...are working very hard to limit the number of asylum seekers for reasons not necessarily connected to the strength of their claim.'*¹⁰⁵ The legal representatives asserted similar views and believed that interpretations of the Refugee Convention, refugee law and the application of internal relocation are collectively used to reduce the numbers of refugees.

"There are so many asylum seekers that countries look to find ways of excluding them. You could have a much more generous reading of the Refugee Convention, but that would mean we would allow much more refugees, and that's a policy and a result that the government doesn't want and the courts are quite keen to avoid...Internal relocation is as much as political as how we treat the Refugee Convention." [Legal Advocate, London]

This perceived 'politicisation' of refugee law, including the application of internal relocation, questions whether international obligations are being undermined and how independent the judiciary and the asylum system in the UK remain. For one legal representative, the lack of independence within the judiciary system has also significantly changed the primary role of Courts and immigration judges. For this barrister, the responsibility particularly of senior immigration judges, is not to assess the legitimacy of individual applicants, but to limit the potential numbers of refugees who could apply, through 'gate-keeping.'

"It has moved away from being a proper judiciary body with any sense of judicial independence to now, they are gatekeepers in everyway....The moment you get to a senior immigration judiciary they are not judges they are gatekeepers and that is their only function, it is what they exist to do. They don't see the client in front of them; they just see the clients behind them. So whatever case you take in front them, they are not seeing the particular appellant with their particular problems, they are seeing, well if we say yes to this one, they are seeing all the other ones who will come in after her. So you are always dealing with their projections of, not of risk, but

¹⁰⁵ Bohmer, C. and Shuman, A. *'Rejecting Refugees – Political asylum in the 21st century'* Routledge p. 256 (2008)

of immigration pressure. And it's very, very rare, too, at a senior level of a tribunal to get them to focus on the particular person. And very often then, that leads to a real distortion in the way you present these case as you can never present these cases as this person is typical, they always have to be atypical." [Barrister, London]

The idea that internal relocation could be used for 'gatekeeping,' whereby judges are consciously limiting the interpretations of internal relocation in order to stem and divert the flow of refugees away from the UK presents a worrying discourse. In practice, this could imply that some people who need international refugee protection are not able to access it as the Courts are restricted by political pressure. Also, legal representatives discussed how public attitudes and negative debates add to the political pressure placed upon immigration judges and the judiciary process.

"Immigration judges are influenced by the standard of public debate, very much so and some more than others. ... I think even the most generous and open minded courts, and I think its fair to include the House of Lords in that, I think they recognise there are certain things that they are just not going to get away with, especially within the public opinion and public attitudes. If they have an interpretation of the Refugee Convention or Human Rights Convention or whatever, which is too broad, then steps will be taken to undermine it.....They have to adopt a definition which will, as far as possible, meet with public understanding. Which isn't to say that they should or do adopt extremely restrictive interpretation just because of that, but it is to say there is a balancing act between what they might like to do and what they think people will accept." [Barrister, London]

Independence of judiciary

The discussions with legal representatives illustrates that there is potential for the independence of the judiciary to be jeopardised in order to meet government targets and appease hostile public reactions. Certainly the legal representative interviewed believed in practice, the Courts are constrained by public animosity driven by largely negative, one-sided debates and reactions. Moreover, one legal representative believed that there was a public perception that the Courts are failing and are considered to be 'too soft' on asylum seekers. Consequently, in order to counter these presumptions, the AIT and Court of Appeal take a deliberately harder stance to mute public anxieties and create an image of a 'harder, more appropriate' system.

“A lot of decisions about asylum law and human rights law are political. If you look at the Aids cases such as ‘N’¹⁰⁶ and so on, about access to medical care, that’s a really political decision. You do get the impression that somebody’s human rights are willing to be sacrificed in order to restore public confidence in the system.” [Legal Advocate, London]

The legal representatives interviewed all expressed concerns that the hostility directed at asylum seekers from the media, the government and the public, did not produce a strong platform in which to exercise an independent judiciary process and apply internal relocation fairly.

“The current climate in relation to asylum and asylum seekers are the public enemy number one. From policy maker, politicians, newspapers which is filtering down to the Courts and it becomes, more and more restrictive”. [Barrister, London]

Alongside the political and public hostility, concerns that decision makers’ attitude towards individual asylum seekers have also changed were raised. One barrister described this as “*compassion fatigue*,” whereby immigration judges view and assess asylum seekers differently to how they were previously regarded. These discussions raise practical concerns with regard to a perceived cynicism towards some women’s stories and how internal relocation is applied. This suggests that there could be potential for a ‘culture of disbelief’ amongst immigration judges, who may have become more distrusting of appellants, more sceptical and doubting of some cases than previously.

“I think there is a little compassion fatigue with respect to women now. So once upon a time you would hear that most women were successful when they put in a claim, but now we are having many more rejections. Once upon a time you won most of your trafficking cases where all of us now are finding it harder to win those cases...especially with IFA [internal relocation] if you look at Nigeria for example...The tribunal very definitely get a case hardening over time, I think once you hear a story a number of times you become much more selective.” [Barrister, London]

106 House of Lords- N v. Secretary of State [2005] and the European Court of Human Rights- N. v. UNITED KINGDOM 26565/05 [2007] ECHR 746

The perceived increase in ‘case hardening’ by immigration judges may influence the decision making process. For many legal representatives, this adds to growing concerns that the judiciary is not as independent and objective as it should be. For two legal representatives, increasing their perceived lack of impartiality was a view that they believed the ‘success’ of immigration judges and their progression was measured by their refusal rates. One barrister was adamant that senior immigration judges were promoted based on the number of refusals they granted at the lower Courts. It should be noted this particular concern was expressed by only one barrister and cannot be verified; however, this perception is significant as it illustrates the climate and scepticism expressed towards judicial independence.

“But they also get promoted; there is no doubt at all that they (senior Immigration Judges) get promoted on their refusal rates down below. So the sort of people that are getting promoted are the sort of people who are definitely saying no to almost everyone. So if you want promotion you have to be harsh. And that’s because the government is in a position to dictate and get to the top level of it. They chose the candidate they want”. [Barrister, London]

Similarly, one legal representative believed immigration judges were not permitted to grant ‘too many’ adjournments and had strict time frames to work within. This perception suggests that there are further constraints and pressures placed upon immigration judges that may influence their decisions and the level of independence within the legal system.

“Whether it’s just because of their own targets that I understand exist, they just go ‘no we’re not allowed to give adjournments.’ They have a very strict percentage on what they are allowed to give adjournments for..... they have targets for time, and I understand they can only adjourn a set number, so if a judge starts to adjourn many cases, even if they justify it in law, they may have to retrain or something... But in reality immigration judges can’t allow every case that they see even if they wanted to.” [Caseworker, Manchester]

The above two quotes question the role of politics and possible incentives within the judiciary and illustrate room for potential political manipulation. This raises several concerns regarding the application of internal relocation for women’s claims. If the judicial process is perceived to be not truly independent and impartial, then the platform for a fair application of internal relocation and assessment of women’s claims becomes extremely questionable.

Summary

Legal representatives discussed how increased political pressure in the UK especially from the late 1990s changed the role of immigration judges to be 'gatekeepers.' In addition, growing hostility directed towards asylum seekers within public debates is believed to be influencing 'tougher' decisions. The legal representatives presented a worrying analysis that the starting point of having an independent, objective judicial process cannot be assumed. Consequently, the application of internal relocation within this context could be perceived as a mechanism to fulfil political and public desires.

d) The relationship between the application of internal relocation by the Judiciary and the UNHCR guidelines

During the 1990s the UNHCR became aware and critical of the increasing usage of internal relocation in refugee law. UNHCR expressed concerns at a lack of standardised approach and an increasing *“practice of determining the issue of IFA before examining the nature and basis of the claimants’ fear... Characterising its use as a short cut to by-pass the determination of refugee claims.”*¹⁰⁷ Consequently in 1999 UNHCR produced a position paper citing the circumstances to which they considered the application of internal relocation could be appropriate¹⁰⁸ and placed it clearly within the determination process.¹⁰⁹ In 2003, in recognition that *“there has been no consistent approach to this concept and consequently divergent practices have emerged,”*¹¹⁰ the UNHCR produced its guidelines. The intention of the guidelines was to supplement the UNHCR handbook and provide an *“interpretive legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff”*¹¹¹ on the issue of internal relocation.

