



Unsustainable:

the quality of initial decision-making
in women's asylum claims



Asylum Aid

Protection from Persecution

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Abbreviations

AIT	Asylum and Immigration Tribunal
AI	Asylum Instruction (replaced Asylum Policy Instructions)
API	Asylum Policy Instruction
BIA	Border and Immigration Agency
CLR	Controlled Legal Representation
COI	Country of Origin Information
COIS	Country of Origin Information Service
ECHR	European Convention on Human Rights
FGM	Female Genital Mutilation
FTT – IAC	First Tier Tribunal (Immigration and Asylum Chamber)
IFA	Internal Flight Alternative
IND	Immigration and Nationality Directorate
LSC	Legal Services Commission
NAM	New Asylum Model
OGNs	Operational Guidance Notes
RFRL	Reasons for Refusal Letter
Refugee Convention	1951 United Nations Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees
SEF	Statement of Evidence Form
UKBA	United Kingdom Border Agency
UNHCR	United Nations High Commissioner for Refugees
UTT – IAC	Upper Tier Tribunal (Immigration and Asylum Chamber)

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Executive Summary

Asylum Aid has long held concerns about the treatment of women seeking asylum in the UK. This research was conducted to examine in detail one specific part of this process: the quality of the initial decisions made by the UK Border Agency (UKBA) when women claim asylum. The resulting report is the first in-depth study of decision-making for women seeking asylum since the introduction of the New Asylum Model in 2007. This Model was introduced partly to improve the way decisions were made, and this report tests how effective these reforms have proved.

Women's asylum claims regularly present issues that are different from those presented by men, and can be highly complex and challenging. The findings in this report have deepened our concern that the UKBA is badly failing to meet this challenge, and that women seeking asylum are frequently let down by an extremely poor standard of decision-making.

The research found that women were too often refused asylum on grounds that were arbitrary, subjective, and demonstrated limited awareness of the UK's legal obligations under the Refugee Convention. Many of the UKBA's decisions proved to be, in the words of an immigration judge examining one of the cases included in this research, "simply unsustainable", and 50% were overturned when subjected to independent scrutiny in the immigration tribunal.

After receiving advance notice of our research findings, the UKBA confirmed that its own internal data also indicates that a disproportionately high number of refusal decisions for women seeking asylum are overturned on appeal. The UKBA has stressed that these are provisional figures, but has also agreed to analyse this data further. Given the concerns raised by our research, this is a very welcome commitment.

Asylum Aid examined the files of forty-five women from three different UKBA regions – based in Cardiff, London and Leeds – who claimed asylum between 2007 and 2010. Nine of these women were also interviewed. The research analyses the case files and draws extensively on the decisions outlined in the reasons for refusal letters issued by the UKBA to those applicants refused asylum, and the determinations made by immigration judges in the cases of those applicants who appealed the initial decision. In addition to this, the report also draws on the opinions and reflections of some of the women themselves.

We also interviewed UKBA officials whose work focuses on training case owners and auditing asylum decisions.

Key findings

The UKBA consistently makes the wrong decisions for women seeking asylum, which then have to be corrected by immigration judges

The majority of women in our research were simply not believed. 87% of the cases in this research were initially refused, the majority because the UKBA did not accept the credibility of their asylum claim. However, 42% of these decisions were overturned on appeal, far above the average for all asylum cases (which stands at just 28%). This figure goes up to 50% when including decisions made after the reconsideration of an initial appeal. Immigration judges accepted the credibility of the applicant's claim in every one of the successful appeals.

The UKBA does not adequately consider the legal entitlement to protection provided to victims of gender-related persecution under the Refugee Convention

Although the Refugee Convention does not explicitly recognise persecution due to gender as one of the grounds on which an individual can be recognised as a refugee, an individual who has suffered gender-related persecution may engage the Convention on the ground of membership of a Particular Social Group (PSG). Despite this, the UKBA ignored PSG entirely in the majority of cases based solely on gender-related persecution, and decided that no Refugee Convention ground had been engaged. More than a third of these decisions were subsequently overturned on appeal when an immigration judge recognised that asylum should in fact have been granted on the basis that the women belonged to a particular social group.

Case owners do not consider issues at the heart of gender-related persecution

The UKBA case owners at times displayed a striking failure to understand the nature of the persecution from which women might flee. This poor understanding led to case owners doubting the credibility of applicant's accounts for no good reason.

For example:

- One woman – whose passport had been confiscated by her husband, and from whom she had been subjected to threats, abuse and humiliation – was informed by the UKBA that she was not considered a victim of domestic violence because her husband had only tried to hit her once
- One refusal letter made repeated reference to an *arranged* marriage when considering the case of a woman who had been *forced* into marriage at fourteen to a man who had subsequently abused her over many years
- At one asylum interview, the case owner stated that they had never before heard the term “female circumcision”

Country of Origin Information and case law were used selectively or unrepresentatively

Case workers should work from balanced and objective Country of Origin Information (COI) reports, and from up-to-date and relevant case law. Even when information regarding the treatment and conditions facing women in their countries of origin was available in COI reports, or when there was relevant case law in existence, both were used selectively and unrepresentatively in support of negative decisions. Some case owners relied on case law that had been overturned by the time they made the decision.

For example:

- One decision-maker relied upon an article from the American gossip website www.gawker.com when refusing an application from a lesbian who feared the death penalty if returned to Uganda. No reference was made to the COI report detailing persecution of gay people in Uganda
- Another refusal letter, issued to a woman who feared ‘honour’-killing if returned to Iraq, quoted a COI report about the support available from local police but omitted information from the same report about the danger that police may sexually assault women who approach them for help
- One case owner cited case law that trafficked women do not qualify as a PSG within the terms of the Refugee Convention. In deciding the appeal, the immigration judge pointed out that case law overturning this had been available at the time of the initial decision, and that the application of case law in the initial decision “must be regarded as wrong”. The judge confirmed that ‘former victims of trafficking’ could constitute a particular social group

Measures introduced by the UKBA to improve the handling of asylum claims have not been adequately implemented

The adoption of gender guidelines in 2004 (last updated in 2010) provided UKBA case owners with guidance on assessing women's asylum claims appropriately. The introduction of the New Asylum Model in 2007 was intended to strengthen the UKBA's ability to make decisions accurately and quickly. But our research found that many of these measures have not been implemented adequately.

- The 'single case owner' model has been eroded. This model promised that a single UKBA case owner would be responsible for an asylum claim from the interview to either removal or integration. The continuity built into this had clear benefits for women seeking asylum, as it would help develop the trust necessary for the disclosure of distressing details. However, the case owner changed at least once for the majority of the women in our sample
- Substantive asylum interviews continue to be conducted in ways that are invasive and unhelpful. Some of the questions asked were both irrelevant to the claim and inappropriate. One victim of sexual abuse was asked if she had attempted to stop a man from raping her; another was asked to explain why several years of sexual harassment had ceased. One interview lasted five hours without a break, and in several instances case owners failed to pick up signals that the applicant was struggling to maintain their concentration during long and distressing interviews

Women seeking asylum are affected by a desperate lack of legal representation

The current means of legal aid funding for asylum work discourages legal representatives from taking the most complex cases to appeal. This can be especially damaging for complex gender-related claims for asylum. The existing legal aid funding framework may not cover the additional work required of legal representatives before taking these claims to appeal, and therefore women are vulnerable to losing support at a crucial stage. This creates a problem for all women seeking asylum, but the situation was most fraught in Cardiff, where half of the women who went to appeal did so without any legal representation.

Key recommendations

To ensure more sustainable decision-making for women in the future, the UKBA should:

- 1) *Ensure that case owners*
 - question asylum applicants appropriately, both through the nature and phrasing of questions and through their tone and attitude
 - understand how trauma affects memory and concentration
 - interpret and apply the Refugee Convention appropriately in relation to gender
 - identify and apply appropriately the ground of membership of a Particular Social Group
 - interpret and use appropriately case law relevant to gender
 - seek out and apply appropriately Country of Origin Information on gender related issues
 - take gender persecution, discrimination, cultural issues and economic issues into account when considering the reasonableness of internal flight alternative
- 2) *Ensure the single case owner model is implemented from the first reporting event until the decision is made.*
- 3) *Guarantee that women asylum applicants are provided with female case owners and interpreters at interview.*
- 4) *With the Legal Services Commission, ensure that the evaluation of the Early Access to Legal Advice Project takes account of the particular needs of women claiming asylum.*

The Country of Origin Information Service should:

- 5) *In its Country of Origin Information reports, expand on gender-specific issues including gender persecution, discrimination, and cultural and economic issues that impact disproportionately upon women.*

The Legal Services Commission should:

- 6) *Guarantee access to free competent legal advice and representation to all asylum seekers in advance of their initial asylum interview.*
- 7) *Revise the graduated fee scheme to ensure that it encourages good quality representation and does not act as a disincentive in complex cases.*

Introduction

Women seeking asylum in the UK from persecution and human rights abuses in their countries of origin often present a range of issues which are different to those presented by men who are seeking asylum.

This is reflected in the stories of some of the women who participated in this research. Sanam was forced into marriage at the age of 14 and suffered domestic violence for years before fleeing Iran after being accused of adultery. Jane is a lesbian from Uganda where the death penalty is imposed as a punishment for homosexuals. Kaltun was beaten and raped after not covering herself up when she went to fetch water from a well in Somalia.

In recognition of the different issues raised by women's asylum claims, the Home Office issued a new Asylum Policy Instruction (API) in March 2004. Entitled *Gender Issues in the Asylum Claim*, these became known as the gender guidelines.¹ As an executive agency of the Home Office, the UK Border Agency (the UKBA) is responsible for considering applications for leave to enter or remain in the UK, including applications for asylum.² Asylum Policy Instructions provide policy guidance for decision-making on asylum claims and should be followed by the UKBA case owners. Despite this, in 2006 Asylum Aid published research that found very little evidence of the implementation of the gender guidelines.³

Since that research was undertaken the BIA⁴ has brought in the New Asylum Model to speed up and implement an end-to-end asylum decision-making process. In 2007, the UKBA regionalised so that decision-making was shared between seven regional teams. These developments resulted in new staff being recruited, new procedures being brought in and a new training programme being devised and delivered to newly recruited case owners.

With the New Asylum Model fully established by 2010, Asylum Aid decided to revisit the question of how the gender guidelines were implemented in asylum decision-making, within the context of international standards. The focus on the quality of decision-making in women's claims for asylum is timely as the UKBA published a revised Gender Asylum Instruction in September 2010.⁵ This research seeks to identify any gaps in the implementation of the 2006 Gender API and how the UKBA's decision-making in women's claims for asylum compares to national, European and international legal standards. It is hoped that the recommendations arising from this research will benefit the roll out of the revised Gender AI and lead to an improvement in the quality of decision-making in women's claims for asylum.

1 UKBA Asylum Policy Instruction: *Gender Issues in the Asylum Claim*, March 2004.

2 <http://www.ukba.homeoffice.gov.uk/>

3 Ceneda S. and Palmer C, 'Lip service' or implementation? *The Home Office Gender Guidance and women's asylum claims in the UK* (London: Asylum Aid, 2006).

4 The Immigration and Nationality Directorate (IND), the Home Office department responsible for immigration and asylum matters, was replaced by the Border and Immigration Agency (BIA) on 1 April 2007, which was in turn subsumed into the United Kingdom Border Agency (the UKBA) on 1 April 2008.

5 For more information on the revised Asylum Instruction, *Gender Issues in the Asylum Claim* revised in 2010, see *Women's Asylum News*, no. 96, October 2010, pp. 4-5.

1. Background and Context

Introduction

Concerns about how women's claims for asylum are considered in relation to international refugee law have been raised regularly over the past decade.

"There is a growing body of scholarship, both internationally and in the UK, demonstrating how women's experiences of persecution are different from those of their male counterparts, and how the model of interpretation applied in industrialised countries discriminates against women in the refugee status determination procedure."⁶

Almost ten years ago, it was argued that "in interpreting the Refugee Convention women's experiences have been marginalised."⁷ However, more recently, Roger Haines QC, the Deputy-Chair of the New Zealand Refugee Status Appeals Authority, recognised the trend that sought to redress the balance, stating that "on accepted principles of treaty interpretation, sex and gender have always been at the heart of the refugee definition. Difficulties arise only because of misinformed decision-making. The refugee definition requires the adoption of an integrative perspective of human rights generally and this includes women's rights".⁸

This section of the report provides the background and context for the research. It covers legal instruments, both national and international, relating to international protection, discrimination and gender equality. It considers gender guidelines related to asylum claims and specific issues affecting women's cases including case law. It goes on to explain the UKBA's New Asylum Model and reviews the research on quality of decision-making generally and in relation to women's claims specifically. It demonstrates a gap in such research and how this report seeks to fill that gap.

International protection

The Refugee Convention

The United Nations 1951 Convention relating to the Status of Refugees (the Refugee Convention) provides the most widely accepted definition of who is a refugee, their rights and the legal obligations that state parties owe them. The UK ratified the Refugee Convention just before it came into force in 1954.

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 social 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 the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁹

6 Information Centre about Asylum and Refugees in the UK (ICAR), *Navigation guide to women refugees and asylum seekers* (London: ICAR, 2004), p. 7.

7 Crawley H., *Refugees and gender: law and process* (Bristol: Jordan, 2001), p. 5.

8 Haines R. QC, *Advancing a gendered interpretation of the Refugee Convention: Refugee Appeal No. 76044*, Presentation for the 2009 National Members' Conference of the Migration Review Tribunal and Refugee Review Tribunal, 10 September 2009, para. 25.

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

Persecution has been interpreted by the UK Courts by reference to the following expression:

Persecution = serious harm + the failure of State protection¹⁰

This is particularly relevant in assessing claims for refugee status where the applicant fears serious harm, not from the state, but from what has been termed a non-state actor. Women claiming asylum often fear persecution by non-state actors such as family or community members in the private sphere. As a result of this, women often have to overcome the hurdle of showing that state protection is not available to them, in the context of their fear of persecution from a non-state actor.

Humanitarian Protection and Discretionary Leave to Remain

A person seeking asylum may simultaneously make a claim for a different form of protection known as complementary protection. In international law, complementary protection derives from obligations in international human rights law. In UK law, complementary protection is known as Humanitarian Protection or Discretionary Leave to Remain.

Humanitarian Protection is defined in the Immigration Rules. The relevant paragraphs of the Rules¹¹ aim to transpose the relevant provisions of the EC Qualification Directive¹² which creates a status, termed subsidiary protection. Asylum seekers may be granted Humanitarian Protection if it is decided that they are not refugees but they can demonstrate that there is a real risk of suffering serious harm on return to their country of origin.¹³ It is important to note that, as a matter of law, the test of whether an individual should be granted Humanitarian Protection as opposed to refugee status can appear easier because the serious harm does not need to be on account of one of the Convention grounds. However, in the UK, very few asylum seekers are, in fact, granted Humanitarian Protection.

Asylum seekers are granted Discretionary Leave to Remain if it is accepted that returning them to their country of origin would breach their right to respect for private and family life guaranteed by Article 8 ECHR,¹⁴ if it is accepted that they are under the age of 17½ years old and there are no appropriate reception conditions in place or if they will suffer torture, inhuman or degrading treatment or punishment on return, but they are excluded from Refugee Status or Humanitarian Protection or if it is a case based on the applicant's ill health.

Women as refugees

The difficulties that have arisen in interpreting the Refugee Convention in relation to women's asylum claims can partly be explained by its historical context. When the Refugee Convention was adopted, its primary objective was to address population displacement in Europe following the Second World War. The concept of a refugee then developed in the context of the Cold War as people fled Communist States and the scope of the Refugee Convention was extended to persons displaced after 1 January 1951.¹⁵ Refugees became principally conceived as male political activists who were persecuted by the State and women and children were regarded as passive dependents.¹⁶

10 Hathaway J., *Law of Refugee Status* (Toronto: Butterworths Law, 1991), p. 125.

11 Paragraph 339C of the Immigration Rules (HC 395).

12 Article 15 of 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.

13 Serious harm is defined as the death penalty or execution, unlawful killing, torture or inhuman or degrading punishment or treatment or a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of armed conflict.

14 European Convention on Human Rights, Article 8.

15 Protocol attached to the 1951 Convention Relating to the Status of Refugees, 1967.

16 Siddiqui N. et al, *Safe to Return? Pakistani women, domestic violence and access to refugee protection – A report of a trans-national research project conducted in the UK and Pakistan* (Manchester: South Manchester Law Centre, 2008), p. 45.