The guidelines cover 38 points regarding the interpretation and application of internal relocation. They stipulate that a *“particular area must be identified and the claimant provided with an adequate opportunity to respond,”*¹¹² whilst also distinguishing between persecution from state and non-state agents. The guidelines, notably clarifies the ‘relevance’ and ‘reasonableness’ analysis and scope of assessment. This includes identifying whether the relocation area is legally and practically accessible and safe, and whether there is any risk of serious harm or persecution if relocated. The ‘reasonableness legal test’ is refined to whether *“the claimant, in the context of the country concerned, can lead a relatively normal life without facing undue hardship.”*¹¹³ In order to assess this fairly, the guidelines stipulate that consideration of the following issues are necessary:

- Personal circumstances – including taking into account the age and sex of the claimant, any vulnerabilities, lack of ethnic and cultural ties, language abilities and opportunities available in the relocation area

107 Kelley, N. ‘Internal Flight/Relocation/Protection Alternative: Is it Reasonable?’ in International Journal of Refugee Law Volume 14, No1 (2002) p.9

108 UNHCR’s position paper ‘Relocating Internally as a Reasonable Alternative to Seeking Asylum (The so-called “Internal Flight Alternative” or “Relocation Principle” (1999)

109 European Legal Network on Asylum (ELENA) ‘Research Paper on the Application of the Concept of Internal Protection Alternative’ updated 2000 p3

110 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’ HCR/GIP/03/04 July 2003 p.2

111 *ibid* p.1 (guidelines)

112 *ibid* p.3 (guidelines)

113 *ibid* p.6 (guidelines)

- Past persecution – including assessing trauma borne out of past persecution and the likelihood of internal relocation enhancing further psychological trauma
- Safety and security – including confirming that the relocation area is safe and secure and the claimant is removed from danger and potential injuries
- Respect for human rights – including a practical assessment that human rights, particularly non-derogable rights, would be respected and protected.
- Economic survival is necessary – the relocation area is only appropriate if the claimant can earn a living, access medical care and accommodation. In addition it is stipulated that it would be considered unreasonable to relocate somebody to an area where they would be ‘required to live in conditions of severe hardship.’¹¹⁴

Although the guidelines are not legally binding, they are regarded as an instructive tool for practitioners and decision makers regarding the practical application of internal relocation.¹¹⁵ However, the interviews with legal representatives revealed that there is at times, little correspondence between the application of internal relocation in the UK and the UNHCR guidelines. Legal representatives expressed concerns that the practical application of internal relocation has evolved contrary to the intentions of and with little resemblance to the guidelines.

“In principle, they should be safe from harm if the current guidelines as set up by UNHCR were applied. I don’t think however that those guidelines are interpreted in the spirit that the UNHCR intended... In my opinion in the last 12 years I’ve been practising asylum law, IFA [internal relocation] ... it is being used more and more. .. I think the reasonableness analysis is now interpreted too strictly...in practice. I don’t think it’s evolved in a way that it was originally intended.” [Barrister, Manchester]

This implied separation between the practical application and intentions of internal relocation raises concerns regarding the role and significance of the UNHCR guidelines within the UK asylum system. For some legal representatives, the recent case of AH (Sudan)¹¹⁶ demonstrates how caselaw is evolving in the UK quite distinctly from the UNHCR guidelines. As discussed in Chapter 3, The House of Lords ruled, in their clarification of the internal relocation test (the Januzi position) that it would be ‘reasonable’ and not ‘unduly harsh’ to return the men to Khartoum.

114 *ibid* (guidelines) – paragraphs 25-30

115 Siddiqui et al, ‘Safe to Return?’ (2008) p.48-49

116 AH, IG & NM (Sudan), SSHD [2007] ECWA Civ 297

“The other big difference is, you see it particularly in the Sudanese case, that it was once accepted, that if your persecutor was the state, then in a sense the principle didn’t have an application. But at least for the Darfurians, the tribunal has given it an application in those sort of cases. And that is a very big change in terms of this. Because its always been in the past, the idea that... if your threat of persecution came from the state, then there really wouldn’t be a place for you to hide. With the case of AH, it essentially says yes there will be.” [Barrister, London]

AA (Uganda) also demonstrates potential interpretive diversions from the UNHCR guidelines in the application of internal relocation. The Court of Appeal were called to hear a reconsideration of the AIT decision which originally ruled it would be ‘reasonable’ to relocate AA (a single woman) to conditions of enforced prostitution, homelessness and destitution in Kampala¹¹⁷ (see Chapter 3). When juxtaposing this AIT response alongside the UNHCR guidelines (outlined above), there are distinct differences in interpretation of what constitutes ‘unduly harsh’ and how internal relocation is applied. This case also raises significant issues regarding differences in the application of internal relocation between the AIT and the Court of Appeal. In the reconsideration, the Court of Appeal heavily criticised and overturned the AIT judgement stipulating that *“the AIT acted irrationally and its determination cannot stand.”*¹¹⁸

Legal representatives also raised concerns regarding how they believed the UNHCR guidelines were understood and applied between courts. For many legal representatives, only the House of Lords and Court of Appeal understood and sanctioned the UNHCR guidelines.

“The point with UNHCR guidelines, they come really in really helpful when you are in a superior court and not in the tribunal. Because the superior courts, cite the guidelines as being very helpful. You’ve only got to look at K and Fornah¹¹⁹ is one, Shah and Islam¹²⁰ is another and various cases where the Court of Appeal and the House of Lords, stand by the guidelines and state they are not given credit below.” [Barrister, London]

These discussions suggest inconsistency between courts over the perceived usefulness of UNHCR guidelines with legal representatives believing higher courts

117 AA (Uganda) [2008] EWCA Civ 579

118 ibid AA (Uganda) paragraph 18

119 K and Fornah [2006] UKHL 46

120 Shah and Islam [1999]

largely apply the guidelines, yet lower courts do not. This does raise concerns regarding why the UNHCR guidelines are not considered to be useful or practicable guidance in the lower courts and questions why the acceptance at the higher courts is not filtered down. For some legal representatives, the differences between courts are more fundamental than not only utilising the UNHCR guidelines but also include lower courts challenging the role and significance of the UNHCR advice and guidance.

“Part of the problem with a lot of the UNHCR guidelines is that, we have a tribunal system that really understates, or miscounts the significance of, the UN guidelines, on everything. So we’ve got numbers of tribunal determination where they say, ‘well of course their role [UNHCR’s] is significantly different to ours’..... A number of immigration judges really discredit and ignore the implications of their advice. And that, notwithstanding within the convention that they [UNHCR] have a role to give advice.” [Legal Advocate, London]

For some legal representatives, the active shift away from the UNHCR guidelines, particularly in the lower courts, has left many legal representatives in practice, not using or quoting the guidelines in their legal arguments. Many legal representatives believed that as the courts largely dismissed and at times discredited the role of the UNHCR, they no longer provide a useful tool to steer immigration judges and had little influence on decisions about internal relocation. The legal representatives argued that determinations were based on UK asylum law and the UNHCR guidelines were considered separate and arguably outdated compared to current caselaw.

“I am aware of them (UNHCR guidelines) but I just don’t use them...Part of the reason why I don’t go back to the UNHCR guidelines is that the UNHCR get trashed in, various caselaw, and, I expect their guidelines to be based more on early argument on Internal Flight [internal relocation], but I think, the law has moved significantly on.I can’t believe what is happening with the Internal Flight, particularly for women is in line with what the UNHCR expect.” [Barrister, London]

The perceived development of UK caselaw outside of UNHCR guidelines and frameworks is concerning and challenges what role the UNHCR guidance will have within the UK asylum system in the future. Although it is recognised that the UNHCR guidelines are not legally binding, it was largely accepted that they were to act as a point of guidance to decision-makers and legal representatives. The House of Lords

for example accepted this role in *K and Fornah*;¹²¹ however, the practical role and usefulness of the guidelines appears to be increasingly challenged particularly at the lower courts within the UK. This research identifies an emerging separation between the intention of internal relocation within the UNHCR guidelines and the application within the UK asylum system.

This shift away from the UNHCR guidelines in the UK, does present a worrying trend regarding the application of internal relocation now and in the future. If the separation continues particularly in the lower courts, the need to provide international frameworks could increasingly have limited relevance within the UK asylum system.

Summary

This section has outlined the UNHCR guidelines and their role and intention to provide international guidance. Two recent UK cases *AH* (Sudan) and *AA* (Uganda) were discussed to illustrate how the application of internal relocation is arguably moving away from the UNHCR guidelines. Moreover, legal representatives revealed differences between courts and how in practice, the UNHCR guidelines appeared to have little influence in lower courts. This development of UK caselaw and its divergence from the UNHCR guidelines is a concerning development and challenges the future role of UNHCR's international frameworks within the UK.

121 *K and Fornah* [2006] UKHL 46

e) Practical implications for legal representatives

The burden of establishing proof of a claim for refugee status is placed upon the appellant. This includes proving grounds of past persecution, risks of future persecution and the absence of protection throughout the country.¹²² In addition to establishing sufficient evidence and grounds for refugee status, legal representative also have to counter internal relocation arguments when the principle is applied to individual cases. This section will outline the additional work that is required by legal representatives to address the legal internal relocation arguments within the tribunal and courts system.

Interviews with legal representatives revealed the extent internal relocation has impacted on the workloads of many legal representatives who specialise in representing women asylum seekers. For some legal practitioners, representing women whose claims are based on non-state persecution was legally and evidentially more complicated and consequently more time consuming than traditional male political persecution cases. Some legal representatives raised concerns that the issues and legal arguments surrounding internal relocation also added to the increasingly onerous workload of legal representatives.