“Seeking asylum in western industrialised states has traditionally been associated with young, single men. [...] While women may claim asylum for the same reasons as men, research has demonstrated that women’s experiences of persecution are often different to those of men. Women, for example, are more likely to flee from gender-specific forms of persecution: sexual violence, marital rape, domestic violence, female genital mutilation, forced abortion or sterilisation.”¹⁷

Thus it has been argued that the definition of a refugee in the Refugee Convention has been interpreted in a way that limits its application mainly to those fearing forms of persecution associated with the formal politics typically conducted by men, and excludes most activities in which women might be key actors – economic and social life and the ‘private’ sphere in general.¹⁸

Despite women suffering human rights violations because of their gender,¹⁹ the Refugee Convention does not include gender as one of the grounds on which an individual can claim asylum. The membership of a particular social group (PSG) ground in the Refugee Convention has been used to partially fill the gap left by the absence of gender in the five grounds in the Refugee Convention.²⁰ Interpreting the existing Convention grounds from a gender perspective may also address this problem.

Statistical data

Women make up one third of asylum applicants applying in their own right (not as a dependent). This proportion has remained constant for the last decade. In 2009, of the 24,450 applications received in the UK, 8,045 were by women applying in their own right.²¹

The table below shows the results of initial decisions for 2009:²²

	Female		Male	
Total initial decisions	8225		16065	
Recognised as refugee and granted asylum	1900	23%	2285	14%
Granted Discretionary Leave or Humanitarian Protection ²³	430	5%	2125	13%
Refused	5890	72%	11655	72%

17 Information Centre about Asylum and Refugees in the UK (ICAR), *Women refugees and asylum seekers in the UK* (London: ICAR, 2007).

18 Marfleet P., *Refugees in a Global Era* (Basingstoke: Palgrave Macmillan, 2006), pp. 155-156.

19 Gender refers to cultural definitions of masculinity and femininity, whereas sex refers to the transcultural biological division of the human species into masculine and feminine classes. See Faithorn E., ‘Gender bias and sex bias: removing our cultural blinders in the field’ in Whitehead T. and Conaway M. (eds), *Self, sex and gender in cross-cultural fieldwork* (Illinois: University of Illinois Press, 1986), pp. 275-276.

20 Fitzpatrick J., ‘The use of international human rights norms to combat violence against women’ in Cook R. (ed), *Human rights of women: national and international perspectives* (Philadelphia: University of Pennsylvania, 1994), pp. 532-571 at p. 550.

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

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

23 1,940 of these cases were minors granted discretionary leave to remain and 20 were minors granted humanitarian protection. These figures are not disaggregated by gender. See Table 2m, Unaccompanied Asylum Seeking Children, applications received for asylum in the United Kingdom, excluding dependants, and initial decisions by age at initial decision and country of nationality, 2009.

Using these figures it can be calculated that 28% of applicants were granted some form of leave at initial decision and 72% were refused. This proportion is the same for male and female applicants. Home Office statistics state that 4,150 asylum appeals were allowed by the Tribunal in 2009, constituting 28% of all asylum appeals heard.²⁴ These figures are not disaggregated by gender. However, after being given advanced notice of the findings of this research, the UKBA stated that a disproportionate number of refusals of applications from single females are overturned at appeal and that it is analysing the reason for this.²⁵ The UKBA have confirmed that internal management information for all asylum appeals heard in the last 12 months suggests a similar pattern, with an allowed appeal rate of 35% for women where the asylum decision was made within 6 months of application and 41% where the asylum decision took longer than 6 months. The comparable rate for men is 26%, irrespective of how long the decision took to make. The UKBA have asked Asylum Aid to point out that although these figures are based on a much larger sample size (over 12,000 appeals in total and around 3,500 women's appeals) they have not been subject to the degree of scrutiny and verification that would be required for publication as national statistics, and so their accuracy needs to be treated with a degree of caution.²⁶

Legal framework

International

The United Nations High Commissioner for Refugees (the UNHCR) has developed guidelines on international protection to assist national authorities during the refugee status determination procedure; the UNHCR gender guidelines.²⁷ They provide that, as gender is not explicitly included in the Refugee Convention grounds, the definition of a refugee should be interpreted in a manner having regard to gender dimensions.

The United Nations General Assembly,²⁸ the Beijing Platform for Action²⁹ and the UN Special Rapporteur on violence against women³⁰ recommend a gender-sensitive approach to the granting of asylum and the implementation of guidelines recognising gender-related persecution.

When examining the UK's state report on its implementation of the Convention for the Elimination of All Forms of Discrimination against Women³¹ in 2008, the monitoring body of the Convention "call[ed] upon the State party to pay specific attention to the vulnerability of women asylum-seekers while their claims are under examination and to ensure the full implementation of the Asylum Gender Guidelines".³²

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

25 UKBA, Asylum Improvement Project: List of change projects – December 2010, p. 4.

26 Email from the UKBA to Debora Singer of Asylum Aid, 15th December 2010.

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

28 UN General Assembly, 'In-depth study on all forms of violence against women': UN doc. A/61/122/Add.1, 6 July 2006, 107.

29 'Beijing Declaration and Platform for Action': UN doc. A/CONF. 177/20, 17 October 1995, Strategic Objective E. 5, paras 147h, 147i and 148.

30 Coomaraswamy R., 'Integration of the human rights of women and the gender perspective, violence against women': UN doc. E/CN.4/2000/68, 29 February 2000, para 122(f). Ertürk Y., *15 years of the United Nations Special Rapporteur On Violence Against Women, Its Causes and Consequences*, United Nations May 2009.

31 <http://www2.ohchr.org/english/law/cedaw.htm>

32 Concluding Observations of the Committee on the Elimination of Discrimination against Women: United Kingdom of Great Britain and Northern Ireland, 18 July 2008, p. 48.

The European dimension

In 1996, the European Parliament passed a Resolution recommending that Member States adopt guidelines on women seeking asylum as agreed by the UNHCR.³³

Nevertheless, there are few references to gender in the European Union's Qualification Directive³⁴ and none in the European Union's Procedures Directive (which sets out minimum legal standards in EU law that member states must respect in their asylum procedures).³⁵ The UNHCR has concluded that the Procedures Directive does not always ensure fair and accurate outcomes in relation to gender and that it has created protection gaps which could result in the breach of international and European law.³⁶ It is therefore necessary to ensure that EU Directives are interpreted from a gender perspective by, for example, having reference to the UNHCR Gender Guidelines.³⁷

The Parliamentary Assembly of the Council of Europe (PACE) passed a Recommendation in 1998 urging Member States "to adopt criteria and guidelines dealing with women seeking asylum, in order to enhance a gender-sensitive approach and ensure women's specific needs are met".³⁸ In 2010, the Committee on Migration, Refugees and Population in the PACE published a report on gender-related claims for asylum that recognises that specific attention must be paid in such claims to ensure effective protection in member states.³⁹ In October 2010, the PACE adopted a Resolution recommending a series of measures to Council of Europe member states to ensure that proper account is taken of the gender dimension when asylum applications are being assessed.⁴⁰

National

Gender equality duty

The Gender Equality Duty was introduced into legislation in the Equality Act 2006, amending the Sex Discrimination Act. It means that public bodies must have 'due regard' to the need:

- to eliminate unlawful sex discrimination and harassment (including for transsexual people).
- to promote equality of opportunity between men and women.⁴¹

33 European Parliament, Resolution on the Council Resolution on minimum guarantees for asylum procedures (5585/95 – C4-0356/95), A4-0315/96, 14 November 1996.

34 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. In the UK, the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 aim to transpose the Qualification Directive which sets out the criteria for being recognized as a refugee or as someone in need of Humanitarian protection and the rights to which such persons are entitled.

35 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. The main objective of this Directive is to introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.

36 UNHCR, *Improving Asylum procedures: Comparative Analysis and Recommendations for Law and Practice, Key Gender-related Findings and Recommendations* (Geneva: UNHCR, March 2010), p. 38.

37 Asylum Aid and the European's Women's Lobby, *Asylum is not gender neutral: The need for Gender AI to implement to EU qualification directive and the asylum procedures directive* (Brussels: EWL, 2008).

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

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

40 Resolution 1765 (2010).

41 <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/what-are-the-public-sector-duties/gender-equality-duty/>.

Under the gender equality duty the UKBA produced an equality scheme in 2007 and 2008⁴² but has not done so since then. Having and implementing Gender AI is one way of ensuring compliance with the gender equality duty (and its replacement, the Public Sector Equality Duty which will come into force from April 2011 under the Equality Act 2010).

Strategy to end violence against women and girls

In its "Call to end violence against women and girls" the Government recognises that women who seek asylum in the UK may have experienced gender-specific violence/persecution where there is insufficient protection in their country of origin. It states that the UK asylum system is dedicated to being as gender sensitive as possible, from the point that an individual claims asylum to the point of removal or integration and that the UK will continue to work with individuals seeking asylum on a case-by-case basis, including victims of trafficking and victims of torture, to ensure the process is sensitive to gender specific issues.⁴³

Gender guidelines at initial decision-making

The UKBA issues detailed instructions to its case owners on how they should examine claims for asylum and apply the Refugee Convention. The Immigration Rules in turn detail, among other things, how legislative powers to consider applications to come to or remain in the UK should be exercised.⁴⁴ In 1998 the Refugee Women's Legal Group, a network of refugee women, lawyers, academics and other practitioners, published Gender Guidelines for the Determination of Asylum Claims in the UK.⁴⁵ In 2004, the Home Office adopted a version of these guidelines, creating a new Asylum Policy Instruction entitled Gender Issues in the Asylum Claim.⁴⁶ Asylum Policy Instructions (since replaced by Asylum Instructions) are available on the UKBA's website. The website states that "the asylum policy instructions are the Government's policy on asylum. They are followed by asylum case owners in the UK Border Agency."⁴⁷

The Asylum Instruction on *Gender Issues in the Asylum Claim* is now also known as the UKBA's Gender AI. They remind case owners of the following issues:

- that women may be involved in low level political activities, may be harmed due to their imputed political opinion and may experience gender-specific persecution and discrimination.
- that harm within the private sphere with a failure of state protection can amount to persecution.
- how gender-related claims for asylum should be considered in relation to the Refugee Convention grounds.
- the issues that arise in relation to internal relocation.
- procedural issues such as the gender of the interviewer.
- the need to recognise that trauma can result in memory loss and that women may be reluctant to disclose everything immediately because of feelings of guilt or shame.

42 Border and Immigration Agency, *Race, Disability and Gender Equality Scheme* (2007); and UK Border Agency, *Race, Disability and Gender Equality Scheme 2008-9* (2008).

43 HM Government, *Call to end violence against women and girls*, November 2010, pp. 15-16.

44 Liberty, *Your rights: the Liberty guide to human rights, the framework of immigration control*.

45 See <http://www.nadir.org/nadir/initiativ/linksrhein/archiv/c/c000205.htm>

46 UKBA Asylum Policy Instruction, *Gender Issues in the Asylum Claim*, March 2004.

47 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- the need to seek out country of origin information which has relevance to gender-related claims for asylum.⁴⁸

The Gender AI was updated by the Immigration and Nationality Directorate of the Home Office in 2006 and by the UKBA in 2010.⁴⁹ Analysis of the case files for this research project was undertaken while the 2006 version of the Gender API was in force.

Gender guidelines in asylum appeals

In 2000, the Immigration Appellate Authority (IAA) published its own extensive gender guidelines⁵⁰ covering issues such as: the definition of persecution and the meaning of serious harm; the failure of state protection and the Convention grounds; procedural and evidential issues, including obtaining oral evidence, country of origin information, expert evidence and credibility issues. These guidelines were intended to be applied in asylum and immigration appeals.

In September 2006, the Asylum and Immigration Tribunal (AIT) declared that the gender guidelines published by its forerunner, the IAA, were not the policy of the AIT.⁵¹ When the AIT was abolished and asylum appeals brought within the First and Upper Tier Tribunal (Immigration and Asylum Chamber) in February 2010, the Practice Direction on *Child, vulnerable adult and sensitive witnesses*⁵² was extended to asylum appeals. In October 2010, the IAC issued a Joint Presidential Guidance Note on *Child, vulnerable adults and sensitive appellant*.⁵³ This recognises that applicants who have undergone traumatic experiences may be vulnerable and describes what measures immigration judges may consider to avoid re-traumatising them, and to ensure that evidence provided by them is admissible and reliable.

Comparative national practice

Canada,⁵⁴ the United States of America⁵⁵ and Australia⁵⁶ have gender guidelines to aid their decision-makers in refugee status determination. They are administrative directives rather than being binding in law, but they provide decision-makers with a method of interpreting or applying international refugee definitions in a gender-sensitive manner.⁵⁷

48 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010.

49 For more information on the revised Asylum Instruction, *Gender Issues in the Asylum Claim* revised in September 2010 see *Women's Asylum News*, no. 96, October 2010, pp. 4-5.

50 Berkowitz N. and Jarvis C., *Asylum Gender AI* (London: Immigration Appellate Authority, 2000).

51 Note from C. M. G. Ockleton, Deputy President, Asylum and Immigration Tribunal, Issue 17, 2006, p. 25.

52 Tribunals Judiciary, *Practice Direction: Child, Vulnerable Adult and Sensitive Witnesses*.

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

54 'Guidelines for women refugee claimants fearing gender-related persecution', Canadian Immigration and Refugee Board, 1993.

55 'US Gender AI, consideration for asylum officers adjudicating asylum claims from women,' United States Immigration and Naturalization Service, Office of International Affairs, May 1995.

56 'Refugee and humanitarian visa applicants: guidelines on gender issues for case owners', Australian Department of Immigration and Multicultural Affairs, 1996.

57 Macklin A., 'A comparative analysis of the Canadian, United States and Australian directives on gender persecution and refugee status' in Indra D. (ed), *Engendering forced migration: theory and practice* (Oxford: Berghahn Books, 1999), pp. 273-293.

The only European countries with gender guidelines are the UK,⁵⁸ Sweden,⁵⁹ the Netherlands⁶⁰ and Norway.⁶¹ In addition, Spain and Germany have both amended their asylum legislation in relation to gender. Spain adopted an Act that amended existing legislation in 2007, recognising gender as an additional ground for refugee status.⁶² Under German immigration law applicants are recognised as refugees if they fear persecution by non-state actors that the state is unable or unwilling to control and/or persecution is “solely on account of sex.”⁶³

Specific issues for women seeking asylum

There are a number of issues that disproportionately affect women seeking asylum in the UK. These issues can be operational, such as whether childcare facilities are provided at interviewing centres. They can be procedural, such as where decision-makers consider whether to delay the examination of the claim to allow additional time for a woman who has been subjected to gender-related persecution to start to recover and prepare for her interview. The issues can also be substantive such as the gender sensitive application of key legal concepts that affect women seeking asylum in particular.

Procedural issues

Disclosure

Non-disclosure or late disclosure of information has a particular impact on women seeking asylum. Some women may feel too traumatised, feel shame or fear stigma at disclosing rape or sexual violence⁶⁴ or may not know that such types of harm are relevant to their claim for asylum. The arrangements made for a woman's interview may also affect disclosure of her account of events, for instance, if a woman is interviewed by a male case owner and/or a male interpreter, or in a place that is not sufficiently private. If a woman was initially a dependent on her husband or other relative's claim for asylum and then makes a claim for asylum in her own right, there may be facts that have not been disclosed previously because they were not central to the husband or other relative's claim for asylum.

Credibility

During the refugee status determination procedure, the UKBA case owner must make credibility assessments in relation to the accounts of asylum seekers. If the credibility of an applicant's account is accepted, it will form the primary factual basis for the assessment of the asylum claim. The UNHCR states that “the relevant facts of the individual case will have to be furnished in the first place by the applicant himself. It will then be up to the person charged with determining his status (the examiner) to assess the validity of any evidence and the credibility of the applicant's statements”.⁶⁵

58 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010.

59 Swedish Migration Board, *Gender-Based Persecution: Guidelines for Investigation and Evaluation of the Needs of Women for Protection* (March 2001).

60 Netherlands Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*) 1994. Immigration and Naturalization Service (IND), Work Instruction no. 148: *Women in the asylum procedure*, 1997.

61 European Council on Refugees and Exiles, *Norway, European asylum systems: legal and social conditions for asylum seekers and refugees in Western Europe* (2000).

62 The New Amendment to the Organic Law for the Effective Equality of Women and Men introduced an amendment to Law 5/1984, which regulates the right to asylum and refugee status in Spain, and provides the following: “Third Additional Disposition: Article 3, Part 1 [of Law 5/1984] applies to foreign women who have fled their countries on account of a well-founded fear of suffering gender-based persecution”. The most recent amendments to asylum legislation in Spain are now contained in Act 12/2009.