"I said to my colleague....have you got any issues around Internal Flight (IF) [internal relocation], he said I'm not getting IF in my cases, I'm not arguing it. I thought, well that's odd, how come I'm arguing it all the time in my cases and then I realised he does normal asylum cases and I specialise on women's issues. I get a lot more women's' stuff, trafficking, Domestic Violence, FGMhe doesn't have the IF arguments that I'm having, and that is because I'm representing women and women are predominantly at risk ...from non-state agents...These cases are just so complicated and arguments around IF just add to that... If you're going to argue an IF argument now, you have to do a lot of extra work." [Barrister, London]

Legal representatives identified that internal relocation principally meant the additional collection of evidence to counter claims that relocation would be 'unduly harsh.' This usually involved extensive research, assessing and submitting relevant and objective secondary resources and materials outlining key issues and an analysis of the realities women would face if returned and relocated. A key issue identified by legal representatives is the lack of monitoring of women when they are returned and relocated. Currently, there is no system in place to assess and audit the realities, circumstance and issues women face when relocated in their country of origin. This omission contributes to a lack of evidence, materials and understanding of the

122 Kelley, N. 'Internal Flight/Relocation/Protection Alternative: Is it Reasonable?' p.10 (2002)

complexity of issues women face if they are single, separated, divorced or lesbian in a new town or city. Moreover, interviews with legal representatives identified that the level of evidence required for internal relocation debates surpassed publicly available information and therefore reports and evidence from 'country experts' are also needed. The solicitor below identifies the difficulties and dearth of information required for a women's gender claim and internal relocation evidence.

"If they are persecuted by non-state agents you've got to show lack of state protection and you've also got to show lack of safety throughout the country. And then you're looking at how big the country is, the bigger the country the harder it is to prove there is nowhere else to go. Then you have to look at the nature of persecution as well....When you're talking about trafficking or forced marriage, that's when it gets really difficult. In countries like Nigeria or Pakistan, well you effectively have to persuade the court that women across the country are discriminated against and that therefore, the persecution you receive in one area is not going to be alleviated by moving to a another area, you're just gonna face a different type of discrimination in law, and that's where it gets particularly difficult. You've got to make the risk general enough to cover the whole country, yet specific enough to persecute your client... Its quite hard to... get the combination and to get the level of evidence you need." [Solicitor, London]

The level of detail legal representatives are required to submit in order to counter internal relocation arguments in courts means that 'country experts' need to submit social anthropological and logistical evidence as well as information about the persecution. This includes assessing the likelihood of risks of persecution on return, practical issues and potential discriminatory practices women would face if returned and relocated. However for legal representatives, the use of 'country experts' can also be a risky strategy in courts as sometimes they are dismissed in the courts and their evidence is discredited. As the burden of proof relies on the appellant and the crux of countering internal relocation arguments is dependent on evidence, the lack of publicly available information and the discrediting of 'country experts' appears to impact on women's claims.

"There are many problems with regard to evidence, in many instances we have to go right down, with research, its not all that easy to get what we need to document social attitudes. Quite often we have to rely on a country expert, rather than rely on a specific published source, and then you always run the risk of an expert being accused of generalising as he or she is giving their opinion based on their experience. In my case, the difficulty of finding

out what it will be like if she moved to Colombo, really getting right down to where would she go, who lives there, how much would it cost to live there, what proportion of that would she need to work, would she get protection if government forces came round, how often do Tamil Tigers come round to these places, what would the room be like, would it be reasonable for her and her child to stay there, this is really quite difficult to find. You can get quite a lot of information with regard to this person's been assassinated...that's all in the news, but looking at what would practically happen to somebody if they were relocated is really hard." [Barrister, London]

Alongside the difficulty in identifying a relevant 'country expert' with the key experience necessary for the specific case, some legal representatives believed the discrediting of 'country experts' by the UK court system is having a detrimental effect. Discussions emerged regarding how once a 'country expert' had been discredited they would not be used again, as all their future evidence would come under suspicion and scrutiny of the courts. In addition, the frequent dismissal of 'country experts' acted as a deterrent for other eminent experts to submit information as they ran a risk of being discredited by immigration judges who disagreed with their opinion and evidence.

"It's also about whether the country expert is willing to stick their neck out. Now at the tribunal you need somebody who's very familiar with a particular country, has frequently visited there and has ongoing everyday contact. That's not that easy. Essentially their reputation as an expert can be dismissed which can be very damaging for them. There was a recent country guidance case for Somalia, where the expert was trashed, she made a couple of errors and the tribunal dismissed everything else she said, and now nobody will be able to use her again.... obviously this impacts on others." [Caseworker, Manchester]

Legal representatives also discussed how in addition to the collection of sufficient and detailed evidence, the conditions of the legal aid system also impacted on the realities of countering internal relocation arguments. All legal representatives believed Legal Aid contracts added funding and time constraints that ultimately restricted the time and resources they could spend on any case. Concerns were raised regarding the fixed fee regulations, including difficulties in getting funding for expensive 'country experts' and 'medical assessment reports.' Legal representatives also expressed fears that some legal firms rejected complex cases because of the fixed fee system which together, impacted on women's ability to access good legal representation.

“The funding... the preparation and representation of cases for women asylum seekers is not conducive to this work...I think we could probably win more IFA [internal relocation] cases if we had more time, more resources to look at it more properly, but ...people want a quick solution.”
[Legal Advocate, London]

“The expectation that you can prepare these cases and examine the entire country on that fixed fee anyway is ludicrous. So the entire system is set up to fail.” [Barrister, London]

Moreover, legal representatives believed the increased pressures to quicken the asylum system through the New Asylum Model (NAM) and the Detained Fast track (DFT) also created increased burdens and restrictions for representing clients. Claims based on gender related persecution and subsequently internal relocation arguments are legally complex and require thorough explorations and evidence. Many legal representatives believed however that the pace of the system did not permit the in-depth investigations necessary to adequately represent their clients.

“There’s huge time constraints given the speed of the asylum determination process, especially fast track.... what is being asked of us is to look at an entire country and to prove something in relation to every aspect of that country, which is just an incredible process.... It’s an impossible task, given the funding and time.” [Barrister, London]

“The timeframe is very difficult. It’s slightly better for a country guidance case, but in terms of your average case, yes it’s definitely far too quick. The reality what happens, you get refused, then you have about 4-6 weeks from when it’s refused.” [Barrister, London]

In addition, to the above working constraints and difficulties in relation to representing women asylum seekers and countering internal relocation arguments, further constraints were also discussed regarding gender issues. One legal representative raised concerns that the removal of the IAA gender guidelines¹²³ restricted debates on gender and limited the scope of legal arguments. For her, the IAA gender guidance originally allowed legal representatives to steer immigration judges on gender issues but since its removal, and with no plans to reinstall or update it, legal representatives can no longer do this.

123 see Chapter 1 and Chapter 4 section b)

“Particularly since the gender guidelines have been thrown out the window. The immigration judges that are sensitive to gender issues continue to be sensitive to gender issues and they continue to find ways to draft their determinations to allow certain cases. It’s the ones who aren’t sensitive to those issues. We used to be able to point them to their own guidelines and say ‘look this is what the guidelines say’ but now, you’re just told they don’t exist, they don’t have to look at them anymore and therefore, you’re heavily reliant on having some kind of, objective or expert evidence... This is hard to find because women are often a silent majority in many countries.”

[Solicitor, London]

Summary

Legal representatives highlighted issues regarding a lack of publicly available materials alongside the need but occasional risks of using ‘country experts.’ Within this context, legal representatives also discussed current constraints and restrictions that affect the timing and resources available to represent their clients adequately. Moreover, some legal representatives believed legal aid conditions, and the quickening of the asylum process, created a system that is not conducive in assessing the complexities of internal relocation arguments. To add to these concerns, the lack of gender guidance was believed to have a detrimental impact on women’s cases by limiting legal arguments.

Chapter 5

The Appropriateness of internal Relocation - Exploring five women's Case studies

Five in-depth case studies with women asylum seekers were conducted. Each case study was based on a specific form of gender related persecution and all women had been refused refugee status (at some stage) on the grounds of internal relocation. Each case study was specifically chosen to highlight certain issues regarding the application of internal relocation and the impact on women asylum seekers. In addition, in order to get a geographical spread, cases from different countries and continents were chosen. All names have been changed for the purpose of this research. Each case study represents the views, circumstances and experiences of the women interviewed for this research project only.

This chapter will briefly outline the five case studies and then address the key themes that emerged from the case studies. The themes include:

- a) Risks on return
- b) Cultural context
- c) Access to livelihoods
- d) Safety and protection issues
- e) Women's perception of UK immigration courts
- f) Women's understanding of internal relocation

Case study one: Lesbian from Uganda

Rose's story

Rose is a lesbian from Uganda where homosexuality is illegal with a mandatory prison sentence of seven to ten years.

Rose's family discovered she was a lesbian and took her and her partner to the local police station. She was arrested and faced verbal and mental abuse in the police cells by fellow in-mates. She was then taken out of the cells and subsequently raped, burnt and taunted by several police officers. After several days, her family bailed her out of the police station and then made plans to kill her. She fled to the UK and immediately claimed asylum. Her partner is still in prison in Uganda. Rose's accounts and the basis of her claim was deemed as credible, but she was refused on the grounds of internal relocation. During her hearing, UKBA (former Home Office) presented this case of persecution as a local issue. Her refusal letter states:

“It is considered reasonable to conclude that as a young fit person....you would be able to relocate to another area of Uganda and support yourself in these circumstances and this would not be unduly harsh to expect you to do so. It is also considered that if you relocated to another area of Uganda and did not inform your family, they would have no way of .. knowing this fact... Therefore, it is considered that irrespective of the merits of your claim, you do not qualify for recognition as a refugee.....you could internally relocate to escape the localised threat from your family and the local police officers.”

Case study two: Sexual violence in South Kivu, Democratic Republic of Congo (DRC)

Tanya's story

Tanya was a member of a human rights and welfare distribution group in South Kivu, DRC since the late 1990s. In 2003 rebel groups (RCD) banned the activities of this group and arrested Tanya and whilst in detention, Tanya experienced sexual and physical violence. Tanya immediately claimed asylum and has been going through the asylum system for five years and she has now currently exhausted her grounds for appeal. She has been refused international protection on the grounds of internal relocation. The UKBA and immigration judges believe that it is reasonable to return Tanya to Kinshasa (the capital of DRC). Tanya is a single woman who has never been to Kinshasa, has a different ethnicity to majority tribe in Kinshasa and does not speak the local language in Kinshasa. In her interview she stated:

“I don't know what it would be like for a single woman, if you have no family, no job, no husband, no children. I think it would be difficult to survive. For me, going to Kinshasa is like going to another country really. I think I would be really lost socially. It's a different country to me, a different culture, different language, different people.”

Case study three - Domestic violence in Pakistan (woman with a disability)

Fabaka's story

Fabaka experienced severe domestic violence and torture from her husband in Pakistan. Fabaka fled Pakistan and sought international protection in the UK where she has been going through the UK asylum system for three years. Fabaka has a disability and whilst the courts acknowledge internal relocation to any city would be difficult, they have concluded that she can return to her parents' house in a different city from her husband. Fabaka is concerned at the high level of risk and inadequate

extent of protection accessible if returned and relocated to Islamabad. She reveals that:

“Of course if I am there, my husband and his family will know I am there. They know where my family live, they have looked there before, when I went there before I came here. If I am back, as soon as, they will know it, it is very clear.”

Case study four - Domestic violence in Yemen (woman with children)

Harifa's story

Harifa's husband was granted leave to remain in the UK. Whilst in the UK he became extremely violent towards her and she consequently left him and applied for asylum in her own right (surplus claim). If returned to Yemen, her husband and his family wanted custody of her children. Harifa's claim was originally refused on the grounds of internal relocation. Harifa was anxious that if returned and relocated to a new city in Yemen, she would lose custody of her children and, as a divorced woman, face additional abuse and discrimination. Harifa had been through the asylum system for three years and was granted leave to remain in March 2008 under the case resolution programme.

“Oh it was horrible when they say that [internal relocation]. First I think I am finish. I can't leave, I can't go new city. In my case...my husband say he going to take my children. He would take them you know, we don't have system or anything. If man wants children, they have children.....they say how woman to look after children alone, this woman bad, bad, bad....I would lose my children, my life, everything.”

Case study five – Lesbians from Jamaica

A group interview was conducted for this particular case study principally to explore risks on return for lesbians in Jamaica. As identified from interviews with legal representatives, many lesbians from Jamaica are increasingly being refused international protection in the UK on the grounds of internal relocation. All three women had experienced different levels of persecution and physical and sexual violence in Jamaica based on their sexuality. All the women were going through different stages of the asylum system. As discussed in the methodology chapter, analysis for this case-study also includes the determination details of a woman who

was supposed to attend the interview but was taken to Yarl's Wood Immigration Removal Centre (IRC) before the interview. Since writing this report her decision has been over-turned and she now has Leave to Remain in the UK. One woman describes her experiences in Jamaica below:

"I can't explain what happened to me in my country. They come and shoot me, with a gun man, because of my sexuality. Yeah, I have had a knife at my neck because of how I dress. They assumed I was one and I had to deny it, 'cause if I didn't I wouldn't be sitting here at this moment."

Analysis

Although each of the women interviewed had experienced individual forms of harm and faced specific circumstances, key issues and anxieties were apparent with regard to internal relocation. For all of the women interviewed, the thought of being returned and relocated to a different city heightened their fears for their future. Particular concerns included fears of abuse, attacks, exploitation and cultural discrimination. The sections below will discuss the key issues raised from the interviews in more detail.

a) Risk on Return

For many of the women, being returned to their country of origin was incomprehensible, largely due to the risks they believed they would face as single, divorced, separated or lesbian women. The case-studies highlight how each of the women interviewed feared specific risks relating to the individual circumstances of their case. This section will discuss the immediate fears that the women identified; for example case studies three and four (domestic violence) illustrated the fear the women had about being located by their estranged husbands and their in-law families. Their views illustrated how the women felt at risk of being found and of being subjected to further persecution. In addition, the women felt safeguards to help them hide and lack of protection from abuse made them extremely vulnerable. Both Fabaka and Harifa believed that, if they were returned, their husbands would quickly find them, and this made them fearful for their lives and made them question the appropriateness of internal relocation.

“Being there is a platform to expose you to the people who you were running away from. My neighbours will know I am back. They will tell their friends and family. The news will go around, you understand, when news reaches there, they have a chance to get me. People who may want to hurt me, they will know as soon as I am back. They may wait a while, but they will come, they will get me” – Fabaka (domestic violence/Pakistan)

“If I went back, even to new city, they would know, everybody talk. Yes, within two or three days they would find me, they would know I am back and find me.... All Yemen the same for women...if they did that [relocate me] they would finish my life” – Harifa (domestic violence/Yemen)

Similarly, specific issues regarding homosexuality were raised in case studies one and five (lesbians – Uganda and Jamaica). The risks these women believed they faced if returned and relocated to their country of origin were of targeted violence and physical and sexual abuse based on their sexuality. Human Rights Watch have been extremely critical of the treatment and aggressive policies against homosexuals in both Uganda and Jamaica¹²⁴. For the women interviewed, their views of severe risks on return to their country of origin were also heightened by their own experiences of persecution, attacks and of rape in the past. For both these case studies, the women interviewed had all experienced various forms of physical and/or sexual abuse because they were lesbians. Moreover, Rose identified additional fears based on the verbal taunts she experienced whilst she was being raped by the

¹²⁴ See: Human Rights Watch: ‘letter to the Ugandan Authorities regarding recent arrests of LGB activists’ June 2008 and Human Rights Watch: ‘letter to Bruce Golding, Prime Minister of Jamaica’ February 2008

police officers. This traumatic experience made her feel personally targeted, and convinced her that being returned and relocated would place her at direct risk of further sexual abuse. These are some of the psychological barriers women face with regard to internal relocation and the way women feel additionally vulnerable if they have experienced rape and sexual abuse.

“If a man feel like you are a lesbian because you wont go with him, so they will show you what you are missing. I don’t think for one day, as long as I live, I will not forget what those police said to me when they were raping me. You are the way you are because you haven’t met me, you haven’t had a man, man enough to change you. You are vulnerable if you are a lesbian in Uganda.” – Rose (Lesbian from Uganda)

In Jamaica there have been several ‘mob attacks’, beatings and killings of lesbian and gay men or people suspected of being gay.¹²⁵ This known violence directed at other lesbians in Jamaica made the women in the group interview feel extremely fearful of the violence they would face if returned and relocated. The women in this case study also knew of examples where lesbians had been returned to Jamaica and were then subsequently murdered a matter of days later. The conversation below highlights how these known examples confirmed their views and anxieties about being returned and relocated and reiterated their fears of violence directed towards lesbians.

Participant 1: “you know sometimes the immigration people they send back lesbians to Jamaica, they die you know”

*Participant 2: “yes that’s true, there was this lady in detention centre. She told them what would happen to her if she was sent back. But they didn’t believe it and they sent her on a Monday and by Wednesday she was dead. They kill her.”
(Lesbians from Jamaica)*

Similar grave worries about risks of further rape, violence and sexual abuse were at the forefront of Tanya’s (DRC/sexual violence) fears and anxieties. The UN has reported on the existence of rape and horrific sexual violence being used as

125 See: Human Rights Watch: ‘Shield Gays from Mob attacks’ February 2008 and: Human Rights Watch: ‘Jamaica investigate the murder of alleged lesbians’ July 2006 and: Gay City News ‘Jamaica’s Island of Hate’ March 2006

a “particularly awful and shockingly common feature of the conflict in Congo¹²⁶” especially in South Kivu. UN Special Rapporteur on violence against women, Yakin Erturk concluded in her report to the UN General Assembly that:

“Extreme sexual violence used during the armed conflicts seems to have eroded all protective social mechanisms, unleashing the exercise of brutal fantasies on women's bodies. Civilians are increasingly among the perpetrators of rape, which adds another layer of oppression for women.”¹²⁷

It is perhaps unsurprising that within this context and with her personal experiences of sexual violence in the past, being returned and relocated for Tanya is a fearful option. For Tanya, being relocated to Kinshasa would neither reduce the risks of further attacks nor remove her from the people who had subjected her to sexual violence in the past. There are also problems regarding whether someone who has been raped can psychologically rehabilitate in an area where they know no one and fear everyone.¹²⁸

“For me, I think about, because it happened to me before, it can still happen. The same people that were involved in what happened to me before, the bad thing, they are still there.” Tanya, (sexual violence/ DRC)

The above quotes illustrate some of the immediate anxieties faced by women asylum seekers who are confronted with being returned and relocated to a new city. All the women interviewed believed that moving to a new city would not minimise their risks of further abuse, violence and attack. For some women internal relocation, contrary to the perceptions in the UK, would in reality expose them to the very people who had persecuted them in the past, or other people would continue to persecute them in the future. Alongside the immediate fears, all the women discussed the cultural context and specific backgrounds, including social codes and mores, within their country of origin. In all of the case studies women described how the patriarchal cultural conditioning placed the women in a vulnerable social position and at risk of further exploitation and abuse.