63 German Immigration Act, Section 60(1), 2005.

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

65 UNHCR Handbook, paragraph 195.

Negative credibility findings by case owners are often the basis upon which asylum claims are refused. Investigations into the quality of asylum decision-making in the UK have shown that refusals based on lack of credibility made by the IND were taken using unreasoned and unjustifiable assertions⁶⁶ and were not supported by analysis of the facts.⁶⁷ It was found that IND caseworkers made decisions based on assumptions about how people would behave in certain circumstances or on the basis of discrepancies in the applicant's account at the expense of an investigative approach.⁶⁸ The UNHCR has expressed concerns in its Quality Initiative Project reports that IND caseworkers made flawed assessments of credibility.⁶⁹ More recently, the UNHCR has reported that DFT decisions by BIA caseworkers often failed to focus on the individual merits of the claim. Particular concerns included an incorrect approach to credibility assessment, a high prevalence of speculative arguments and a lack of focus on material elements of the claim. There was also evidence that an excessively high burden of proof is being placed on applicants.⁷⁰ It also appears that there is limited application of the benefit of the doubt principle to asylum seekers after the applicant has made a genuine effort to substantiate his/her story to UKBA case owners⁷¹ despite this recommendation in the UNHCR Handbook.⁷² In their most recent report to the Minister, the UNHCR noted that UKBA case owners in the DFT failed to follow consistently the appropriate methodology for assessing the credibility of each material fact.⁷³

Women may face additional barriers in showing that their claim is credible as it is more difficult to access country of origin information on the status and treatment of women.⁷⁴ It may also be more difficult for women to obtain documentary evidence due to the nature of the harm they have suffered or fear and the nature of their activities and place in society.⁷⁵ What is more, in cases of imputed political opinion, some women may not have the information requested by the UKBA to evidence their claim such as evidence that relatives were registered members of a particular political party or information regarding the political party in question.⁷⁶

Many claimants who qualify as refugees are in a state of fear and most have undergone traumatic experiences. Trauma may seriously affect a person's ability to give an accurate and chronological account of events without discrepancies.⁷⁷ Experiences of rape or sexual violence are difficult to disclose (particularly if gender-sensitive interviewing procedures are not followed) thereby negatively impacting on the credibility of claims by women asylum seekers.⁷⁸ If these factors are not recognised, it can lead to incorrect assessments of the credibility of applicants' accounts and, consequently, incorrect refusals of asylum claims.

66 Amnesty International UK, *Get It Right*, p. 19.

67 See Independent Race Monitor, Annual Report April 2002 – March 2003, UKBA Home Office, para. 31; Amnesty International UK, *Get It Right*.

68 Amnesty International UK, *Get It Right*, pp. 19-20.

69 UNHCR, *Quality Initiative Project Fourth Report: Key Observations and Recommendations* (Geneva: UNHCR, 2006), para. 2.3.

70 UNHCR, *Quality Initiative Project Fifth Report to the Minister* (Geneva: UNHCR, 2008), p. vii. See also para. 2.3.4.

71 UNHCR, *Quality Initiative Sixth Report: Key Observations and Recommendations* (Geneva: UNHCR, 2009), p. 4.

72 UNHCR Handbook, paragraph 203.

73 UNHCR, *Quality Integration Project First Report: Key Observations and Recommendations*, August 2010, p. 2.

74 Berkowitz and Jarvis, *Asylum Gender AI*, para. 5.50.

75 *Ibid.* para. 5.40-5.41.

76 *Ibid.* para. 5.45.

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

78 Berkowitz and Jarvis, *Asylum Gender AI*, pp. 50-53.

Substantive legal issues

Although all relevant legal concepts used in assessing asylum claims apply equally to men and women, some affect women seeking asylum more frequently because of the nature of gender-related claims for asylum.

State protection

The need to show the absence of state protection is an element that is often found in cases of women who make gender-related claims for asylum. Gender-related claims for asylum are often, but not always, based on a fear of persecution by non-state actors. In order to qualify as a refugee, a claimant must demonstrate that the state is either unwilling or unable to provide protection from that persecution. This is harder to do if the applicant fears persecution from a non-state actor⁷⁹ and must be done in a way that takes into account the particular issues that the individual applicant would have in accessing protection. For example, remedies against domestic violence in the country of return must be “practical and effective” if state protection is considered to be in place, with the attitude of the police to domestic violence as relevant as the fact that, as a matter of law, it was criminalised.⁸⁰

Convention grounds

Due to the absence of gender as a specific ground in the Refugee Convention, it is common for women's claims to be considered in relation to the Convention ground of membership of a particular social group (PSG). A PSG is defined as “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society” in the UNHCR guidelines.⁸¹ These guidelines have been endorsed by the Supreme Court (formerly the House of Lords).⁸² A significant amount of litigation has focused on the development of the definition of a PSG for women making gender-related claims for asylum.⁸³ In particular, in two well known test cases, the House of Lords found that women in Pakistan⁸⁴ and (intact) women in Sierra Leone⁸⁵ constituted a PSG.

However, in order to ensure an inclusive interpretation of the Refugee Convention, all Convention grounds should be considered from a gendered perspective.⁸⁶ The political opinion ground is often overlooked⁸⁷ even though it is probably the least disputed of all the grounds of the Refugee Convention.⁸⁸ Women may not always fit into the traditional definition of a political refugee and may not have expressed their political opinion but they may be attributed a political opinion because they oppose social mores and discrimination, or because of the political activities of their male relatives (imputed political opinion).⁸⁹

79 Horvath v. Secretary of State for the Home Department, [1999] EWCA Civ 3026 and Svazas v Secretary of State For the Home Department [2002] EWCA Civ 74 (31st January, 2002).

80 McPherson v Secretary Of State for Home Department [2001] EWCA Civ 1955 (19 December 2001).

81 UNHCR, *Guidelines on International Protection “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (Geneva: UNHCR, 2002), para. 11.

82 *Ibid.*, para. 15.

83 Fraser J., *Review of Case Law on Particular Social Group from 1999 to 2005* (Glasgow: Refugee Legal Project, 2005).

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

85 Secretary of State for the Home Department v. K; Fornah v. Secretary of State for the Home Department [2006] UKHL 46, 18 October 2006. “Intact” refers here to women who have not been subject to Female Genital Mutilation (FGM).

86 See for example Asylum Aid and the European Women's Lobby, *Asylum is not gender neutral*, p. 14; and Asylum Aid and the European Women's Lobby and ILGA-Europe, *Proposal for amendments on the Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of the international protection and the content of the protection granted (recast)*, (Brussels: EWL, 2010).

87 Haines R., *Advancing a gendered interpretation of the Refugee Convention*, para. 18.

88 Crawley, *Refugees and Gender*, p. 68.

89 *Ibid.* pp. 68-70.

Internal Flight Alternative

Where a claimant can demonstrate that she has a well-founded fear of persecution in her home country and she is unable or unwilling to avail herself of the protection of that country, she may still be refused refugee protection in the UK, if it is found that she can relocate to another area of her home country.⁹⁰ This is known as internal flight alternative (IFA), internal relocation or internal protection. If IFA is found to be reasonable, decision-makers will not grant refugee status or complimentary protection.⁹¹ IFA may affect women claiming asylum more significantly because women seeking asylum may fear persecution by non-state actors more often than men and the option of relocating is less likely when the persecution feared emanates from the State.⁹²

The legal test established by courts in the UK as to whether IFA is a viable option is to examine whether the applicant is at risk of persecution or serious harm in the proposed area of relocation, and, if not whether the conditions in the proposed area of relocation would be unduly harsh.⁹³ The guidance offered by the UNHCR suggests a standard to assess the reasonableness of relocation by examining whether the claimant can “lead a relatively normal life without facing undue hardship”⁹⁴ and this interpretation has been accepted by the House of Lords.⁹⁵ The Court of Appeal noted that some conditions are unreasonable even if they are widespread in the place of relocation.⁹⁶ The UKBA Asylum Policy Instruction on *Internal Relocation* notes that “protection in that area must be effective and of a durable nature”.⁹⁷ In the House of Lords, Baroness Hale of Richmond noted that the UNHCR’s submissions were not incompatible with the case of *Januzi* and that it was necessary to consider all the circumstances of the individual’s case holistically, including his or her personal circumstances. The UNHCR submitted that in women’s claims for asylum, it is necessary to consider the cumulative effects of relocation itself in terms of social, cultural, economic, legal and psychological aspects.⁹⁸

Evidential issues

Country of Origin Information (COI) reports often cover the human rights conditions in a specific country from a male perspective and there is often only a short section addressing issues that specifically affect women. The lack of accessible information on the status of women and the forms of persecution they may experience in countries of origin makes it more difficult for women seeking asylum to evidence their claim and may result in negative credibility findings.⁹⁹

90 Rule 339O of the Immigration Rules (HC 395).

91 Rule 339O of the Immigration Rules (HC 395). In terms of Article 3 ECHR see *Salah Sheekh v. The Netherlands*, (Application no. 1948/04), 11 January 2007, para. 141.

92 Bennett C., *Relocation, Relocation: The impact of internal relocation on women asylum seekers* (London: Asylum Aid, 2008).

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

94 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* (Geneva: UNHCR, 2003), para 7 ll(a).

95 *Januzi v. Secretary of State for the Home Department & Ors* [2006] UKHL 5 (15 February 2006), per Lord Hope, para. 47; *Secretary of State for the Home Department v. AH (Sudan) & Ors* [2007] UKHL 49 (14 November 2007), per Lord Brown of Eaton-Under-Heywood, para. 42.

96 *AA (Uganda) v. Secretary of State for the Home Department* [2008] EWCA Civ 579, para. 17. For more information see also Bennett, *Relocation, Relocation*, p. 24; and *Women’s Asylum News*, no. 76, June/July 2008, pp. 3-5.

97 UKBA Asylum Policy Instruction, *Internal Relocation*, February 2007.

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

99 Collier B., *Country of Origin Information and Women: Researching gender and persecution in the context of asylum and human rights claims* (London: Asylum Aid, 2007), p. 11; UNHCR *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (Geneva: UNHCR, 2002), para. 37.

Home Office refugee status determination procedure

In February 2005, the Home Office announced that it would be introducing a new system for processing asylum applications. Entitled the New Asylum Model (NAM), this process involves shorter timescales for gathering evidence and making decisions on asylum claims, assigning responsibility for individual asylum applications to specific 'case owners' within the UKBA and introducing more stringent requirements for asylum applicants to keep in regular contact with UKBA staff at every stage of the refugee status determination procedure.¹⁰⁰ Since March 2007, every new asylum application has followed the NAM process. The NAM aimed to achieve better quality decisions that stood up to scrutiny, thereby reducing the number and cost of appeals.¹⁰¹

With the NAM, the UKBA brought in a Foundation Training Programme for case owners which includes asylum law and interviewing and decision-making techniques and took 55 days. This included a specific section on gender.¹⁰² In 2009, this training was revised and reduced to 25 days. The UKBA is implementing the revisions to the Gender AI through mainstreaming these into the Foundation Training Programme and the Consolidation training programme which case owners undergo after three months working in the field.¹⁰³

In 2007, the UKBA established a Quality Audit Team which assesses 10% of asylum decisions based on key aspects including the Reasons for Refusal Letter (RFRL) and application of the correct standard of proof.¹⁰⁴ In September 2010, the Quality Audit Team announced it was to carry out a six month thematic review on gender, focusing on women's files across all decisions. A report would be written in six months on quality reporting standards in women's cases.¹⁰⁵

In 2004, the UNHCR and the Home Office launched the Quality Initiative (QI) project to audit asylum decisions and identify trends of good practice in assessment of credibility of asylum claims. They also look at the correct application of refugee law concepts as well as identifying areas requiring improvement.¹⁰⁶

Since the NAM was brought in, lobbying by NGOs has resulted in the UKBA bringing in two procedural changes that could improve the quality of decision-making in women's cases. Firstly, in May 2007 the UKBA agreed to ask all asylum applicants at screening whether they had a preference for a male or female interviewer.¹⁰⁷ However, the full screening interview is not happening in over one quarter of cases, which means there will not always be the opportunity to ask this question.¹⁰⁸ Secondly, between 2007 and 2009, three of the seven UKBA regions brought in provision of childcare during asylum interviews so that parents (mostly mothers) could talk about their experiences without their children present¹⁰⁹ with a further two bringing in such provision in 2010 or early 2011.¹¹⁰ By then only the two offices in London will not provide childcare.

100 Home Office, *Controlling our borders: Making migration work for Britain. Five year strategy for asylum and immigration* (London: Home Office, 2005), p 36.

101 The Comptroller and Auditor General, *The Home Office: Management of Asylum Applications by the UK Border Agency* (London: NAO, 2009), p. 9.

102 Immigration and Nationality Directorate, *The case owner's Workbook 9: The Asylum Interview* (London: IND, 2006), p. 18.

103 Asylum Aid, the UKBA/Charter engagement process – impacts, as updated by the UKBA, 3rd December 2010.

104 Independent Chief Inspector of the UK Border Agency, *Asylum: getting the balance right? A thematic inspection July – November 2009* (London: OCIUKBA, 2010), p. 19.

105 UKBA, Minutes of Asylum Determination Meeting, 20 September 2010, p. 1.

106 UNHCR, *UNHCR and UK work to improve refugee status determination*, (London: UNHCR, 2008).

107 *Women's Asylum News*, no. 68, August 2007, p. 4.

108 The Comptroller and Auditor General, *The Home Office: Management of Asylum Applications by the UK Border Agency*, p. 10.

109 Asylum Aid, *Charter of Rights of Women Seeking Asylum 2 years on: impacts and actions* (London: Asylum Aid, 2010), p. 6.

110 House of Commons Written Answers 13 October 2010, Volume No. 516, Part No. 51

Following the election in May 2010, the Conservative/Liberal Democrat Coalition Government produced a programme for government which stated “We will explore new ways to improve the current asylum system to speed up the processing of applications.”¹¹¹ This resulted in the UKBA setting up the Asylum Improvement Project (AIP), the terms of reference for which include “better, more sustainable, decisions” (i.e. not lost at appeal).¹¹² Although these terms of reference did not mention gender specifically, gender was referred to in subsequent documents.¹¹³

Since its parliamentary launch in October 2008, the UKBA has engaged with the *Charter of Rights of Women Seeking Asylum* which now has over 200 endorsements. Following the Every Single Woman campaign,¹¹⁴ this engagement was enhanced with the appointment of the Head of Immigration as the Gender Champion to take the strategic lead on gender issues, and the agreement of terms of reference between *Charter* endorsers and the UKBA to engage in a dialogue on operational issues relevant to gender.¹¹⁵ The topic of gender is also regularly discussed at the UKBA's National Asylum Stakeholder Forum.

Quality of decision-making in the refugee status determination procedure

Research on the quality of decision-making over many years has focused on the reasons for refusal letter (RFRL) issued to asylum seekers when they are refused asylum. “If a decision has been taken to refuse asylum after substantive consideration, the decision-maker will need to draft a reasons for refusal letter. This should clearly set out the reasons why the application is being refused.”¹¹⁶

Research undertaken before the NAM was brought in consistently revealed that asylum decisions were based on inaccurate and out-of-date country information, unreasoned decisions about the credibility of applicants' claims and a failure to properly consider complex torture cases.¹¹⁷ The Home Office's statistics on asylum applications showed many refusals were overturned on appeal; getting more decisions right first time would lead to fewer appeals, speedier results and lower costs.¹¹⁸

Inspections and audits since the NAM was implemented show:

- Decisions to grant refugee status contained detailed reasoning on the file and decisions to refuse were based on evidence provided at interview and subsequent representations.¹¹⁹
- Some examples of good practice, but evidence of incorrect approaches to credibility assessment, high prevalence of speculative arguments and lack of focus on material elements of the claim, limited understanding of refugee law concepts and an excessively high burden of proof being placed on applicants.¹²⁰

111 HM Government, *The Coalition: our programme for government*, May 2010, p. 21.

112 UKBA, *Terms of reference for the Asylum Update*, January 2010, p. 1.

113 UKBA, Asylum Improvement Project, Corporate Partner Workshop, October, 2010; UKBA, *Asylum Improvement Project: List of change projects* – December 2010, p. 4.

114 Asylum Aid, *Every Single Woman* (London: Asylum Aid, 2009).

115 Asylum Aid, *Charter of Rights of Women Seeking Asylum 2 years on*, pp. 6-7.

116 Asylum Process Guidance: Reasons for Refusal Letter (undated).

117 Asylum Aid, *Still no reason at all: Home Office decisions on asylum claims* (London: Asylum Aid, 1999); Amnesty International UK, *Get It Right*; Smith, E., *Right first time? Home Office asylum interviewing and reasons for refusal letters* (London: Medical Foundation for the Care of Victims of Torture, 2004).

118 Asylum Aid, *Still no reason at all*, p. 46.

119 Independent Chief Inspector of the UK Border Agency, *Asylum: getting the balance right?*, p. 20.

120 UNHCR, *Quality Initiative Project Fifth Report*, p. vii. See also para. 2.3.4. and UNHCR, *Quality Integration Project, Key Observations and Recommendations* (Geneva: UNHCR, 2010).