126 John Holmes, UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordination - speech made in October 2007 in Women's Asylum News 'DRC: Rape continues to go unpunished', Issue number 74 April 2008 p10

127 Yakin Erturk, UN General Assembly Human Rights Council – Mission to the Democratic Republic of Congo (2008)

128 Ehlers and Clark, 'A cognitive model of posttraumatic stress disorder' (2000)

b) Cultural Context

This section will highlight some of the key cultural and social information the women discussed as part of the interviews. For all of the women, any issue about internal relocation should always be placed within the cultural context of their country of origin. The women also discussed how a particular understanding of the position of women should always be thoroughly analysed prior to any decision of internal relocation.

“Woman who went back to Yemen, its not easy. First of all, in a different place or city people will be thinking why she alone with children. It’s a difficult life. How would you go to job, how would you take children to school. Even just go out. You can’t just go out, everybody look at her and say she a bad woman, she live alone, something happen with husband, she not good.”
Harifa (domestic violence/Yemen)

Specific issues and social restrictions placed on women were particularly apparent in the Yemen and Pakistan case studies. Themes which emerged included logistical and practical issues of how a divorced/single/separated woman would cope living within their society including providing a secure environment for children, accessing accommodation and support. The societies in Pakistan and Yemen consider women as the keeper of honour. Divorced women are often considered to have violated the highly revered honour code, which itself leaves some women open to further abuse and exploitation.¹²⁹ Similar concerns are addressed within Amnesty International’s country report on Yemen. This report concludes there is a continued implementation of laws that discriminate against and restrict the progression of women in Yemeni society.¹³⁰ In addition, in the World Economic Forum’s ‘Global Gender Gap’, which measures and ranks gender participation and opportunities in the work force of 128 countries, Yemen is ranked as the most unequal society for women.¹³¹ According to this statistical study, women in Yemen are grossly disadvantaged in comparison to men in educational attainment, access to work, health, survival and political empowerment. The cultural position and gender segregation experienced by women in Pakistan also places women returned and relocated at a practical, social and attitudinal disadvantage. On a practical level, Fabaka discussed the difficulties a single woman would immediately face in Pakistan, especially without male protection.

129 Pope, N. Honour Killings: ‘Instruments of Patriarchal Control’ in Mojab et al... ‘Violence in the name of Honour’ 2004 and Human Rights Watch ‘Women’s Human Rights’ (2001) p444

130 Amnesty International ‘Country Report 2008 – Yemen’

131 World Economic Forum ‘Global Gender Gap Report’ (2007)

“There isno possibility for a single woman to establish a home on her own. Without the shelter of a man from her own family.... otherwise it is not possible that a woman can live on her own...especially when you are considering relocating to a completely new city. That is just impossible... when they hear there is a new woman, who is single, alone. Well the first thing that 90% of people will think is that the woman has a bad character... They think it’s a reason that her family kicked her out, she has caused shame on her family for the bad things that she had done and that is why they don’t want her.” Fabaka (domestic violence/Pakistan)

The above quote from Fabaka demonstrates the role and need for a male protector within Pakistan and the hostility and blame directed at single women. Similar concerns were identified by the South Manchester Law Centre’s research ‘Safe to Return?’ This report highlighted the prevailing perception within Pakistani communities that a woman living or even travelling without a man would be met negatively and viewed with huge suspicion.¹³² The research suggests that the suspicion is so severe it is considered culturally unacceptable:

“Many participants queried whether the UK authorities grasped how unacceptable it is amongst member of the Pakistani community (both in Pakistan and for many in the Pakistani diaspora) for women to live alone, particularly without male support.”¹³³

For Fabaka, the level of suspicion and hostility directed at women who are separated from their husbands would inevitably place them at risk for the future. She believed that life for a woman without a male protector would mean not only that people would view her negatively, but also that she would face additional risks of further abuse and violence. For Fabaka, the social intolerance directed at single/separated/divorced women means they are extremely vulnerable and targeted for attacks. This level of cultural suspicion and associated risks for single/separated/divorced women raises doubts about how feasible and appropriate internal relocation is for many women.

“They will just get the idea that she is someone with nowhere to go, her family is not going to accept her, she had bought shame, she can’t go back. Then they will just want to take advantage of her weakness. Because they know she is alone, she is helpless, she had no one to look after her, to take

¹³² Siddiqui et al., ‘Safe to Return?’ p. 150-151 (2008)

¹³³ ibid ‘Safe to Return?’ p.150

stand for her...if she goes to the police they will just send her back to her parents. They know this, they will use her how they want. She then becomes a new victim in that area for the men around her.” Fabaka (domestic violence/ Pakistan)

Similar ‘acceptable’ social codes placed upon women were a feature in the case studies with lesbians from Jamaica and Uganda. In both these case studies the women believed that issues regarding cultural norms and values placed upon ‘women without men’ places them at risk regarding social integration in any relocation area. Perhaps more worryingly within this context, the women also identified levels of suspicion that would be directed at women who do not have husbands or boyfriends and reject male sexual advances. For women in this position, the label of being a lesbian or suspected of being a lesbian has serious consequences in both Jamaica and Uganda.

“ You know, even if you have two friends and they are walking together, just walking, they will say ‘oh there are the lesbians’, even if they’re not. You always have to have a man, just to stop them talking. Two women cannot even live together, you have to have a man with them at all times.... They will just go ‘here come the lesbians’ and then you have to run for your life.” (Lesbian from Jamaica)

A prevailing feature of all the case-studies for this project was that being a single, separated, divorced or lesbian woman was socially unacceptable. Alongside being viewed with severe suspicion, scepticism and hostility, some women also believed people in their community would perceive them to be a prostitute. This is largely because the concept of an independent woman without a male protector or husband is considered so culturally ‘abnormal’ that for many people within the community, to be a prostitute is the only explanation. This social perception places many women in a dangerous position. The social norms and cultural restrictions placed upon many women creates concerns regarding whether relocation is a viable alternative to international protection, or whether in reality it places women directly in jeopardy.

“I think people would treat you like a prostitute. In my country, it’s not like here, where you can rent your own house and work. There, if you are not married, you should live with your parents. If you are single and living by yourself it means you are a prostitute, so people would give you no respect or consideration. You would be at risk.” Tanya (sexual violence/DRC)

“They think a woman not good, they think you’re not a good woman, they think you go with a man, you understand me. That is what they say and think. How is a woman safe? I not know how they think it is safe, it is not safe.”
Harifa (domestic violence/Yemen)

c) Access to livelihoods

As part of these discussions, the women also highlighted several concerns they had about accessing a secure livelihood. For the women interviewed, internal relocation was extremely questionable if they could not access a living in order to sustain themselves (and their children). The women felt the social constraints placed upon women in their country of origin and relocation areas meant their future was extremely insecure and consequently they were at risk of exploitation. In addition, divorce laws often discriminate against women, and a return to their country of origin often constitutes losing custody of their children. Because of the stigma associated with violating the social code, separated and divorced women with no family support face economic disempowerment, as women are required to rely on men for protection and sustenance.¹³⁴ Harifa also identified constraints placed upon women with children and the practical issues regarding access to work and child care in a new relocation area with no surrounding support, family networks or government assistance.

The UK immigration courts did acknowledge the difficulty both Harifa (Yemen) and Fabaka (Pakistan) would have regarding access to work; however, internal relocation was regarded as ‘reasonable’ in both cases. For the three other cases, access to livelihood was believed to be possible according to the immigration judges, but the women in the case-studies believed this area to be more complicated than depicted in their determinations. In the determination details of a Jamaican lesbian the immigration judge ruled: *“the appellant has shown herself to be resourceful in holding down various jobs in Jamaica, despite coming from a very poor family.”* Within the group interviews however, the Jamaican lesbians expressed different views regarding the complexity of accessing jobs for known or suspected lesbians as the conversation below illustrates:

Participant 1: “number one, being a lesbian is a no, no. No job for you, because they won’t hire you. Like no matter how much education and what you can do, they won’t

¹³⁴ see: Niaz, U. ‘Women’s Mental Health in Pakistan’ (2004)

Participant 2: yes that's why I never worked with no one, I was self-employed, but after a while, when people find out, business go down, nobody wants to buy.... then you can't make ends meet, they are doing this (whispers), so you move on to somewhere else, but the same thing happen again, or they just burn it down. You are moving here, moving there...as soon as somebody find out, you have to go."
(Lesbians from Jamaica)

Similar issues were raised in other case studies. For example, Tanya (sexual violence/DRC) believed that her individual circumstances of not speaking the local language, together with not having qualifications and being a single woman, impeded her ability to access employment and left her susceptible for exploitation within the informal economy in Kinshasa.