- Whilst quality had been improving, lessons from audits by the Quality Audit Team were not being shared with all case owners and incorrect decisions by case owners were not being reversed.¹²¹
- There was no systematic analysis of the reasons for allowed appeals which would have allowed the UKBA to identify national or local trends that could have led to an improvement in the quality of decisions.¹²²
- Whilst all staff placed a strong emphasis on the quality of their decisions, the majority of case owners said they believed senior managers were more interested in the conclusion targets rather than quality.¹²³
- Concern about how many initial decisions were being appealed.¹²⁴

An early and interactive role for legal representatives during the refugee status determination procedure was piloted by the NAM teams in Solihull during 2007 in order to 'frontload' resources into the initial decision rather than the appeal stage (the Solihull pilot). Under this model, applicants were expected to submit a witness statement before their substantive asylum interview. This was used to inform discussions between the case owner and the applicant's legal representative, enabling case owners to prepare for the interview and ensuring that the interview focused on the 'core issues' of the claim rather than those aspects which were not in dispute. An independent evaluation of the Solihull pilot concluded that:

- Front-loading decision-making systems and legal aid expenditure delivers better quality decisions. As one indication of this, 10% of the UKBA's initial decisions made under the Solihull pilot were overturned on appeal compared to 20% in the control group, where the unreformed process was used.
- The overall quality of service was improved – applicants were more engaged and had a better understanding of the asylum process which meant that they appreciated that they had been able to put their case fully and had a greater acceptance of the reasons for a negative decision.¹²⁵

The pilot, now named the Early Access to Legal Advice Project (ELAP) is currently being rolled out across the Midlands region of the UKBA.¹²⁶

Whilst the evaluation of the Solihull pilot did not consider gender issues, it can be suggested that women with gender-based claims might benefit significantly from the ELAP. This hypothesis is based on the importance of early access to legal advice in complex cases, the opportunity that applicants have to prepare a witness statement with their lawyer and the project's focus on an interactive process which might help with disclosure.

121 The Comptroller and Auditor General, *The Home Office: Management of Asylum Applications by the UK Border Agency*, p. 5.

122 Independent Chief Inspector of the UK Border Agency, *Asylum: getting the balance right?*, p. 23.

123 *Ibid.* p. 19.

124 The Centre for Social Justice, *Asylum matters: restoring trust in the UK asylum system* (London: Centre for Social Justice, 2008), p. 80.

125 Jane Aspden, *Evaluation of the Solihull Pilot for the UKBA and the LSC*, 2008.

126 Emma Churchill, Director of Asylum, addressing the UK Border Agency All Party Parliamentary Group on Refugees, House of Commons, 15th November 2010.

Quality of decision-making in women's asylum claims

The first research focusing specifically on decision-making in women's cases was undertaken by Asylum Aid in 2001 and concentrated on the cases of women from Kenya. The research demonstrated the poor quality of Home Office decision-making and the existence of a 'culture of disbelief'.¹²⁷

Research in 2006 which aimed to assess whether the UKBA's Asylum Policy Instruction on *Gender Issues in the Asylum Claim* was being implemented in practice revealed a lack of awareness of gender issues and evidence of the gender guidelines not being followed.¹²⁸

Many of the UNHCR's auditing reports identify a lack of gender sensitivity in dealing with asylum claims and include recommendations regarding this,¹²⁹ often reiterating recommendations because they have not been accepted by the Immigration Minister because of operational constraints.¹³⁰

After the NAM was brought in, research relating to quality of decision-making has not focused on women in general but on specific topics: the detained fast track (DFT), IFA, women with claims based on their sexuality and trafficked women.

The DFT is part of the NAM. It is an accelerated decision-making process where an applicant is detained whilst their asylum claim and any appeal is decided. Women routed into this process are detained at Yarl's Wood Immigration Removal Centre in Bedfordshire. Findings relating to decision-making in women's cases in the DFT show that:

- the DFT was unsuitable for complex cases such as gender-related claims and a fundamental part of the problem was the failure by the UKBA to follow its own gender guidelines.¹³¹
- complex gender-related claims for asylum were still being inappropriately referred to the detained fast track process¹³² and a more robust referral mechanism for the detained fast track needed to be identified to better identify potential gender-related claims for asylum which are not suitable for fast-track processes.¹³³
- poor consideration of whether a claim engages a Convention reason was particularly accentuated in women's claims and in relation to the identification of a PSG.¹³⁴
- Analyses of any possible IFA failed to assess whether relocation would remove the specific threat of harm in relation to the particular applicant's individual circumstances¹³⁵ or applicant's ability to survive economically.¹³⁶

127 Refugee Women's Resource Project, *'Only Crooked Words,' Home Office decisions on Kenyan women's asylum claims* (London: Asylum Aid, 2001), p. 7.

128 Ceneda and Palmer, *'Lip service' or implementation?*, p.11.

129 UNHCR, *Quality Initiative Project Second Report to the Minister*, undated, Recommendation 21; UNHCR, *Quality Initiative Project Third Report to the Minister*, March 2006, Recommendations 24 and 25; UNHCR, *Quality Initiative Project Fourth Report*, para. 4.2.33; UNHCR, *Quality Initiative Project Sixth Report*, para. 3.4.31.

130 UKBA Minister's Response to Second Report, Response to Recommendation 21 – the recommendation was "under consideration", 24 October 2005.

131 Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK* (London: HRW, February 2010).

132 Bail for Immigration Detainees (BID), *Refusal Factory: Women's experiences of the detained fast track asylum process at Yarl's Wood Immigration removal centre* (London: BID, 2007); and UNHCR, *Quality Integration Project First Report*, p. 4.

133 Home Office, *Yarl's Wood Detained Fast-Track Compliance with the Gender API: A Report by the NAM Quality Team* (London: Home Office, 2006).

134 UNHCR, *Quality Integration Project First Report*, p. 3

135 *Ibid.*

136 UNHCR, *Quality Initiative Project Fifth Report*, para. 2.3.43-47.

Research on the impact of internal flight alternative (IFA) on women asylum seekers found that this was increasingly relied on as a ground to refuse to recognise women seeking asylum as refugees, both at the initial decision stage and at appeal.¹³⁷ Further, it appeared that the concept was applied without an adequate understanding of the law and a lack of engagement with gender issues and relevant training.¹³⁸

In relation to asylum claims by lesbian and gay applicants, research has found systemic discrimination and the use of out-of-date country information alongside a lack of training and appropriate guidance in the decision-making process.¹³⁹

Research focusing on the consideration of the claims for asylum made by trafficked women published in 2008 found that there were improvements on procedural issues, such as providing female case owners and interpreters, but the rate of success at appeal showed that the quality of initial decision-making remained an issue. All the women in the sample whose cases were completed at the time of the research (12 women) were refused at initial stage but the decision was overturned in their appeals. The findings were recognised as having implications for a wide spectrum of cases including other forms of gender-related persecution.¹⁴⁰

Following its independent citizens' enquiry into the UK asylum system, the Independent Asylum Commission concluded that the Government's own gender guidelines were inconsistently observed and that gender specific claims for asylum were not adequately addressed by the asylum system.¹⁴¹ Parallel findings have been reported in the Asylum and Immigration Tribunal where immigration judges were found not to implement the IAA Gender Guidelines even when they were accepted as representing the Tribunal's policy.¹⁴²

Most recently, Rights of Women compared the extent to which different statutory bodies (including the police and Crown Prosecution Service) had fulfilled their obligations under the Beijing Platform for Action.¹⁴³ Rights of Women concluded:

“Of all the public authorities we have greatest concern about the UKBA ... [which] has not adopted a gender sensitive approach in its responses to women at risk of or experiencing violence.”¹⁴⁴

Rationale for this research

No specific research has been undertaken on the quality of decision-making in women's claims for asylum since the UKBA brought in the NAM. As shown above, many women risk facing additional barriers when claiming asylum because of the failure to interpret the Refugee Convention from a gender perspective. When considering the quality of decision-making in women's asylum claims,

137 Bennett, *Relocation, Relocation: The impact of internal relocation on women asylum seekers*, p. 36.

138 *Ibid.* pp. 40-41.

139 UK Lesbian and Gay Immigration Group (UKLGIG), *Falling the Grade: Home Office initial decisions on lesbian and gay claims for asylum* (London: UKLGIG, 2010); and Stonewall, *No Going Back: Lesbian and Gay People in the Asylum System* (London: Stonewall, 2010).

140 POPPY Project and Refugee Women's Project at Asylum Aid, *Good Intentions: a review of the New Asylum Model and its impact on trafficked women claiming asylum* (London: Eaves, 2008), p. 21.

141 Independent Asylum Commission, *Deserving dignity* (London: IAC, 2008), p. 42.

142 Wallace R. M. M. and Holliday A., *The Application of the Gender Guidelines within the UK refugee status determination procedure*, June 2005; and Black Women's Rape Action Project and Women Against Rape, *Misjudging rape: breaching Gender AI and international law in asylum appeals* (London: Crossroad Books, 2006).

143 The Beijing Platform for Action, an outcome document of the United Nations Fourth World Conference on Women in 1995, contains specific actions to be undertaken to remove all obstacles to women's active participation in all spheres of public and private life.

144 Rights of Women, *Measuring up? UK compliance with international commitments on violence against women in England and Wales* (London: RoW, 2010), p. 137.

many additional factors require attention. These cover legal, procedural and evidential aspects of the asylum process.

Until now, much of the research on the quality of decision-making has not included a gender analysis and has therefore not considered the issues that predominantly affect women.

Some of the research that does focus on women's issues took place before the NAM was brought in and is therefore out-of-date. Research on women's cases undertaken since the NAM came in has focused on specific issues, namely the detained fast track, internal flight alternative, asylum claims based on sexual orientation and cases of trafficked women.

There has been no research on the quality of decision-making under the NAM in relation to women's asylum claims in general. This research seeks to fill the resulting gap and examines whether reforms brought under the NAM have achieved the objective of enhancing the quality of decision-making, looking specifically at the cases of women asylum seekers and whether the gender guidelines and other national, European and International standards are correctly applied by the UKBA.

2. Methodology

In order to assess the quality of the UKBA's decision-making in women's asylum claims under the NAM, a legal analysis of 45 files was undertaken and 9 women were interviewed.

2.1 The sample

The criteria for the research sample were women's cases that had been granted or refused asylum through the New Asylum Model and where an initial decision had been made.

The sample included both granted and refused cases. Some of the sample were in the process of or had completed the appeal stage. There was a deliberate attempt to ensure the sample covered a wide range of gender-related persecution such as female genital mutilation (FGM), trafficking, forced marriage, and contravention of social mores. Whilst the sample obtained was diverse, the random nature of the sampling meant that Pakistan was not included despite being one of the top ten countries of origin for women seeking asylum in the UK.

In order to compare possible variations in quality of initial decision-making across regions, three UKBA regional offices were selected. London was chosen as the region with the longest experience and highest volume of decisions. Cardiff was chosen because it was the first region to provide childcare for women with children. The criteria for selecting Leeds was partly based on the need to find an area that had not recently been the focus of evaluation (such as Solihull) and where legal representatives and NGOs might be able to offer assistance in identifying cases. 15 files from each region were examined and three women from each region were interviewed.

Reputable legal representatives and leading NGOs in London, Leeds and Cardiff, were asked to contact previous or existing female clients and request their participation in the research. Where consent was given, these women's files were made available for analysis. Accessing files was initially difficult given the dearth of legal representation, particularly in Cardiff, and required persistence.

2.2 Legal analysis

For the legal analysis, the research focused on a range of information in the woman's file. This included, if available, the UKBA's 'Reasons for Refusal Letter,' substantive interview records, Statement of Evidence Form (SEF) where applicants outline in detail their reasons for claiming asylum, applicant witness statement, supporting subjective and objective evidence submitted and any additional representations. Any appeal submissions and determinations available were also examined. This was because the submissions made by legal representatives and the determinations made by immigration judges were considered to be useful and relevant evidence to help in the analysis of the quality of the initial decision.

There was less information available for those cases where applicants were recognised as refugees, as applicants are not provided with the reasons behind such a decision. While it would have been useful to have more information on the UKBA's reasoning in these cases, it was decided that the potential stress caused to women refugees by requesting their consent to receive a copy of their file from the UKBA would be disproportionate to any benefits this brought to the research. Therefore this was not pursued.

In order to analyse the asylum decision in an objective and comparable way, a set of criteria to

assess the quality of asylum decisions was developed. These criteria were drawn up based on compliance with international legal instruments and case law, as well as the UKBA's Gender API.¹⁴⁵ The use of country of origin information (COI) relevant to women seeking asylum, the case owners' approach to credibility and the conduct of the asylum interview were also included. Templates were drawn up to analyse the interview, the decision and the appeal (see Appendices A, B and C) and all 45 files were analysed against these. A monitoring form to record basic demographic information including age, marital status, and education was also completed (see Appendix D).

2.3 Interviews with women asylum seekers

A series of semi-structured interviews with nine women asylum seekers whose case files were part of the research sample were conducted. The interviews complemented the file analysis as they were able to clarify aspects of their case. These interviews resulted in a fuller picture of the women's experience of the asylum process and their views on the decision, and provided the human context to the case files.

2.4 Interviews with stakeholders

To supplement the information gained from the files and interviews, two interviews were conducted, one with the Quality Initiative/Integration Project at the UNHCR Branch Office London and one with the UKBA's Quality Audit Team. Both interviews covered training and auditing. In addition, legal representatives and NGOs that facilitated access to their clients' files reported informally on their experience of the NAM such as the ease of contact and consistency of case owners as well as legal aid restrictions.

2.5 Research committee

The research was guided by Asylum Aid's Women's Project Advisory Committee composed of academics, lawyers, NGO representatives and women refugees which meets quarterly. A smaller core group of Asylum Aid's staff and a member of the Committee, Professor Eleonore Koffman, reviewed progress and offered guidance on the research on a monthly basis.

2.6 Ethics

Ethical issues were a high priority in the research and all participants gave informed written consent to the examination of their files and to being interviewed. The confidentiality of files and interview notes between the researchers and the participants was outlined to women and was implemented accordingly. During the research interviews, which were conducted using female interpreters where necessary, the utmost care was taken to ensure that women did not have to re-live painful experiences, and could change their mind about imparting sensitive information at any time during the interview.

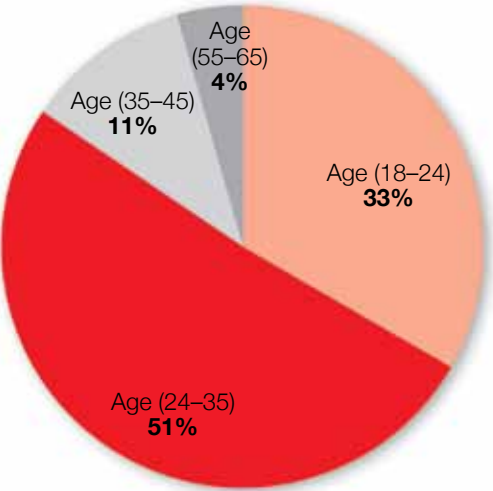
145 UKBA Asylum Policy Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised October 2006.

3. The Sample

3.1 Characteristics of research participants

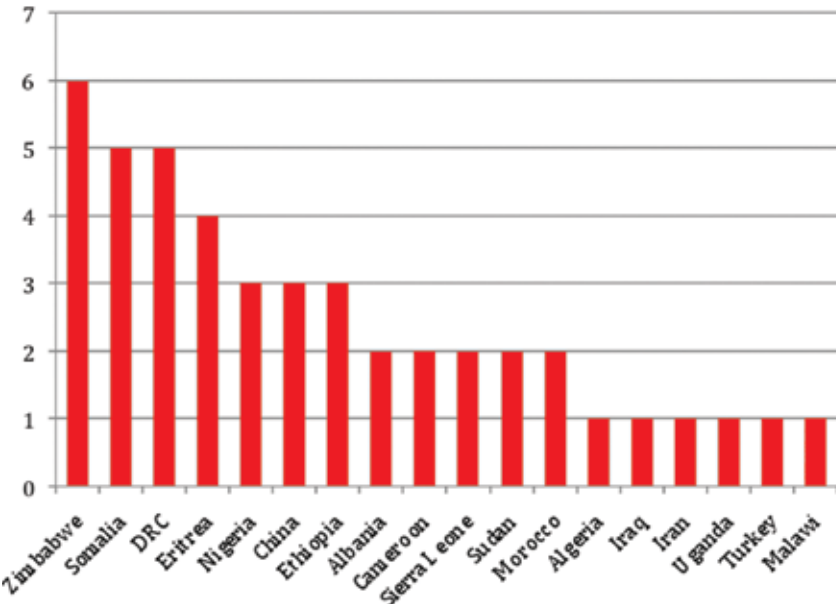
All 45 women whose files were analysed had claimed asylum in their own right. None was previously dependent on another applicant. All cases examined involved claims submitted following the introduction of the NAM in 2007 with the majority involving claims submitted during 2009-2010. The age range and countries the women came from are illustrated in Figures 1 and 2:

Figure 1: Age range of research participants



According to the Home Office’s statistical information on the age breakdown of women claiming asylum in the UK in 2009, 42% of women asylum seekers were aged 25-34,¹⁴⁶ so the research sample broadly reflects this.

Figure 2: Countries of origin of research participants



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

The sample reflected all of the top ten nationalities of women claiming asylum in the UK,¹⁴⁷ except Pakistan.

40% of the women were single and 33.3% described themselves as married or with a partner. Four women were married but separated and four were divorced. Two women had been widowed. Information on education was available for 37 women. 20% had completed secondary school whilst 18% had completed a degree. Four had no formal education whilst three women had completed primary school only. Information with regard to employment in country of origin was available for 39 of the women. Three were unemployed, five were housewives and the remaining women had worked in a variety of jobs, including domestic workers, nurses, secretaries and teachers. One was an engineer, one a pharmacist and one a graphic designer.

3.2 Types of asylum claim

Figure 3 shows the issues raised in women's asylum claims. Some women's claims raised more than one issue.

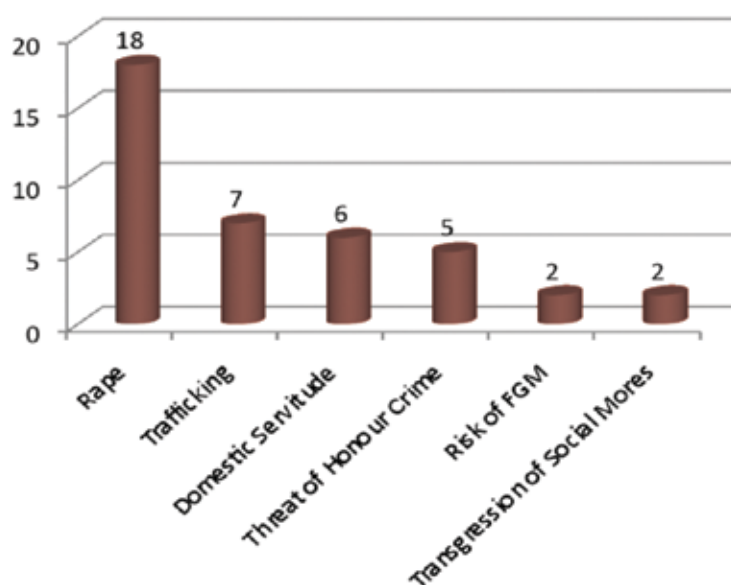
Figure 3: issues raised in claim

Issues raised in asylum claim	Number of cases
Rape	18
Political activity	10
Imputed political opinion	10
Race/ethnicity	7
Trafficking	7
Domestic servitude	6
Threat of 'honour' killing	5
Religion	3
Sexual orientation	3
Risk of FGM	2
Transgression of social mores	2
Nationality	1

31 cases out of the 45 examined (69%) involved an element of gender-related persecution as shown in Figure 4. Some cases involved more than one aspect of gender-related persecution.

¹⁴⁷ *Ibid.*

Figure 4: Types of gender-related persecution identified in research participants' claims



3.3 Asylum decisions

Key findings

- In 87% of cases, the asylum claim was refused.
- In 50% of cases, the initial decision was overturned on appeal (out of all the cases refused and including applications for reconsideration).

Of the 45 files examined, 39 women were refused on all grounds at first instance (87%), four women were granted refugee status, one was granted humanitarian protection and one discretionary leave.

The four women who were recognised as refugees had claims relating to blood feud and trafficking; ethnicity; imputed political opinion; and ethnicity and female genital mutilation.

One woman was granted discretionary leave due to family life and one woman was granted humanitarian protection on the basis that she was a victim of trafficking.

The grant rate compares with Home Office statistics which show that out of initial decisions made in women's cases in 2009, 72% were refused on all grounds, 23% were granted refugee status and 5% resulted in a grant of discretionary leave or humanitarian protection.¹⁴⁸ The sample was small, and relied on the provision of cases by legal representatives, which may partly explain why the proportion of refusals is higher than the Home Office statistics for total cases.

In all 39 refused cases, an appeal was lodged; in 3 cases the appeal remained outstanding at the time of this research. Of the 36 appeals heard, 13 (36%) were allowed on asylum and human rights grounds and 2 (6%) were dismissed on asylum grounds but allowed on human rights grounds. This means that 42% of appeals were allowed at the initial appeal on asylum and/or human rights grounds whilst 58% were dismissed on all grounds.

¹⁴⁸ Control of Immigration: Statistics United Kingdom 2009, Home Office Statistical Bulletin 15/10, Table 2j, Asylum Initial decision outcomes, excluding dependants, by country of nationality and sex 2009.

As stated previously, the UKBA has confirmed that internal management information for all asylum appeals heard in the last 12 months suggests a similar pattern, with an allowed appeal rate of 35% for women where the asylum decision was made within 6 months of application and 41% where the asylum decision took longer than 6 months. The comparable rate for men is 26%, irrespective of how long the decision took to make. The UKBA have asked Asylum Aid to point out that although these figures are based on a much larger sample size (over 12,000 appeals in total and around 3,500 women's appeals) they have not been subject to the degree of scrutiny and verification that would be required for publication as national statistics and so their accuracy needs to be treated with a degree of caution.¹⁴⁹

In three of the cases where initial appeals had been dismissed, permission to apply for reconsideration was granted and the subsequent appeals allowed, increasing the rate of successful appeals to 50%.

In five more cases permission to apply for reconsideration was granted and the reconsideration appeal remained outstanding at the time the research was carried out (Figure 5).

Figure 5: Recognition rate of cases at initial decision, on appeal and reconsideration

	Number of applicants/ appellants	Appeals outstanding	Number of cases refused	Number of cases granted/ allowed	Total granted/ allowed
Initial Decision by the UKBA	45	-	39 (87%)	6 (13%) ¹⁵⁰	6 (13%)
Appeals to the Tribunal	39	3	21 (58%)	15 (42%)	18 (50%)
Applications for reconsideration	14 (12+2 ¹⁵¹)	5 (4+1 ¹⁵²)	6 ¹⁵³	3 (8%)	

3.4 Regional variation in rate of appeals allowed

Key finding

- There was a marked difference in the rate of appeals allowed in the three regions.

62% of all appeals were allowed in London, 42% in Leeds and 14% in Cardiff (ie the initial decision was overturned at appeal). Most cases were allowed on both asylum and human rights grounds. Figure 6 shows the breakdown by region.

¹⁴⁹ Email from the UKBA to Debora Singer of Asylum Aid, 15th December 2010.

¹⁵⁰ Four cases were recognised as refugees, one case was granted Humanitarian Protection and another Discretionary Leave to Remain.

¹⁵¹ Application for reconsideration made by the UKBA.

¹⁵² Application for reconsideration made by the UKBA.

¹⁵³ Permission to apply for reconsideration refused.

Figure 6: Recognition rate of cases at initial decision and on initial appeal by region

	Number of applicants	Granted at first instance	Number of appeals lodged	Outstanding	Dismissed	Allowed
Cardiff	15	1	14	2	10	2 (17%)
Leeds	15	3	12	-	7	5 (42%)
London	15	2	13	1	4	8 ¹⁵⁴ (67%)

The rate of appeals allowed across the UK in 2009 for both men and women was 28%.¹⁵⁵ The high percentage of appeals allowed in London is striking. The number of cases where the initial decision was upheld at appeal (rather than overturned) was considerably higher in Cardiff than in the other regions.

154 Two cases were allowed on human rights grounds only.

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

4. Procedural Aspects of the Refugee Status Determination Procedure

4.1 The role of the case owner

4.1.1 Consistency and accessibility

Key finding

- In the majority of cases, more than one case owner dealt with the asylum claim.

Other findings

- In 33% of cases examined, the case owner who drafted the decision was not the case owner who conducted the interview.
- The case owner never presented the appeal.
- None of the women interviewed knew who their case owner was nor how to contact him or her.

Discussion

The notion of an 'end to end' case management system, led by a single 'case owner' was at the forefront of the New Asylum Model when it was initially rolled out in 2007. A standard letter issued to one of the women from the UKBA in February 2010 read:

'Your case owner is responsible for: interviewing you; making the decision on your application; managing any support you are entitled to receive and staying in touch with you; providing official documents; representing UKBA if you make a legal appeal; and arranging your integration into life in the UK, or return to your country of origin, either voluntarily or by enforced removal'.¹⁵⁶

Continuity of case owner is particularly important in women's cases because trauma, shame and stigma may affect the disclosure of rape and sexual violence and make disclosing these experiences very difficult.¹⁵⁷

The research showed that in practice the majority of the duties listed above were not being carried out by a single case owner. In two thirds of cases, the person conducting the interview made the decision on the applicant's case. However, in the majority of cases, case owners did not identify themselves and/or changed several times during the processing of the claim.

Research by the National Audit Office in 2009 found that the case ownership model had cut the number of times cases were being transferred from one person to another and reduced the opportunity for delay and error.¹⁵⁸ However, the data in this research shows that the number of times a case is transferred from one case owner to another is still high and that mistakes still occur that

¹⁵⁶ UKBA standard letter given in February 2010 to an applicant in Cardiff during her first reporting event.

¹⁵⁷ Bögner, Herlihy and Brewin, 'Impact of sexual violence on disclosure during Home office interviews', pp. 78-79.

¹⁵⁸ The Comptroller and Auditor General, *The Home Office: Management of Asylum Applications by the UK Border Agency*, p. 11.

jeopardise accurate decision-making. In one case, five different individuals presented themselves as the case owner at different stages prior to the decision being made, and the case owner who drafted the decision clearly did not familiarise herself with the previous correspondence in the file before making the decision. In another case, a report by the Medical Foundation was handed to the case owner conducting the asylum interview but the case owner making the decision appeared not to have received it, affecting their decision.

In all regions examined there was strong evidence of the identity of the case owner not being communicated to the applicant or her legal representative. Legal representatives in Cardiff and Leeds were able to identify and contact the case owner dealing with a case but legal representatives in London found it harder to identify or contact case owners.

None of the women interviewed as part of this research knew who their case owner was or how they could contact him or her. They did not know what the case owner was supposed to assist them with. They all described feeling uninformed and confused with regard to the refugee status determination procedure. The National Audit Office has noted that the first reporting event, initially intended as an opportunity for the applicant and her case owner to meet for the first time, is of little benefit as in practice it is not attended by the case owner but is delegated to junior staff.¹⁵⁹

4.1.2 Gender of case owner

The gender of the individual conducting the interview was deduced from their name as recorded in the interview records in 39 cases. In the other cases, no interview records or partial interview records were available.

Key finding

- In 67% of cases (26 out of 39), the interviewing officer was a woman. In 33% of cases it was a man.

Other findings

- London had the highest percentage of female interviewing officers (86%), followed by Leeds (63%) and Cardiff (60%).
- It was impossible to ascertain the gender of the interpreters involved in a case as they were only identified by code.
- The majority of the women interviewed for this research stated that when asked at the screening interview whether they preferred a female case owner, they did not comprehend the full implications and did not want to appear 'difficult' or 'picky'. Only two had requested a female case owner. Of the remainder, five said with hindsight they would have requested a female and two said they had no preference.
- Data was available from the files for 30 women¹⁶⁰ who were asked whether they wanted a female case owner. Five requested to be interviewed by a woman. One of them specified that she also wanted a female interpreter. Two requested a man. 23 said they had no preference.

159 *Ibid.* p. 5.

160 In the other cases, no screening interview records or partial screening interview records were available.

- In three of the cases where no preference was expressed, the legal representative subsequently wrote to the UKBA requesting a female interviewing officer.
- Requests for a female interviewing officer were complied with in all cases.
- In the one case where a female interpreter was requested, this was initially not complied with but was rectified at the woman's insistence at the actual interview resulting in a three hour delay.

Discussion

The gender of both case owners and interpreters is particularly relevant in women's cases because of the importance of creating an environment where women feel able to disclose any experiences that are relevant to their asylum claim. As these may include gender-related persecution such as rape, domestic violence or 'honour' killings, having a case owner and interpreter who are also women can be very important.

Following consistent advocacy efforts by various NGOs including Asylum Aid, applicants are now being asked at the screening interview whether they prefer to be interviewed by a man or a woman. It was found that two versions of the question were being used.

A screening interview form used in February, September and October 2009 and February 2010 states:

'We realise that because of the nature of their claim, some applicants may feel more comfortable talking to a man and others may feel more comfortable talking to a woman. 11.3 Do you have a preference as to whether you are interviewed by a man or a woman?'

A screening interview form used in April and May 2009 states:

'We realise that because of the nature of some asylum claims, you may possibly feel more comfortable and talk more freely if your interviewer is of the same sex as you. 10.3 Do you want the person who conducts your substantive asylum interview to be of the same sex of you?'

In fact the former version is the one agreed with the NGOs in spring 2007. The majority of women expressed no preference regarding the gender of their interviewing officer when asked at their screening interview. However, from the interviews conducted as part of the research, it appears that the environment at the screening interview does not enable women to give an informed response. Women described feeling intimidated and fearful at screening interviews. Some interviews were held via a glass window and the overall feeling was that of having to hurry up and not being able to give detailed answers. Some women described being shouted at and feeling confused and uninformed.¹⁶¹ The majority of women interviewed said that with hindsight they would have requested that a woman interview them.

Whenever a female interviewing officer was requested, this request was always complied with. The one request for a female interpreter was not initially complied with, although this was rectified. The revised Gender AI states that "it should normally be possible to comply with a request for a male or female interviewer or interpreter that is made in advance of an interview".¹⁶² It would be logical for the

161 See also: UKBA Independent Chief Inspector, *Liverpool Asylum Screening Unit, Unannounced Inspection* (London: OCIUKBA, 2009); *Women's Asylum News*, no. 95, September 2010; and question from Bridget Phillipson MP, Home Affairs Select Committee on 20th July 2010, Q119.

162 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 7.1.

UKBA to assume that the gender of the interpreter should be the same as the gender of the case owner requested by the applicant.

4.2 The asylum interview

The asylum interview is the main tool used by the UKBA to establish the facts of an asylum claim.

4.2.1 Length of interview

The length of the asylum interview including intended and actual start time, finish time, number and length of breaks, was usually recorded by the interviewing officer.

Key finding

- There was evidence from the files of case owners not picking up hints that the applicant was struggling with the length of the interview and/or needed a break.

Other findings

- In the sample, the shortest asylum interview was 1 hour and 50 minutes and the longest was 8 hours.
- All the victims of trafficking in the sample had long asylum interviews, three of which were more than 7 hours long (two in London, one in Leeds).
- The longest interview was with a woman who had been severely mistreated as a domestic servant; she was interviewed by the UKBA in Leeds for 8 hours, including breaks totalling 1.5 hours.

Discussion

The complicated nature of certain types of asylum claim such as those involving trafficking had an impact on the length of interview and generally took longer. Previous research cited concerns in connection with this:

“...there were some aspects of the NAM framework that were not felt to be appropriate for cases involving women who have been trafficked for sexual exploitation (and by extension, those who have experienced other forms of gender persecution), such as the reliance on the substantive interview”.¹⁶³

Neither the Asylum Policy Instruction on *Interviewing* nor the UKBA's Interviewing Protocol contains guidance on maximum length of interviews. Breaks are to be offered at the discretion of the interviewing officer and may be requested by the interviewee.¹⁶⁴

One woman was interviewed for 5 hours and not offered a break despite complaining of a headache. Such complaints voiced by applicants during interviews were not taken as 'hints' by case owners to take a break or stop the interview. Hints included women telling the case owner they had a headache, were tired or confused, agreeing to continue with the interview to 'get it over with', asking for clarifications of questions and becoming less able to answer questions adequately. The legal representative of one woman wrote a letter to her case owner stating that:

“The applicant ... told me that she was crying throughout the interview but no record of this has been made in your notes except one reference to her 'needing to compose herself'”.

¹⁶³ POPPY Project and Refugee Women's Project at Asylum Aid, *Good Intentions*, p. 10.

¹⁶⁴ UKBA Interviewing Protocol and UKBA Asylum Policy Instruction, *Interviewing*, November 2006, re-branded December 2008.

Long interviews with applicants are unlikely to fulfil the purpose of the interview and establish the facts of the claim since memory loss and inability to concentrate affects the ability of traumatised women to recount experiences.¹⁶⁵

4.2.2 Questions asked at interview

Key finding

- Women were often asked irrelevant or inappropriate questions, which could be deemed damaging to the applicant or, in a number of cases, offensive.