"It's difficult for people to get a job with qualifications, but I don't have any qualifications. This didn't come up in the courts. I don't know what I would do for work or money, I just don't know. It's upsetting actually because I just don't know...how will you survive, its difficult to imagine. I don't think English people really understand how bad it is." Tanya, (sexual violence/DRC)

d) Safety and protection issues

Alongside access to secure livelihoods, internal relocation also requires an assessment of safety and protection within the relocation area. As discussed above, some of the women in the case-studies were advised where they should relocate to and for other women, this was unknown. For example, when exploring Tanya's case study (sexual violence/DRC), her determination letter details how *"it is not intended that you would be removed to territories controlled by the former rebels, but to Kinshasa."* For Tanya, being from a different ethnic background, a single woman, and not speaking the local language, means she does not believe Kinshasa would be a safe area. Issues regarding the scale of discrimination and social segregation of Swahili speakers in Kinshasa are acknowledged by the UN Human Rights Commission¹³⁵ but were not acknowledged within her determination. For Tanya, relocating to Kinshasa is not practical, as she believes she would be at risk of discrimination and would not be able to access safety and protection:

¹³⁵ UN Committee on the Elimination of Racial Discrimination – Concluding Observations The DRC, CERD/C/COD/CO/15. 17th August 2007t: (2007) para. 16

“I tried to explain I have never been to Kinshasa, I don’t speak the language, I speak Swahili actually....From that I am scared... here I think nobody will kill me, I think there is a law and you can complain...I have had experiences, bad experiences in my country....there is no way I can face it. In Kinshasa, it’s not only about having a home but it’s about security. In Kinshasa I don’t trust my neighbour, I don’t know what they would do to me...I will have nobody to defend me. I don’t think I would have the strength to survive.” Tanya, (sexual violence/DRC)

The above quote illustrates the cultural context and extent of safety to which women are being returned and relocated to as well as questioning how a ‘safe haven’ is identified. In other case studies, a particular relocation area was not specified and the women interviewed were unclear where they were to be relocated. For these women, the decision of where to relocate within their country of origin was the source of much anxiety and a decision that was impossible to make.

“I sit down and I look at the map of Jamaica and I think, where can I go. There are 14 parishes and I look at them carefully. Now where would I go. I have lived in all the 14 parishes, tell me miss, where do I go. Where am I safe?” (Lesbian from Jamaican)

Not having a specific location in which to return people to is both a cause of personal worry, as well as an important international protection and monitoring issue. Currently, no monitoring systems are in place to oversee and audit whether internal relocation is a practical alternative to international refugee protection. As soon as people are returned there is no agency or follow-up support system in place to ensure people are relocated safely. This partly explains why no data is available about where people relocate to and what happens to them. This also raises additional concerns about what safeguards are in place and what level of national protection people can access in their relocation area.

“You know I say to my lawyer, I say, if I go, sent back home, who gonna monitor me to see what happens. She said nobody.” (Lesbian from Jamaica)

Particular issues regarding access to protection for women who have experienced domestic violence and fleeing spousal abuse was also raised in the Pakistan case study. Questions regarding what anonymity a woman can secure in Pakistan to ensure her ex partner cannot find her and what protection can be accessed if they are found were raised. Availability and accessibility to protection should also be

seen within the attitudinal context of how domestic violence is culturally perceived. In Pakistan, domestic violence and abuse is often regarded as a 'private' matter between couples. The Human Rights Commission in Pakistan report:

*“By tradition domestic violence is treated as a strictly confidential matter, no matter how publicly it might be committed, and therefore the law has been unable to make serious interventions. Alarming a lot of law enforcement personnel are not even aware if domestic violence falls under the mischief of any law and that they should be providing immediate relief to victims. In an investigation carried out by the Daily Times reporters, it was discovered that out of 85 police stations surveyed only 2 police stations outlined the correct procedure for action in a case of domestic violence, whereas officers at 68 police stations were under the impression that police can not intervene in cases of domestic violence, even if the victim comes to them with a complaint.”*¹³⁶

These views raise additional questions of women's perceived access to state protection if returned and relocated in their country of origin. Many women in the case studies believed contacting the police for help and assistance would not offer protection but would instead create more complications and make them more vulnerable. This was particularly an issue for both domestic violence case studies in Yemen and Pakistan.

“Her family will say why you go to speak, why you make problem for me, it's like this. Everything is about money. You can't go to the police they will change everything if a man pays them to. Some woman, they found her in hospital, all body, you know like black from hits...all over her body. But if she speak, if she says my husband, then they make big problems for her and she knows this. And they not believe woman like they believe man. All systems towards man. Woman can not go against man.” Harifa (domestic violence/ Yemen)

For the two case studies looking at sexuality issues in Uganda and Jamaica, their views regarding the inaccessibility of the police was based on their own experiences of the police in the past. In both these countries the level of 'accepted' homophobia is extremely high and endorsed through popular culture, social norms and the legal system. In Jamaica for example, violent acts towards gay people and lesbians is

¹³⁶ The Human Rights Commission of Pakistan 'The State of Human Rights in 2007' Chapter 5 'Rights of the Disadvantaged, 5.1 Women'. (2008) p.155

actively promoted through music (popular song lyrics include: *"kill dem, battybwyoys haffi dead, gun shots pon dem, who want to see them (homosexuals) dead put up him hand"*¹³⁷ and 'gay eradication days.'¹³⁸ The women interviewed viewed the police as part of the homophobic infrastructure and not as an independent body offering protection. This view is confirmed by their personal experiences in Jamaica as the conversation below illustrates:

Participant 1: "When I lived (inaudible), they knocked down my fence, and they coming for me, so I call the police and when they come I think they protect me, yeah, but they think it's a joke. The policeman he think it all a joke..."

Participant 2: you were asking for trouble

Participant 1: but my back was against the wall, I had my children, I had my daughter, what should I do?..... I think if you are a lesbian in Jamaica, it's like committing a crime. It is seen as a crime itself.... even if you have money, if you have a problem and the police know you are gay or lesbian, they will be the one who will set you up and let things happen to you, there is no safeguard. No way.

Participant 3: yes, when I went to the police to protect me, he did, he turned nasty with me, you understand. They look as you as if you're dirty. Then they cut you up ...and there is no place to go".
(Lesbians from Jamaica)

Similarly in Uganda, government rhetoric, legislation and public hostility creates a fearful cultural context for many lesbian and gay people. For example, in 2007 a public demonstration was organised to demand active police enforcement and a continuing ban on gay relationships and was attended by hundreds of people in Kampala.¹³⁹ In addition, during the promotion of the Commonwealth Heads of Government meeting in Uganda in November 2007, an MP demanded on the radio a *"clamp down against lesbian and gay Ugandans"* stating the *"international event... would be a good opportunity to send a clear message that gays are not welcome in Uganda."*¹⁴⁰ In these circumstances Rose is anxious, and believes the police are enforcers of the law under which they perceive her as a criminal and not an agency from which to seek protection.

137 Vanessa, 'Homophobia in Jamaica' (May 2005)

138 Mcleod, D. The Jamaica Star 'Gays Must Leave Today.' April 26th 2007

139 BBC News 'Ugandan's hold anti-gay sex rally' August 21st 2007

140 Pink News 'Protests ask commonwealth to fight gays' November 23rd 2007

“I’m a lesbian, that’s like going to the police station and saying I’m a thief, I’m a murderer. If people want to beat me that a crime, but I’m a lesbian, people want to beat me, what would I do, I’m classed as a criminal” Rose (Lesbian from Uganda)

Moreover in reality, going to the police presents Rose with additional traumatic psychological barriers, as it was police officers who raped, burnt and tormented her in the past. Being abused by police officers has affected how Rose’s views the police; consequently she questions which organisation she will turn to for protection in her country of origin. This also illustrates significant and psychological issues regarding the feasibility and appropriateness of internal relocation for women who have been severely abuse by state agents and raped in detention.

“You know when you live in a country you think the police and the authorities are there to protect you. But that wasn’t so in my case. It’s the police that abused their position with me.So if I go back to Uganda, if I relocated somewhere else and something happens, where will I go for help? How can I go to the police and report this crime, when it is they who abused their position so badly with me.” Rose (lesbian woman/Uganda)

e) Women’s perception of UK immigration courts

In all of these case-studies, the women expressed how knowledge and understanding of the complexity of cultural norms and social patriarchy was essential to any analysis and decisions regarding the appropriateness of internal relocation. The women believed that the complexity of social and cultural issues and access to protection and safety were over-simplified by the UK immigration courts. This included an assertion from the women interviewed that too many assumptions were made in their case, especially regarding their future safety. For the women, these opinions of the courts were not based on evidence, and consequently they felt more vulnerable regarding being returned and relocated.

“The judge did say he believe I was in danger if I attempted to back to where I was from, but he didn’t believe it if I went to another part of the country... Its like he believe one part and not the other part, he can believe it happened but not that I shouldn’t go back. They just presume, its my country, I can live in a different place and I will be safe. That’s what they presume.” Tanya (sexual violence/DRC)

Issues regarding assumptions of risks associated with fleeing a violent partner were discussed in one case study. Fabaka believed knowledge of domestic violence within the UK was not applied to women asylum seekers who feared their ex-husbands. For Fabaka, leaving an abusive partner did not mean, as the UK immigration courts suggested, that the violent partner would not try to find you and continue their persecution. Fabaka felt that risks associated with leaving a violent partner were met with more understanding where British citizens were concerned, particularly regarding abusive power dynamics and the necessity of safeguards.¹⁴¹ She thought that these issues were not considered for women asylum seekers.

“They think that whatever has happened, has happened....when they take a domestic violence case, they always say, well ok, now you are separated, you are not together, it’s over, you’re safe, you won’t get harmed. But here they admit it themselves that when here, when someone is separated from their husband, then that woman is most at risk....but when they build an asylum case, they don’t take any of these issues with those women, they just say, you are separated, you are no longer with him... and that’s it.” Fabaka (domestic violence/Pakistan)

For the women interviewed, the perception that immigration judges and UKBA were basing their safety and future on assumptions and not evidence made the women feel that the UK asylum system is not transparent and evidence-based in its decision-making. This made the women feel that there was a bias against them and consequently, whatever they did would be met with scepticism and disbelief by UKBA and immigration judges. This made some women question the motivation of the UK judiciary and how the internal relocation test was being applied to their cases.

“It really makes me feel so angry as well. Also it makes me feel it’s an unfair system. So if we’re talking about a violent act and they are not going to believe it on the basis that I couldn’t prove it. I felt well, when I was going through that period, if only I had prove it, kept records, documented it, but then if I had, well then they think I would have been planning asylum.” Fabaka, (domestic violence/Pakistan)

The two case studies involving lesbians also raised several significant issues regarding the assumptions surrounding sexuality that were applied to their cases. In both these case studies the women had to prove they were a lesbian to the UK

141 Kurt-Swanger, K. ‘Guidelines on how to use the police and courts’ (2005) p.139-153

immigration courts and were subsequently were accepted as lesbians by the court. Both case studies raised concerns that they felt neither the immigration judge nor UKBA comprehended the level of hostility and violence directed at lesbians in their country of origin. Moreover, both identified assertions made by immigration judges and the UKBA that they would be safe if returned and relocated as long as they were 'discreet' about their sexuality. This issue has been raised in other homosexuality asylum cases in the UK¹⁴² and proves particularly problematic and impracticable for the women interviewed for this research.

"Discreet, what do they mean by that?. Do they think lesbians just walk around holding hands or something.... It's not like that at all. There is no such thing as discreet.I would not have to just hide my sexuality, but put it underground like it doesn't exist, we're talking beyond hiding....My family were already starting to get suspicious, without a boyfriend, with a husband, no babies... Can you imagine what it would be like when I'm even older.?"
Rose (Lesbian from Uganda)

In addition, the determination details of a lesbian outlined below highlight the conditions to which the immigration judge believed it would be reasonable to expect her to return and relocate in Jamaica. This outcome illustrates the immigration judge's assumptions about middle-aged lesbian women as well as people's access and right to personal identity.

"The Appellant is now in middle age and less likely to be a focus of sexual attention than in the past.... My conclusion is that she will be able to resume her life there without a real fear of persecutory harm. This does entail that she will have to be in denial about her sexuality." (Immigration Judge - determination details of Jamaican lesbian woman)

For the women interviewed in both case studies, being 'discreet' or forced to 'hide' their sexuality was an extremely contentious issue from a practical and personal point of view. The women believed 'hiding' their sexuality was more complicated than the immigration judge and UKBA credited and even if they changed certain things, it was impossible to stop people thinking and identifying them as a lesbian. For the women, this assumption raised serious doubts regarding the appropriateness of internal relocation for lesbians from countries where homosexuality is illegal or known for its extreme violence directed at gays and lesbians.

142 Howard, S. 'Try not to act Gay' in 'The Guardian' Friday November 16th 2007

- Participant 1: "if I go home, what will I do, how will I hide. How can I hide. It's me"*
- Participant 2: "I told them I can't ...I can't change who I am"*
- Participant 3: "listen to me, if I put on a skirt do they think people stop talking. Is that all they think it's about"....*
- Participant 2: "it doesn't matter how you dress"*
- Participant 1: "yes changing your clothes doesn't matter...its who I was born to be...if you go home can you hide your sexuality? What do they think you can do? Do they really think that if you dress differently that it. What do you have to do to hide it, how can you"*
- Participant 2: "but you know even if you went with a man, they would still say she a lesbian or she was a lesbian you know. Once they think it, you can't change it. Once you get label its stuck on you and its not coming out" (Jamaican lesbian women)*

f) Women's understanding of internal relocation

The Refugee Convention is forward-looking; a key component is to assess the likelihood of future persecution and whether internal relocation is 'reasonable.' Only evidence considered objective is submitted as part of an asylum claim. Women are therefore rarely asked about their views of future risks on return, which adds to their feelings of voicelessness within the asylum system and their perplexity around internal relocation. It was also apparent that many women had limited (if any) understanding of the principle of internal relocation before it was applied to their case. This lack of knowledge prior to the immigration judge's decision appeared to add to their anxiety and incomprehension about internal relocation.

"I didn't really hear about this issue of relocation until in the court really. I didn't really know about it. All I know is I have a problem in the country.... It just seemed so strange I just couldn't understand it... From what I understood, for me. I had in mind they would either approve or disapprove me. I couldn't get this option. I know I don't know the law, but I just don't understand it. Kinshasa, I just didn't think about it much, I had no idea, I just didn't think

they could return me there. How can I return there? I just don't understand it."
Tanya (sexual violence/DRC)

"When they send me the refusal, that was the first time I heard about it. I actually had to ask about it, I had to say what does it mean... I was not aware of the terms used here.... Internal flight, it was quite strange word for me. They said it meant going to another part of the country, moving to another city for living and start a new life. My reaction was the same as right now. I know it's impossible, I don't even want to think about it." Fabaka (domestic violence/Pakistan)

This initial confusion does raise the question of the level at which legal representatives are explaining the asylum process and potential decisions and options of the immigration courts to their clients. Undoubtedly, the lack of understanding the women had about internal relocation, alongside their limited (if any) practical assurances of safety if returned and relocated, had a psychological impact on many of the women. This left many women not only questioning the integrity of the immigration courts but also being psychologically affected by the process and thought of internal relocation.

"No they [immigration judge and the UKBA] not understood me. They give me refuse. I don't understand everything here. First time, my English no good, I was not strong, I didn't speak, in court all I did was cry, I couldn't speak and they keep asking me questions, maybe 20 or more... I no understand, they give me interpreter but hard to speak. I am very scared.... They say go back to Yemen again, I cry. Later I get their letter and cry and cry.....They say liar so many time to so many people. But us not all liars. I think they need to check everything. Well they just say liar and don't check and not believe. They think if one is liar then we are all liars. That's very hard. To be told that is, difficult. "
Harifa (domestic violence/Yemen)

The asylum process, combined with women's past experiences of gender based persecution and fears for personal safety, meant many women were extremely anxious about internal relocation. Issues regarding the psychological affects of trauma and how this heightens perceptions of security and the women's ability to rehabilitate themselves in a new area needs to be considered.¹⁴³ One woman's fears of return and relocation were so extreme that she felt suicide was more palatable. All the women believed the knowledge they had of their country of origin was not considered in the decision to relocate them and this filled them with genuine fear. Psychologically, this left many women feeling not believed, not understood and disposable.

¹⁴³ Ehlers and Clark 'A cognitive model of posttraumatic stress disorder' (2000)

“You know this is serious, listen, I don’t like the thought, I don’t want to think about it, the thought is horrible and it make me want to kill myself. I know what I have been through. And tell them I say ‘ I would rather kill myself then go back there and let them kill me’. I tell them, I tell them... I don’t even like to talk about it...I don’t like to hear the thought of going back. I just. I have been through so much, even the thought of going back, I will, I tell you I will kill myself...I know they will kill me, so I will kill myself.” (Jamaican lesbian woman)

Summary

This chapter discussed key themes that emerged from the case studies and the particular risks the women felt they were exposed to as single, separated, divorced or lesbian women (with or without children). This section explored the individual anxieties women had regarding past experiences and specific fears they had for their future. This chapter outlined why the women interviewed believed internal relocation is inappropriate particularly regarding risks, access to livelihoods and safety and protection. The case studies also identified levels of confusion regarding women’s understanding of internal relocation and the psychological impact this confusion makes

Chapter 6

Conclusions

This research project explores the legal principle of internal relocation and assesses its application and impact on women asylum seekers who have experienced gender based persecution. This report discusses key issues regarding the use and application of internal relocation and women's access to international protection. The research analysed how legal representatives believe internal relocation is being applied to many women's asylum claims. The analysis highlighted worrying trends that legal representatives identified including:

- **A lack of understanding of the issues that affect women asylum seekers**

Legal representatives discussed a perception that many immigration judges and UKBA personnel had limited understanding of gender issues, which contributed to a simplistic application of internal relocation to many women's asylum and human rights cases. Many legal representatives expressed grave concerns that single, separated, divorced or lesbian women were being returned to circumstances of risk, vulnerability and abuse because their social exposure and practical realities were not given thorough consideration. Consequently, legal representatives thought that internal relocation was being simplistically applied without sufficient evidence-based analysis and scrutiny of risks. Furthering this perception was legal representatives' experiences of cases in which immigration judges and UKBA personnel applied significant weight to assumptions such as: the existence of entities of protection (eg refuges, NGOs), apparent 'resourcefulness' of some women asylum seekers or their observations of a woman in court. This questions whether women who need international protection are in practice able to access it and whether some women are being returned to further persecution.

- **The impact of internal relocation on the decision-making processes**

Legal representatives raised concerns that internal relocation is being used as an additional hurdle to deny international protection. They referred to cases where they felt that some of their female clients would have traditionally been granted refugee status under the 1951 Refugee Convention but were now being rejected solely on the premise of internal relocation. The removal of the IAA Gender Guidelines (2000) is a major issue for legal representatives and has a detrimental impact on women asylum seekers. Removing without updating and replacing the gender guidelines has created a perception that the judiciary not only has a limited understanding of gender issues but also does not value the importance of gender within the decision-making process.