Other findings

- Open questions were usually followed by closed questions giving the applicant a chance to recount her story and then clarify information.
- Questioning was particularly intrusive in cases based on sexual orientation. None of the three lesbians in the sample were believed to be lesbians by the case owners.

Discussion

“The purpose of the asylum interview is to establish the facts of an asylum claim”.¹⁶⁶ It is expected to focus on identifying the reasons why an applicant fled her country of origin and what future risk she would face were she to return.

One Zimbabwean woman claimed asylum after her parents were murdered for supporting the opposition. At her interview she was asked: ‘What are your hobbies? Do you play hockey for a league or a team?’

Her refusal letter stated: ‘In your spare time, you enjoy playing hockey, walking in the park and socialising’. This was used to suggest that she had come to the UK for economic betterment.

A woman whose claim was based on her sexuality was asked: ‘Can you explain to me the nature of a sexual relationship between two women?’

When interviewed for this research, the same woman stated: ‘Even though I’m an asylum seeker, I deserve to have privacy’.

Questions that demonstrated a lack of understanding of gender-related persecution included the following two examples:

A young Chinese woman whose claim was based on having been trafficked was asked: ‘Did you attempt to stop this man from raping you?’

Another woman disclosed that she was sexually harassed by an uncle for 2-3 years from the age of 12. The case owner asked ‘Do you know if there was any reason the abuse stopped after 2-3 years?’

¹⁶⁵ Bögner, Herlihy and Brewin, ‘Impact of sexual violence on disclosure during Home Office interviews’, p. 174.

¹⁶⁶ UKBA Asylum Policy Instruction, *Interviewing*, November 2006, re-branded 2008.

Women who were interviewed for this research reported being particularly affected by having to answer many personal and traumatic questions during their asylum interview and having the veracity of their account subsequently challenged. One woman said: 'I cannot forget them [the interviewing officer and the interpreter]. When I told them about my life, she didn't believe me and that hurt a lot.'

Similarly, Sanam, who suffered sexual abuse by her father as well as severe domestic violence after a forced marriage at 14 was interviewed for 2 hours 20 minutes. She was not offered words of sympathy nor a break. She reported: 'It was very obvious that they accused me of lying though they did not actually say the words, it was obvious.'

The UKBA must reconcile the fact-finding nature of interviews with an appropriate and sensitive questioning technique for vulnerable applicants to disclose information in an environment of trust. Indeed, the revised Gender AI states: "Interviewers should be ready to ask searching questions while being sensitive to the difficulties an applicant may have in disclosing all the relevant information".¹⁶⁷

These findings raise the issue of the UKBA's reliance on the interview to collect the facts of the claim from applicants. Case owners in the Solihull Pilot all stated that having a statement of claim before the interview helped them make a well-reasoned decision on the case.¹⁶⁸ Being able to provide such a statement means that applicants do not face the trauma of telling their experiences again and the interview can focus instead on key points which the case owner needs clarifying. This is particularly important for people who have experienced torture and/or gender-related persecution.

4.2.3 Preparation for interview

Key finding

- Case owners exhibited very poor knowledge of gender-related persecution.

Other finding

- There was an almost total lack of preparation by case owners regarding objective information (country and thematic).

Discussion

One woman described fearing that her daughter would be subjected to forced circumcision if returned to Sudan. Her case owner replied:

Q. Can you clarify what you mean by circumcision?

A. Circumcision

Q. I have not heard of female circumcision.

The Gender AI available at the time of the decision mentioned female genital mutilation (FGM), which is commonly known as female circumcision, a number of times. For instance: "FGM...is widely practised in some societies but it is a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution."¹⁶⁹

167 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, p. 3.

168 Aspden, *Evaluation of the Solihull Pilot*, p. 9.

169 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 2.2, p. 6.

The research findings demonstrated a lack of knowledge and preparation by case owners before the interview. Of particular concern was the lack of knowledge regarding gender-related persecution. Such knowledge is essential if women's claims are to be decided appropriately. Considering country information in advance of the interview would similarly assist case owners in conducting the interview and the fact-finding purpose of the interview.

4.2.4 Childcare facilities

Finding

- Three of the women had children with them when they attended their asylum interview. The two women in Leeds were provided with childcare by the UKBA. In London, one woman's legal representative had to cancel the asylum interview twice due to lack of childcare but eventually the applicant managed to get someone to look after her children.

Discussion

The UKBA in Cardiff has been providing childcare since September 2007. Further to Asylum Aid's recommendation in the *Charter of the Rights of Women Seeking Asylum* (the Women's Charter), childcare was introduced at the UKBA's offices in Leeds in September 2009 and in Glasgow in February 2010.¹⁷⁰ A further two regions are bringing in such provision in 2010 or early 2011.¹⁷¹

London is the only region in which childcare during asylum interviews is neither available nor planned. This can result in women being interviewed about their reasons for claiming asylum in front of their children. This clearly has implications for both the case owner and the applicant in fulfilling the purpose of the interview to establish the facts of the claim.

The revised Gender AI states that:

"For those without satisfactory childcare arrangements of their own, each UK Border Agency regional office has its own arrangements in place to ensure that children are not present when parents are interviewed about their reasons for seeking asylum. This can include rescheduling the asylum interview date to accommodate childcare arrangements, or the provision of childcare at or near UK Border Agency premises".¹⁷²

4.3 Time frame of the decision making process

A key initial element of the NAM was the promise of concluding 90% of cases in six months (calculated as 182 days) from the date of claim until grant of leave to remain or removal. This target was later assessed to be unachievable¹⁷³ and was then abolished.¹⁷⁴ As shown in figure 7, whilst some cases were concluded in a short time frame, in particular those where applicants were recognised as refugees, some took far longer than 182 days to reach a final outcome.

170 Asylum Aid, *Charter of Rights of Women Seeking Asylum 2 years on: impacts and actions* (London: Asylum Aid, 2010), pp. 1-2, 6.

171 House of Commons Written Answers 13 October 2010, Volume No. 516, Part No. 51

172 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, p. 17.

173 Independent Chief Inspector of the UK Border Agency, *Asylum: getting the balance right?*, p. 4.

174 *Daily Telegraph*, "Asylum target to be scrapped", 29 July 2010.

Figure 7: Number of days between key dates during the asylum procedure

	Claim - interview	Interview- decision	Claim – decision	Claim – initial appeal heard	Claim – grant of status or appeals rights exhausted
All regions average	61 days (approx. 9 weeks)	57 days (approx. 8 weeks)	116 days (approx. 16.5 weeks)	188 days (approx. 27 weeks)	205 days (approx. 29 weeks)
Cardiff average	19	71	90	139	229
Range	10-43	7-341	18-366	67-290	67-527
Leeds average	22	42	64	166	139
Range	9-79	7-181	18-201	67-637	40-628
London average	140	56	199	281	344
Range	7-554	7-333	28-588	81-612	28-759

The speed at which cases were dealt with was described by some women as too fast for them to obtain evidence from their country of origin and/or medical reports from specialist organisations. By contrast, in Leeds one case owner exercised flexibility in a case and the legal representative was given time to obtain medical evidence crucial to the decision-making process.

It is in the interest of asylum seekers to have their claim considered within a reasonable time frame in order to decrease the feeling of uncertainty and other psychological effects the refugee status determination procedure may have on already traumatised and vulnerable applicants; but this needs to be balanced with flexibility by case owners to allow applicants sufficient time to gather all relevant evidence.

4.4 Access to legal representation

Access to legal representation was examined in accordance with the Legal Services Commission's categories of public funding including at the initial stage (Legal Help), post decision (Controlled Legal Representation) and at higher appeal stage (Controlled Legal Representation 1).

Key finding

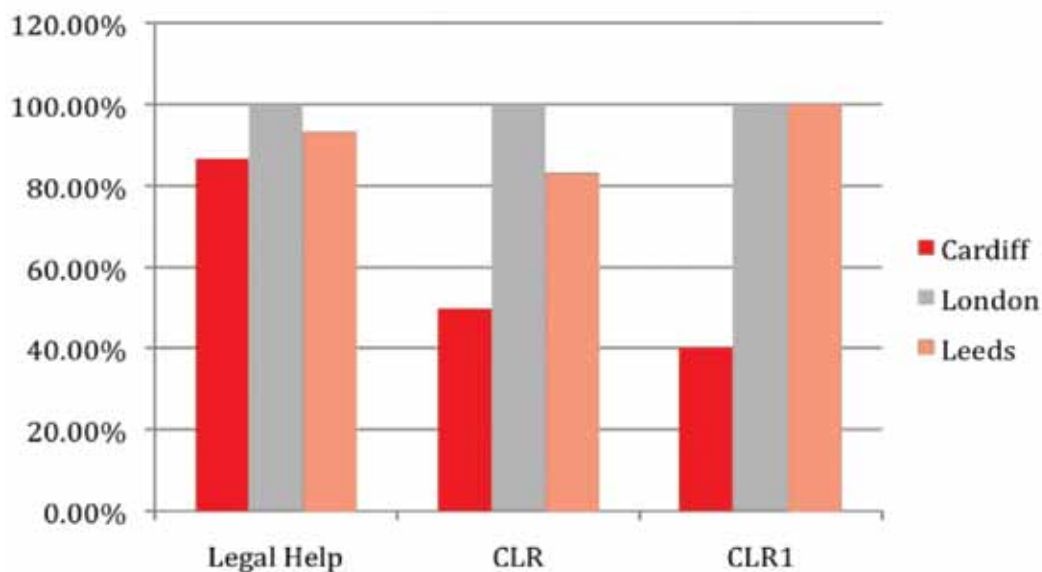
- Women found it difficult to get legal representatives outside of London.

Other findings

- At the initial stage of their asylum application, all women in London were legally represented, all women but one in Leeds were represented (although nine had representatives in London) and in Cardiff all but two women were represented (with seven of the 13 represented women having legal representatives in London rather than in the region).

- All the women met with their legal representative before their asylum interview. None of the legal representatives attended the asylum interview since Legal Help is not provided for this, except in exceptional circumstances which did not apply to the cases examined.
- In Cardiff, seven women (50%) did not have legal representatives to represent them at appeal. This supports the emerging evidence that legal representatives in Cardiff often did not consider that the merits of an asylum claim justified continued Legal Services Commission funding (the Legal Service Commission requires legal representatives to estimate chances of success to be more than 50% or to be unclear, if funding is to be justified for legal representation at appeal). Nearly all of the unrepresented cases were assisted by Asylum Justice, a local NGO providing *pro bono* legal assistance including drafting appeal grounds and, exceptionally, attendance at court.
- In Leeds, out of 12 cases that proceeded to appeal, 10 were represented. One was refused CLR by a local solicitor and another was not represented initially.
- In London, all cases were represented at appeal.

Figure 8: Access to legal representation by region



Discussion

The sample was obtained by using legal representatives as 'gatekeepers' and therefore the results at initial stage are skewed towards represented cases. Even so, a regional pattern emerges that access to representation is not uniform across the UK, with Cardiff appearing to have a particular shortage of legal representatives, especially those that will take cases to appeal stage and above. Further, women in Leeds and Cardiff were often represented by solicitors based in London. Women interviewed for the research concurred that they found it easier to access legal representation in London.

The key elements of high quality legal representation have been defined as being firstly, professionalism and expertise, which enables the representative to establish the full factual and evidential basis of the case at the earliest opportunity. Secondly, the quality of the one to one relationship between the representative and client is viewed as vital to the overall quality of provision,

as it helps establish the client's trust and confidence in the representative and encourages early disclosure of the full facts of the case.¹⁷⁵

Evidence from interviews with women showed that they felt better informed about the asylum procedure and better prepared if they were legally represented. They stressed the link between being legally represented and being able to present all the facts of their case. Some women further drew attention to the importance of the legal representative being female and familiarity with gender-related claims such as FGM was valued. Women described feelings of being 'let down' by their legal representative when abandoned at appeal stage. The subsequent experience of going to the Tribunal alone was described as leaving them exposed to the whims of a Judge and Home Office Presenting Officer¹⁷⁶ who may not show sensitivity to the gender aspects of the claim. One interviewee who had her appeal dismissed said that she felt unable to face the next stage of the process on her own.

In relation to the lack of legal representation, the Welsh Refugee Council noted that:

"The most telling indication of the lack of legal advice in Wales is the huge demand for the services of Asylum Justice. It is overwhelmed by demand and its volunteers are working under enormous pressure. By November 2009, Asylum Justice had taken on 173 new clients in Swansea since the only LSC registered legal representative stopped work there in August 2009".¹⁷⁷

A paper by the Asylum Support Partnership similarly explains the situation experienced by the Refugee Council in Yorkshire and Humberside:

"The situation is very desperate. The general impression is that if your solicitor has dropped you at appeal stage, you will not be able to get a new solicitor, as they will assume that if you have failed the merit test once you will fail again ..."¹⁷⁸

Cuts in legal aid, the decline in private solicitors firms offering asylum and immigration advice and the closure of Refugee and Migrant Justice, one of the largest providers of legal representation to asylum seekers and migrants across the UK, are likely to lead to an increase in unrepresented asylum seekers, in particular at appeal. Given the complexity of some women's asylum claims, this is likely to affect women disproportionately.

4.5 Impact of the asylum process on health and well-being

Key finding

- The women interviewed identified causal links between their emotional and physical health and the asylum procedure.

175 *Review of quality issues in legal advice: measuring and costing quality in asylum work*, March 2010, undertaken by the Information Centre about Asylum Seekers and Refugees on behalf of Refugee and Migrant Justice, in partnership with Asylum Aid and Immigration Advisory Service.

176 Home Office Presenting Officers represent the UKBA before the Tribunal.

177 Welsh Refugee Council, *Access to Legal Advice for asylum seekers and refused asylum seekers in Wales* (Cardiff: WRC, 2010).

178 Asylum Support Partnership, *Access to legal advice for dispersed asylum seekers* (July 2008).

Other findings

- 13 out of the 45 women (29%) suffered from depression and were taking anti-depressant medication.¹⁷⁹ Two women had attempted suicide and three others were described by medical professionals as experiencing suicide ideation.
- The impact of receiving a negative decision led to a sharp decline in mental health for some women.

Discussion

One 22 year old woman from DRC described how she became suicidal when she received a negative decision from the UKBA saying “it’s always bad news, really fast. Nothing works in my life.” A Cameroonian woman described that when her representative went through the refusal letter “I was very depressed, crying and screaming.”

Sanam, who was disbelieved at initial stage but had her appeal allowed on the ground that she would face inhuman and degrading treatment if returned, attempted suicide after her grant of status due to the stress of being separated from her children in Iran.

UKBA guidance mentions the effect of trauma on demeanour and ability to recount past events.¹⁸⁰ However, this was not given weight by the case owners. Indeed, the effect of trauma on memory was not mentioned in any refusal letters although it was referred to by some immigration judges in appeal determinations.

179 11% of women in the UK population suffer from depression according to the Office of National Statistics, *Psychiatric morbidity among adults living in private households in Great Britain* (London: ONS, 2000).

180 UKBA Asylum instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, p. 18; and Asylum Instruction, *Considering the Protection (asylum) Claim and Assessing Credibility*, July 2010, p. 15.

5. Quality of Decision-Making

The researchers undertook a legal analysis of the UKBA's decisions, based on the information available in the case files.

5.1 Identification of Convention grounds

In one third of the refusal letters, the researchers identified that it was necessary to consider further whether the gender aspects of the claim had been adequately explored in assessing whether a Convention ground was engaged.

Key findings

- Where the sole reason for persecution was gender related, the Convention was never held to be engaged. The Convention was engaged in all other cases.
- Case owners showed a marked reluctance to engage with the membership of a particular social group Convention ground.

Other findings

- Overall, the Convention ground identified was the obvious one, or the one explicitly stated by the applicant.
- Where more than one Convention ground was identified, only one was given detailed consideration.
- When a woman presented a claim which included gender-related persecution, a ground such as political opinion or race was more adequately explored, even when membership of a particular social group could have been engaged.
- In six out of the seven trafficking cases, the Convention was not seen to be engaged.
- All claims where the applicant described fearing 'honour' killing on return were held not to engage the Convention.

5.1.1 Breakdown of claims by Convention reason

Findings

Imputed/political opinion

- Case owners identified political opinion as the Convention ground in 10 cases and imputed political opinion in 10 cases.
- The 10 cases where political opinion was identified as the Convention ground mostly involved women who described some level of active political engagement with a political party.
- Case owners applied an inclusive and flexible approach to the concept of imputed political

opinion. They were able to link persecution to a Convention reason, even when there was no direct political activity carried out by the woman. The majority of cases involved women alleging persecution because of the political involvement of a family member (usually a man).

Race/ethnicity

- In seven cases race was identified by the case owner as a Convention ground.
- In all cases involving race, the women also described a form of gender-related persecution, either in the form of rape and/or domestic servitude.
- In three cases, all involving applicants from Somalia, race was identified as the sole ground despite the women giving clear accounts of gender-related persecution.

Nationality

- In one case nationality was identified as a Convention ground.

Religion

- In three cases religion was identified as a Convention ground.

Particular Social Group (PSG)

- In 13 cases the case owner found that no Convention ground was engaged. In all these cases the alleged persecution was for a reason related to gender.
- In nine cases, no Convention ground was identified from the outset. In the other four, membership of a PSG was identified as a potential ground but was held not be engaged following examination.
- In 11 out of the 13, detailed consideration of the case file suggested that membership of a PSG should have been examined as a potential ground.
- Out of these 13 cases, one was granted discretionary leave to remain and one was granted humanitarian protection by the UKBA.
- Out of the 11 remaining cases, in four cases the Tribunal held that the Convention was in fact engaged. In all four cases the relevant Convention ground considered by the immigration judge was PSG. In the three cases that were allowed, the immigration judge accepted that the applicants were part of a PSG and would be at risk on return. Two cases involved sexual orientation and one was on the basis of fear of 'honour' killing. The fourth case was a trafficking case and though the judge held that trafficking could engage the Convention (contrary to what was stated in the refusal letter), he did not believe the applicant gave a genuine account and did not accept she would be at risk if returned. The appeal was dismissed.

Discussion

The Convention ground of political opinion was applied broadly so that it encompassed women's experiences as recommended by the Gender AI.¹⁸¹ For example, Rachel described being arrested and raped because of her husband's position in the military. The case owner correctly identified her experience as being due to a political opinion that was imputed to her. In the case of Heaven, who was detained and raped because of her mother's political involvement, the case owner correctly identified a Convention reason of imputed political opinion. Nevertheless, both claims were rejected because they were considered not to be credible or not consistent with the objective country information.

However, many refusal letters stated that no Convention ground was engaged. Though the burden of substantiating a claim for asylum or humanitarian protection is on the applicant, the UKBA has accepted the UNHCR's position in accordance with international law that 'in practice the duty to ascertain and evaluate evidence to establish a claim is shared between the applicant and the case owner, and it is for the case owner to test all available evidence.'¹⁸² The principle of the 'shared burden' is particularly important in identifying the relevant Convention ground engaged in women's cases because of the complexity of their cases. As confirmed in the revised Gender AI, 'an applicant is not required to identify accurately the Convention reason for her fear'.¹⁸³

The UNHCR has also highlighted that 'in many gender-related claims, the persecution feared could be for one, or more, of the Convention grounds'¹⁸⁴ and the Gender AI reiterates this.¹⁸⁵

The two key gaps identified in the assessment of the Convention grounds were the failure to engage with more than one Convention reason and the failure to identify Convention grounds in gender-related claims.

5.1.2 Failure to engage with more than one Convention reason

Out of the 41 refusal letters examined,¹⁸⁶ more than one Convention ground was identified by the case owner in nine cases. It was generally observed that even when a second Convention ground was identified it was rarely given sufficient consideration.

In the case of Rachel from the DRC, in addition to imputed political opinion, the case owner identified an additional Convention ground: the applicant's mixed nationality. However, the refusal letter gave very little weight to the second ground identified though in fact it was at the core of the claim. The only paragraph dedicated to the additional ground was: "during your asylum interview, you stated that you faced persecution due to your mixed nationality parentage... Apart from the incidents mentioned above, you have not provided any evidence of any circumstances where you have faced such persecution in your past and it is not considered that you would face any real risk of persecution if returned to the DRC due to your mixed nationality parentage". The analysis was very problematic as: (a) the two incidents referred to were the murder of her parents in her presence and her own abduction and rape, (b) the applicant had made additional references to her mixed nationality and (c) there was ample objective evidence to support her account.

181 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 4.6, pp. 12-13.

182 UKBA Asylum Instruction, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 10.

183 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 4.1, p. 9.

184 UNHCR's Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the Refugee Convention and/or its 1967 Protocol relating to the Status of Refugees (7 May 2002).

185 *Ibid.*

186 These included the 39 refusals and the two cases granted Humanitarian Protection and Discretionary Leave respectively.

The example demonstrates the difficulty case owners have in engaging with more than one Convention ground and in engaging with the correlation between two Convention grounds.

In several other cases, case owners identified only the most obvious Convention ground although an additional one should have been considered. In three claims made by Somali women, race was the only Convention ground identified despite the women giving a clear account of having experienced gender-related persecution. It is considered that in at least two of those cases it would have been appropriate to assess the claimants as also being members of a PSG, in particular as case law that women in Somalia do constitute a PSG was available at the time the decision was made.¹⁸⁷

5.1.3 Failure to identify Convention grounds in gender-related claims

Many of the cases warranted consideration of the claims under the Convention ground of membership of a PSG. It was noticeable that at the initial decision stage where the sole reason for persecution was gender-related, the Convention was never held to be engaged and that gender-related persecution was never the sole basis on which an applicant could be recognised as a refugee. This in effect created a higher threshold for women whose claims involved a gender element. The following analysis examines the application of the Convention to three types of claims: claims made on the basis of sexual orientation, claims made by victims of trafficking and claims involving fear of 'honour' killing.

5.1.4 Sexual orientation

In three cases, persecution on the basis of sexual identity was the main reason the applicants feared returning to their country of origin. None of them were believed by their case owners to be lesbians. In two cases it was held that, in addition, the claim did not engage the Refugee Convention. In the third case it was accepted that lesbians in Cameroon did constitute a PSG and there was lack of state protection. However, as the applicant's account of being a lesbian was not accepted, it was held that she could be expected to return safely.

In the case of Jane, a Lesbian from Uganda, the case owner relied heavily on the case of JM (homosexuality: risk) Uganda CG [2008] UKIAT00065 in finding that "there was a cultural disapproval of homosexuality but this did not amount to persecution". In February 2010, the High Court had held in the case of SB, a lesbian from Uganda, that "for asylum purposes, homosexuals in Uganda form a particular social group, and a member of that group is entitled to refugee status if he or she has a well-founded fear of persecution". The Court specifically found that JM was based on information which was 'now out of date'.¹⁸⁸ The case of SB was promulgated before the decision in Jane's case was made and was publicly available. The case owner made no reference to it and refused the application for asylum. On appeal, the immigration judge questioned why the UKBA continued to rely on JM, allowed Jane's appeal and granted her refugee status.

Another issue identified in two cases was the requirement for 'discretion'. In a case involving a lesbian applicant from Sierra Leone, the refusal letter stated:

'it is not considered unduly harsh for you to return to Sierra Leone either alone or [with partner] and continue to live as a lesbian discreetly given that you are already doing so in the UK. This view is in line with the case law of HJ Iran & Anor v SSHD [2009] EWCA CIV'.

187 HM (Somali Women: Particular Social Group) Somalia [UKIAT] 00040, affirmed by AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091.

188 SB (Uganda) v Secretary of State for the Home Department[2010]EWHC 338(Admin).

The refusal letter was issued before the Supreme Court's judgment that applicants could not be expected to exercise discretion in the expression of their sexual identity to avoid persecution (see below).

A report by the UK Lesbian and Gay Immigration Group has found that the requirement of 'discretion' was raised in 56% of cases examined as part of their research. The report highlights the flaws in limiting sexual orientation to 'behaviour' or 'homosexual acts' rather than considering it to be a key and central component of the individual's identity.¹⁸⁹

Subsequently, a major development in UK jurisprudence means that applicants can no longer be required to be 'discreet' about their sexual orientation in order to avoid persecution. In July 2010, the Supreme Court reversed a previous decision of the Court of Appeal that asylum applicants could be expected to conceal their sexual orientation to avoid persecution. Lord Hope, the Deputy President, said "the question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does... he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it".¹⁹⁰

The UKBA has published a new Asylum Instruction on *Sexual Orientation and Gender Identity in the Asylum Claim* incorporating the Supreme Court's decision.¹⁹¹ The clear implications are that applicants can no longer be expected to exercise 'discretion' in order to avoid persecution. It remains to be seen how this will be implemented.

In all cases examined as part of the research where the applicants claimed to be lesbians, case owners did not accept this. Though the removal of the concept of 'discretion' represents a major development, there is still a high threshold to meet for applicants to convince case owners of their sexual identity, even though the law only requires that to be established to the level of a reasonable degree of likelihood.

5.1.5 Trafficking

"Your claim for asylum is based upon your fear that if returned you would face mistreatment due to a reason not covered by the Geneva Convention".

Refusal Letter, UKBA, Cardiff, May 2010

The Gender AI recognises that while being trafficked for sexual or economic exploitation is not, in itself, a ground for refugee status, some trafficked women can establish a Convention reason and have valid claims to refugee status.¹⁹² The UNHCR Guidelines confirm that some victims of trafficking may fall within the definition of a refugee and be entitled to refugee status.¹⁹³ Categorically stating, as in the example above, that fear of mistreatment due to the applicant being a victim trafficking, is not covered by the Convention, is incorrect and not in accordance with these guidelines.

Seven cases concerned women who described being trafficked to the UK and feared return to their country of origin for reasons related to their trafficking. In one case, the applicant was recognised as a refugee following the asylum interview though her experience of being trafficked was not the sole

189 See UKLGIG, *Failing the Grade*.

190 HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31
On Appeal from: [2009] EWCA Civ 172.

191 UKBA Asylum Instruction, *Sexual Orientation and Gender Identity in the Asylum Claim*, October 2010, pp. 12-13.

192 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, p. 16.

193 UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked* (Geneva: UNHCR, 2006), p. 5.

reason she sought asylum. In one case the applicant was refused asylum as it was not accepted the Refugee Convention was engaged but she was granted humanitarian protection as it was accepted she would be at risk of torture, inhuman or degrading treatment on return. All other cases involving trafficking were refused and the Refugee Convention was held not to be engaged.

In the case of Gina, the initial decision suggested that her fear of mistreatment in Nigeria did not form a basis upon which a grant of asylum could be given, due to the findings of the Immigration Appeal Tribunal in JO (internal relocation – no risk of re-trafficking) Nigeria [2004] UKIAT 00251 that trafficked women do not qualify as a PSG within the terms of the Refugee Convention. The Tribunal had found in that case that “trafficked women do not qualify as a PSG, since what defines them is essentially the fact of persecution”.¹⁹⁴ However, at the time the decision was made in Gina's case, the finding made in JO had been overturned by SB (PSG-Protections Regulations-Article 6) Moldova CG [2008] UKAIT 00002 where the Tribunal established that ‘former victims of trafficking’ are capable of constituting a PSG under the Refugee Convention because former victims of trafficking share the common background or past experience of having been trafficked and the group is therefore not defined by the persecution.¹⁹⁵ At Gina's asylum appeal, the immigration judge found that: ‘the contrary opinion expressed in the reasons for refusal letter must be regarded as wrong’. Nevertheless, it should be noted, that he proceeded to dismiss the appeal, not accepting that Gina had provided a credible account.

It is now clearly established in case law that as a general principle, former victims of trafficking are capable of constituting a PSG.¹⁹⁶ This is not only limited to countries where there is established case law (like Albania, Moldova, Thailand, China and Nigeria),¹⁹⁷ but can apply to applicants from other countries, depending on the ground of their claims and the circumstances in their country of origin. This research showed that case owners were usually not aware of these principles.

5.1.6 Fear of ‘honour’ killing

All claims where the applicant described fearing ‘honour’ killing on return were held not to engage the Convention. In the case of a claimant fearing return to Iraq on the basis that her brother and father had threatened to kill her because her husband had divorced her, the refusal letter stated: ‘your claim for asylum is based upon your fear that if returned you would face mistreatment due to a reason not covered by the Geneva Convention’. Although there was no specific case law on the status of women in Iraq, the immigration judge found on appeal that in light of the country situation and the evidence of lack of state protection the applicant was a member of a PSG he defined as ‘women who have been ejected by their Iraqi husbands’. The appeal was allowed and the applicant was granted refugee status.

It appeared that case owners were unwilling to consider engaging with the Convention where no directly applicable case law was available and where case law did exist, they took a very narrow view towards applying it. For example, in the case of a claimant from Iran, who was forced into an abusive marriage at 14 and was then accused of cheating on her husband, membership of a PSG was examined but was held not to apply because of the case of TB (PSG – women) Iran

194 JO (internal relocation – no risk of re-trafficking) Nigeria [2004] UKIAT 00251, para. 18.

195 This finding was partly based on Baroness Hale of Richmond's statement that “women who have been victims of sexual violence in the past are linked by an immutable characteristic which is at once independent of and the cause of their current ill-treatment. They are certainly capable of constituting a particular social group under the Convention” (*Hoxha & Anor v Secretary of State for the Home Department* [2005] UKHL 19 (10 March 2005), para. 37). See SB (PSG-Protections Regulations-Article 6) Moldova CG [2008], AM and BM (Trafficked women) Albania CG [2010], para. 53.

196 SB (PSG-Protections Regulations-Article 6) Moldova CG [2008], AM and BM (Trafficked women) Albania CG [2010].

197 SB (PSG-Protections Regulations-Article 6) Moldova CG [2008]; AM and BM (Trafficked women) Albania CG [2010]; AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC); HC & RC (Trafficked women) China CG [2009] UKAIT 00027; PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046.

[2005]. However, the quotes provided from TB were selective and did not reflect the actual case law. The case owner stated that 'although your marriage was arranged by your father, you did remain married to your husband for thirteen years. It is therefore not accepted you are at risk due to your 'refusal to enter into an arranged marriage'. The particular group identified in TB was indeed 'young Iranian women who refuse to enter into arranged marriages', a group which the applicant did not fit into. However, to suggest that because she did not fit into this group her case could not engage the Convention was flawed. The Tribunal in TB actually stated that 'it could well be argued now that "Women in Iran" may form a particular social group'. However, in this case, for reasons, which we set out below, a more confined PSG is a realistic assessment for the predicament of this appellant'.¹⁹⁸ There was also previous authority to support the notion that women in Iran who were accused of adultery were capable of meeting the criteria for protection under the Convention.¹⁹⁹

On appeal, the immigration judge accepted that the applicant provided a truthful account and that there would not be adequate protection available to her on return. However, a concession made by the applicant's representative that the case indeed did not engage the Convention meant that the appeal was allowed on the basis that the applicant was entitled to humanitarian protection only. The concession made was arguably unjustified and the judge's positive findings provide very strong indication that the case could and should have been allowed under the Convention as well.

Conclusion

The systematic failure observed in engaging with the Convention and in identifying the ground of membership of a particular social group (PSG) creates a considerable gap in the adequacy of the assessment of the asylum claims of women where the claim is based on gender-related persecution. In such cases, not only do women seeking asylum have to convince the case owner that their account is truthful, they also have to establish that they form part of a PSG and that they have no state protection. It was observed that case owners appeared reluctant to engage with the ground of membership of a PSG and this in effect created a very high threshold for women to cross in order to be recognised as refugees by the UKBA. The UNHCR's recent Quality Integration Project report on decisions made in the detained fast track in Harmondsworth and Yarl's Wood Immigration Removal Centres similarly identified poor consideration of whether a claim engages a Convention ground and in the identification of the Convention ground of membership of a PSG, particularly in women's claims.²⁰⁰

These findings suggest that case owners urgently require in depth training on engaging with the Refugee Convention and the PSG ground for cases involving gender-related persecution and to update their knowledge of case law relevant to such cases.

5.2 Assessment of credibility and the standard of proof

Key findings

- In 39 out of all cases examined as part of the research (87%) the applicant's claim was not believed.
- The assessment of credibility formed the core of the decision to refuse; other aspects of the decision-making process such as identifying the Convention ground and assessing issues of state protection were marginalised.

198 TB (PSG – women) Iran [2005], paragraph 56.

199 In the case of Fatemeh (Miriam)(00TH 00921), the Tribunal had held that an Iranian women accused of adultery by her husband did deserve protection under the Convention.

200 UNHCR, *Quality Integration Project First Report*, p. 3.

- In all cases allowed at appeal (50%), the credibility of the applicants' claims was accepted and the negative credibility findings at the initial decision-making were overturned.

Other findings

- Four applicants were granted asylum. Though it was impossible to ascertain for sure whether their claim had been accepted, it was assumed that key elements of the claim were believed.
- In two cases, the applicants were believed but refused asylum. One was granted Humanitarian Protection as no Convention ground was held to be engaged and the other was refused on the ground of availability of state protection.
- In the 39 cases where the applicant's claim was not believed, asylum was refused but in one case the applicant was granted Discretionary Leave on human rights grounds because, although the applicant's account regarding her asylum claim was not believed, her account concerning her family life was accepted.
- The main reasons claims were deemed to lack credibility by case owners were:
 - 1) internal inconsistencies in the applicant's account
 - 2) external inconsistencies in the applicant's account i.e. the applicant's account was not consistent with objective evidence
 - 3) lack of plausibility
 - 4) lack of understanding of gender-related claims for asylum
 - 5) late disclosure
 - 6) delay in claiming asylum
 - 7) lack of recognition of the impact of trauma
- 60% of refusal letters challenged the plausibility of the applicants' account.
- In 17 cases, delay in claiming asylum was taken into consideration in the assessment of credibility, resulting in adverse credibility findings in many cases.