- **The politicisation of refugee law, the judiciary, and the impact this politicisation has on the internal relocation test**

Legal representatives explained that they believed the asylum system has become increasingly politicised since the 1980s and even more so over the last ten years. For the legal representatives, this political context influenced mainstream media hostility and public scepticism (and vice versa), both of which placed increasing social and political pressure upon immigration judges. Some legal representatives believed this context had implicitly

changed the role of immigration judges to one of a 'gate-keeper;' consequently internal relocation was frequently applied to restrict numbers of people being granted refugee status in the UK. The noticeable politicisation of asylum within the UK and the political, media and public demand for 'tougher' decisions raises serious concerns regarding whether the judiciary is as independent and fair as it should be.

- **The relationship between application of internal relocation by the Judiciary and the UNHCR guidelines**

Legal representatives believed the application of internal relocation within the UK courts has significantly moved away from the intention and basis of the UNHCR guidelines. To demonstrate this point further, two recent cases (AH Sudan and AA Uganda) illustrate how decisions around internal relocation have evolved outside the UNHCR guidelines and for some are being applied arbitrarily and too strictly. In addition, legal representatives identified differences in the level of understanding of the UNHCR guidelines between the senior and lower courts. Senior courts were often regarded as finding the UNHCR guidelines useful, whereas lower courts appear to be more dismissive of the guidelines and the role of the UNHCR in general. The differences between the application of internal relocation in the UK asylum system and the UNHCR guidelines, and the varying perceptions of the courts, calls for greater debate and clarity over the role of the UNHCR and their guidelines within the UK asylum system.

- **Practical implications for legal representatives**

Legal representatives identified how the increasing onus placed upon internal relocation for women's non-state persecution claims has directly impacted upon their workloads and pressures. Legal representatives highlighted practical differences between representing men and women in courts and illustrated the complexities and pressures associated with representing women who had experienced gender related persecution. Legal representatives discussed the complications of evidencing persecution alongside countering internal relocation arguments. Funding restrictions and time constraints created frustrating working conditions. More worryingly, legal representatives identified that women who have experienced gender related persecution and have individually complex cases may find it difficult to access good legal advice because of the gap in understanding gender issues and fixed fee regulations (legal aid).

The research also brought together the experiences of women asylum seekers who have experienced gender related persecution and whose asylum cases are affected by internal relocation. The research identified how the women felt internal relocation was unrealistic and would not diminish future persecution. All the women displayed high levels of personal fear and anxiety about internal relocation and were not assured that their safety and protection would be safeguarded. The women's case studies identified the following key issues:

- **Risks on return**

The women interviewed identified how they believed the cultural status of women within the societies they would be returned to placed them at direct risk of further abuse, exploitation and attacks. Women who had experienced domestic violence were concerned at the lack of protection mechanisms in place in the relocation area and their inability to hide and anonymise themselves if found by ex partners. In addition, further psychological barriers and difficulties regarding internal relocation were identified by women who had experienced rape and/or sexual violence. This included lesbians who had been raped because of their sexual orientation and who felt extremely vulnerable to further attacks. For these women, being a lesbian and being returned and relocated to a different city within a violently homophobic country presented imminent risks of harm and even possible murder. The different circumstances and complexity of needs of the women illustrated how internal relocation was not always an appropriate and viable alternative to international protection.

- **Cultural context**

The women discussed the importance of exploring and analysing the cultural context and social position of women when assessing the appropriateness of internal relocation. The case studies revealed the difficulties and suspicion single, separated, divorced or lesbian women would face in a new relocation area. The women identified practical and logistical problems including accessing accommodation, employment and childcare. Alongside this, the women discussed the cultural unacceptability and associated risks involved in being without a man in any relocation area. These difficulties included the perception that they would be considered a prostitute or labelled a lesbian. The cultural context, social codes and 'labels' placed upon women also affect their ability to access employment and secure livelihoods, which affect the feasibility of internal relocation. Together the case studies demonstrate the importance of understanding the social context and complexities of gender issues and access to livelihoods for women in the context of any discussion on internal relocation.

- **Safety and protection issues**

The case studies identified how the area of relocation was a key source of anxiety for all the women. The women who were given a particular city in which they could relocate were afraid that there was no safety mechanism in place in that city to protect them. Similarly, women who were told to relocate to any city in their country of origin faced an impossible decision when assessing where they would feel safe. The lack of any monitoring or assurances of safety and protection for the women instilled a genuine fear of relocation. This was also compounded by women's personal experiences of the police especially in instances of domestic violence, rape and violent attacks against lesbians.

- **Perception of understanding within the UK immigration courts**

The women discussed how they believed many immigration judges and UKBA personnel applied too many assumptions in their decisions regarding the feasibility of internal relocation. For example, some women identified key differences between how domestic violence is treated where British citizens are concerned, compared to women asylum seekers, including blanket assumptions that they would be safe, and violent former partners would not want to find them. The women also discussed how they felt they were continually treated with distrust and disbelief throughout the asylum system, which contributed to their emotional distress. In addition, the case studies with lesbians identified the assumptions immigration judges and UKBA personnel made about sexuality. These included assumptions that if lesbians were 'discreet' about their sexuality they would be safe in a relocation area. For the lesbians interviewed, based on their previous experiences, this assumption was too simplistic.

- **Women's understanding of internal relocation**

The case studies also identified the level of confusion women had about internal relocation. The first time many of the women heard about this concept was in court and as part of their decision. The lack of sufficient explanation and information regarding how and where to relocate, added to the bewilderment women had about internal relocation. For the women, the mere thought of being returned and relocated to a new city in their country of origin without any safeguards in place to protect them, was too painful and illogical to digest.

Chapter 7

Recommendations

Discussions with legal representatives and women asylum seekers revealed the complexity of issues associated with the application and appropriateness of internal relocation. Drawing from the analysis within this research, this project recommends key practical considerations alongside areas for further research and discussions. These are provided in the context of the CEDAW Committee's concluding observations and the requirement under the Equality Act 2006 for all public authorities to comply with the Gender Equality Duty (see introduction).

Recommendations for the Judicial Studies Board

1. Incorporate gender guidelines or their equivalent into the Equal Treatment Bench Book.

The removal of the IAA Gender Guidelines (2000) is having an impact on many women asylum seekers and needs to be addressed urgently. Guidance in the Equal Treatment Bench Book must be followed by the AIT and the higher judiciary. The book already contains guidance relating to victims of sexual offences and domestic violence in relation to the criminal courts. It should therefore be expanded to include guidance relating to the consideration of women's asylum appeals by the Asylum and Immigration Tribunal and the higher courts.

The guidance should include:

- Recognition of the complexity of gender issues, including understanding the relevance of social and cultural codes in areas where women might be expected to relocate.
- A requirement to provide an assessment of the specific barriers that stand in the way of women accessing state protection.
- Consideration of the issues affecting lesbians, or the Bench Book could include separate guidelines on sexual and gender identity.

2. Incorporate training on issues affecting women asylum seekers into Equal Treatment Training

Specific training on the issues to be covered in the Equal Treatment Bench Book should be rolled out for immigration judges, including the application of law in relation to gender and significant and up to date cases.

Recommendations for the Asylum and Immigration Tribunal

3. All immigration judges should follow the UNHCR guidelines on internal relocation in accordance with the decision of the House of Lords in Januzi.
4. In assessing internal relocation for women, the AIT should have particular regard to country of origin information which describes the position of women in the area of proposed internal relocation.

Recommendations for UKBA:

5. Engage with the *Charter of rights of women seeking asylum*
The Charter sets out a range of rights and actions the UKBA could take to demonstrate and give practical effect to a commitment to treat women seeking asylum with fairness, dignity and respect, based on a recognition of their human rights and of their particular experiences of persecution.
6. Ensure adherence to and monitoring of gender API
The Gender API is a compulsory policy to guide decision-makers when assessing asylum claims. The gender API should be adhered to at all stages of the asylum claim; regular monitoring of decisions against the API should be implemented and publicly available. A thorough understanding of the gender API should become a core competency for UKBA decision makers and a key criterion in their accreditation.
7. The Gender API should be amended to include issues affecting lesbians, or UKBA should adopt separate guidelines on sexual and gender identity.
8. Training on gender issues
UKBA personnel should receive expanded training on gender issues, particularly on the risk on return for single, separated, divorced and lesbian women and the trauma associated with gender-based persecution. Training should also be targeted on current case law, including recent gender cases and the intricacies around non-state persecution.
9. Greater provision and use of evidence based country information
Country information reports should include reference to financial, logistical social and cultural factors that will affect women. UKBA decision makers should be required to cite evidence from country information reports to support all assertions that women asylum seekers could internally relocate or access state protection. If sufficient information is not available, UKBA staff need to make requests for specific information from the Country of Origin Information Service.

Recommendations for Legal Representatives:

10. Further training on gender issues and internal relocation

Legal representatives should attend training on the gender dimensions of internal relocation, including legal arguments and up to date gender cases. Training should also include assistance in collecting evidence regarding assessment of practical realities, social codes and cultural expectations placed upon women and their access to protection.

Further research is recommended on:

- The availability of more specific in-country research on practical, social and cultural difficulties women would face if returned and relocated, including women's access to protection
- Greater monitoring of women who are returned and whose asylum claims have been refused on the basis that they are expected to relocate within their country of origin
- The availability of statistical data from UKBA regarding how many women are being returned because their asylum claim has been refused on the basis of internal relocation
- Further evidence is sought on the impact the Legal Service Commission's funding regime has on the quality of legal representation provided to women asylum seekers. This should include, in particular, whether the Graduated Fee Scheme takes sufficient account of the additional time and resources required to collate evidence relevant to the issue of internal relocation for women.

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