Discussion

5.2.1 Internal and external inconsistencies

Although the Refugee Convention makes no reference to the notion of credibility with regard to the definition of a refugee, the assessment of credibility forms the core of the refugee status determination process in the UK. In the overwhelming majority of cases, the applicant was not believed by the case owner. Previous research and audits have highlighted the assessment of credibility as an area in which the quality of initial decision-making in the UK is inadequate.²⁰¹ With credibility forming the core reasoning of all the refusal letters examined, this is an area of particular concern.

Women who were interviewed for this research emphasised that the asylum interview concentrated on looking for inconsistencies in their subjective account rather than verifying their account against objective information.

The standard of proof applicable to asylum claims is that of 'reasonable degree of likelihood' or 'real risk'. Case owners must consider whether there is a reasonable degree of likelihood that the

²⁰¹ Amnesty International UK, *Get It Right*, p. 5. Independent Race Monitor, Annual Report April 2002 – March 2003, para. 31. This is also covered in UNHCR Quality Initiative reports.

applicant would be persecuted in her country of origin and acknowledges that when it is impossible to conclude whether a past event did or did not occur, it might be appropriate to give the applicant the benefit of the doubt.²⁰²

In March 2008, the UNHCR noted that there was limited awareness among case owners of the existence of the UKBA's Asylum Instruction on *Considering the Protection (Asylum) Claim and Assessing Credibility* introduced in April 2007 and identified credibility as a priority area for any future training.²⁰³ In response to the report, UKBA undertook to put additional emphasis on credibility with the API to be included as part of the new asylum case owner training.²⁰⁴ The UKBA published a revised AI on *Considering the Protection (Asylum) Claim and Assessing Credibility* in July 2010.²⁰⁵

In this research no single consistent approach to credibility was taken by case owners when analysing the claims. A more systematic approach was identified in some cases decided in Leeds where the material facts of the claim were identified and listed and then rejected or accepted in light of COI and alleged internal inconsistencies. Even when a systematic approach was taken to the assessment of credibility, it usually resulted in some facts that were of little relevance to the case being accepted while more important facts were rejected.

In general, the applicants' accounts were broken down into detailed segments of past events, usually in a chronological order, and each segment contained an examination and a conclusion on whether the account was accepted or not. In many of the cases examined, the drafter of the decision rejected one key element of the case and then proceeded to reject all additional elements on the basis of that key element having been rejected, without giving them independent consideration.

In one case, the applicant, from Zimbabwe, described being raped and subsequently conceiving a child as a result. She gave birth in the UK, after claiming asylum. The refusal letter stated: 'whilst you have provided a picture of a baby girl you have produced no documentary evidence to prove you have a daughter born on ... as you claim'. This was despite there being clear evidence on file that the birth certificate was forwarded to the UKBA by the applicant's solicitor on two separate occasions, once at the request of the case owner. Furthermore, both the applicant and her daughter were in receipt of asylum support.

Having knowledge of a particular issue was not seen as sufficient to prove the truthfulness of an applicant's account. For example in the case of Miriam, who claimed that she was from a minority clan, the refusal letter made the following finding: 'it is not accepted that you are a member of the Ashraf minority clan as you claim. Although you were able to answer questions regarding the Ashraf clan structure, the history and occupations of the Ashraf clan, it is considered that this information is widely available in the public domain and therefore your knowledge of these topics is not indicative of your clan membership'.

Similarly Jackie, a nurse from the DRC, described being detained and ill-treated because of her political involvement with an opposition party. She described being subjected to brutal group rape by the soldiers who arrested her. In the refusal letter, the following finding was made with regard to the credibility of her claim:

202 UKBA Asylum Instruction, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, pp. 16, 21.

203 UNHCR *Quality Initiative Project Fifth Report*, March 2008.

204 UKBA, Minister's response to UNHCR Quality Initiative Fifth Report, March 2008.

205 UKBA Asylum Instruction, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010.

'It is considered that you provided a description of the treatment of people in detention in the DRC, consistent with the objective information in the COIS. However the nature of your claimed employment as a nurse and voluntary work in a military hospital with victims of rape and torture would have placed you in direct contact with accounts of such treatment and therefore would have provided you with this knowledge. Therefore your account is not accepted as verification that these experiences actually happened to you.'

Refusal Letter, UKBA Leeds, February 2010

Such applicants appear to be placed in a catch 22 situation – if they do not have the information, their account will not be believed but if they have the information they are told they could have gained it from other sources and are still disbelieved.

The process of comparing the appeal determination with the corresponding refusal letter provided some illustrations of the differences in how the UKBA and the Tribunal approached the assessment of credibility. The appeal determinations always included a reference to the standard of proof being low and quoting the standard of reasonable likelihood or real risk. The focus in the majority of the Tribunal's determinations where the appeal was allowed was on future risk rather than on past persecution. Other determinations by the Tribunal where the credibility findings were reversed suggested that case owners often took an approach based on a close examination of very particular details, rather than looking at a claim as a whole and considering whether the applicant had been consistent in the core matters.

One appeal determination stated:

'I am conscious that I should be cautious in rejecting as incredible an account by an anxious and inexperienced asylum seeker, whose reasons for seeking asylum may well be expected to contain inconsistencies and omission in the course of its revelation to the authorities and investigation on appeal. The Tribunal has noted that 'it is perfectly possible for an adjudicator to believe that a witness is not telling the truth about some matters, has exaggerated the story to make her case better or is simply uncertain about matters, but still to be persuaded that the centrepiece of the story stands'.

First Tier Tribunal, Immigration and Asylum Chamber, London, July 2010

The following extracts from a refusal letter and from a corresponding determination by the Tribunal also illustrate the different approaches taken at the two stages of the decision-making process:

'You claim that you rented a room from a landlord. You claim that you partner Esther lived with you but that you do not think your landlords were aware of your sexuality because you were seen as two friends sharing a flat and they would have been reluctant to rent the flat to you otherwise. In light of the fact that you claim only to have rented a single bedroom, and not a whole flat, it is considered inconsistent that your landlords would have viewed you and your partner as two friends sharing a flat. Consequently, it is not accepted that you had a serious girlfriend with whom you lived.'

Refusal letter, UKBA, London, May 2010

'Some of the secretary of state's [the UKBA case owners's] findings are simply unsustainable – it is irrelevant whether the appellant's landlady knew or believed that the appellant was a lesbian and the appellant's credibility cannot and should not be judged on whether or not she managed to share a room with her partner while continuing to hide her sexuality. It is not inevitable that a homeowner would necessarily assume that two women sharing a room would be lesbians and the secretary of state's conclusion that she would have known is entirely subjective'.

First Tier Tribunal, Immigration and Asylum Chamber, London, July 2010

5.2.2 Lack of plausibility

'You claim you 'fell in love'. This is not consistent with the fact that you saw him three times in total...'
Refusal letter, UKBA London, June 2009

In some decisions, heavy reliance was placed on the applicant's account, or aspects of it, not being 'plausible'. In the above example the applicant's account of falling in love was presented as an 'inconsistency' when it would be more accurate to classify it as implausible in the eyes of the case owner.

In the case of JO Nigeria [2009] EWCA Civ 318, Lord Justice Laws restated the potential danger of basing decisions on implausibility: "[t]he essence of the danger is the unspoken supposition that what seems natural and reasonable or unnatural and unreasonable in the United Kingdom or generally in Western society may seem quite different in the eyes of a different culture or a different society".

The UKBA AI on *Assessing Credibility* accepts that "claims made by an applicant that appear implausible to a case owner may nonetheless be true, and may be plausible when seen in the context of the attitudes and conditions of the applicant's country of origin".²⁰⁶

Nevertheless, in many of the cases examined, unjustified plausibility arguments were raised, often restricted to a very narrow, subjective and culture-specific notion of plausibility.

For example, Kaltun described how, despite repeated raids on her house, she had managed to save a small amount of money by hiding it in a hole she dug in the ground outside her hut. The refusal letter stated: "it is considered implausible that, if your house had been broken into by Al-Shabaab and they had been looking for valuables and then proceeded to rape you and tie your children and husband as you claim, they would not have found the money or taken it from you". This is a subjective evaluation and it is not clear why it is implausible for the applicant to hide the money in the manner described.

Miriam was kept as a domestic servant by a family from a majority clan who intended to marry her to their son when she grew up. However, she married a fellow clan member in secret and subsequently conceived. She was about six weeks pregnant when the mother of the family who was keeping her as a slave discovered that she was pregnant and took steps to punish both her and her husband. The refusal letter suggested that it was not plausible for her pregnancy to have been discovered at such an early stage. In a later statement, the applicant explained that she suffered from morning sickness and would vomit every morning so that it was easy for the mother of the family, who had six children herself, to identify these signs of pregnancy.

5.2.3 Lack of recognition of the impact of trauma

'It is considered reasonable to expect you to recall with consistency the years in which your family members were allegedly killed'.

Refusal letter, UKBA London, June 2010

The Asylum Instruction on *Considering the Protection (Asylum) Claim and Assessing Credibility* acknowledges that when assessing internal credibility, a case owner must be aware that there may be reasons why an applicant is incoherent, inconsistent, or delays providing details. A non-exhaustive list provided in the AI includes 'age; gender; mental health issues; mental or emotional trauma; fear and/or mistrust of authorities; feelings of shame; painful memories particularly those of

²⁰⁶ UKBA Asylum Instruction, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 18.

a sexual nature and cultural implications'.²⁰⁷ The Gender AI also points out that trauma can result in difficulties in concentration and memory loss.²⁰⁸

Research suggests that case owners often fail to consider that trauma may seriously affect a person's ability to give an accurate and chronological account of events without discrepancies. A variety of conditions may be present on arrival in the country of asylum that impact on the recall and interpretation of personal experiences.²⁰⁹

In the case of Lucia, a report by the Medical Foundation for the Care of Victims of Torture was available prior to the full asylum interview and contained a detailed narrative of Lucia's experiences in Sierra Leone. Her husband was killed by the rebels who then kidnapped her and her two children. She was raped on multiple occasions by the rebels' leader and subsequently both her children were killed. The report specifically stated that it is extremely painful for Lucia to go over their deaths and that the shock of the experience 'remains with her and causes her much pain. She struggles with feelings of anger, despair and profound sadness'. During her interview, Lucia repeatedly stated how difficult she found talking about her experiences. This was held against her and affected the consideration of the credibility of her claim:

'Your claim that your husband and eldest son were killed by rebels in 2000, however, you cannot recall the months in which they died as 'I don't want to go back to something that causes me pain' however, you state that 'it was around July that the rebels came and the havoc happened'.

'It is noted that you give inconsistent dates as to when your husband and eldest son were killed. In your screening interview, you claim that you husband and two sons all passed away in 1998, however, at two different points in your asylum interview, you claim that your eldest son and husband were killed in 2000, and your youngest son was killed in 2001... It is considered reasonable to expect you to recall with consistency the years in which your family members were allegedly killed'.

Refusal letter, UKBA London, June 2010

Jane was kidnapped by soldiers and subjected to beating and multiple rapes. Her refusal letter stated:

'You claim that "they were like ten men. While beating me, kicking me...they marched me, made me walk some distance. I was beaten seriously" and that more than one of them "forced me to sex". However, when asked what injuries you sustained you stated "I had on the knees but I had to nurse myself". It is considered implausible that severe beating and multiple rape carried out by ten men would cause no more than knee injuries from falling down in the forest. As such, your credibility is damaged and this part of your claim is not accepted'.

Refusal letter, UKBA, London, May 2010

This paragraph demonstrates the following concerns:

- a) The summary of Jane's experiences are inaccurate;
- b) The selective quoting suggests that the case owner has not considered all the relevant information in a balanced way;
- c) More emphasis is placed on physical injuries than on psychological trauma
- d) Using direct quotes has the effect of presenting the applicant's account in an implausible way and out of context.

207 *Ibid.*, p. 15.

208 UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 7.2 p. 18.

209 Bögner, Herlihy and Brewin, 'Impact of sexual violence on disclosure during Home office interviews', p. 174.

The Asylum Instruction on *Considering the Protection (Asylum) Claim and Assessing Credibility* warns case owners against replicating poor grammar or misuse of language from statements in the refusal letter.²¹⁰

In a later statement commenting on the refusal, Jane said that she did suffer heavy bleeding after being raped but did not feel comfortable or see the relevance of mentioning it at the interview. Her reference at the interview to effects of the trauma she experienced, her inability to sleep, the fact that she suffers from headaches and nosebleeds and her fear of people and preference to remain indoors was completely disregarded by the case owner.

5.2.4. Lack of understanding of gender-related claims for asylum

In some cases, a lack of understanding of women's experiences of gender-related persecution was identified.

In a trafficking case, questions were asked such as 'When you were on the plane, why didn't you just go up to someone and ask for help?' and in another trafficking case the case owner said 'I don't understand why you didn't just leave.' Both these case owners displayed an ignorance in relation to the control exerted on victims by traffickers that could have been redressed had the case owner familiarised herself with widely available objective information on trafficking.

Sawsan came to the UK after her family arranged for her to marry a British citizen. The marriage broke down within days and her husband demanded that she went back to Iraq. However, her male family members threatened to kill her if she returned for bringing 'shame on the family'. At her asylum interview, much emphasis was put on the reasons why the marriage broke down and though not directly relevant to her fear of return, alleged inconsistencies in her replies, were used as a basis not to accept the credibility of her claim:

'In your witness statement you claim that your husband was unable to consummate the marriage and then told you he wanted you to return to Baghdad. You later state that the marriage broke down due to domestic violence. You do claim that on one occasion he tried to hit you, however you state that his mother stood in his way. Therefore it is not accepted that your marriage broke down as a result of domestic violence'.

Refusal letter, UKBA London, June 2010

In her later statement commenting on the refusal, Sawsan pointed out that the fact that she was not allowed to leave the house, that her passport was taken and that she was threatened, insulted and finally thrown out felt like domestic violence to her. She felt that separating her husband's inability to consummate the marriage from his behaviour towards her was superficial as it was all part of the same picture. The case owner's decision is not consistent with the fact that the UKBA accepts that domestic violence includes physical, sexual and emotional abuse.²¹¹ Sawsan's brother's threats to kill her if she returned were conveyed to her via phone through her mother and sister which her case owner took to indicate that there was no genuine risk on her return, as no direct threats were received. Sawsan explained that it was uncommon for male members of the family to contact female members on such issues directly.

Another example of the lack of understanding of women's experiences of gender-related persecution is seen in the case of Sanam who was forced into marriage by her sexually abusive father when she was only 14 years old. Her husband, who was a drug addict, abused her for years but when

210 UKBA Asylum Instruction, *Considering the Protection (Asylum) Claim and Assessing Credibility*, July 2010, p. 44.

211 UKBA, *Victims of Domestic Violence, Requirements for Settlement Applications*.

she tried to return to her family's house she was again sexually assaulted and abused by her father. Nevertheless, the refusal letter referred to the marriage as being 'arranged' rather than 'forced' and pointed out that: "although your marriage was arranged by your father, you did remain married to your husband for thirteen years".

5.2.5 Late disclosure

Lucia was subjected to multiple rapes in Sierra Leone. Her case owner commented on the late disclosure of her sexuality as follows:

'You claim to have first become aware of being attracted to women "after what the rebels did. During the counselling I felt I don't want anything to do with men. I feel if there are only women in the world the atrocities in the world won't happen". It is noted that you claim to have only had one lesbian partner in the UK, and that whilst in Sierra Leone, you were unaware of your claimed sexual orientation and were married with two children. During your screening interview when asked why you were unable to return to Sierra Leone you made no mention of your sexuality. Your failure to mention your sexuality during your screening interview has damaged your credibility regarding this part of your claim'.

Refusal letter, UKBA London, June 2010

The case owner failed to view Lucia's account and her explanation of her sexual orientation in the context of the trauma she experienced, which was corroborated by a report from the Medical Foundation for the Care for Victims of Torture. She said that she had felt ashamed to mention it at the screening interview. By disputing her account on the basis of it being disclosed late, the case owner has failed to take into consideration the Gender API available at the time: "If an applicant does not immediately disclose information relating to her claim, this should not automatically count against her. There may be a number of reasons why a woman may be reluctant to disclose information, for example feelings of guilt, shame, concerns about family dishonour".²¹² The revised Gender AI reiterates that late disclosure of gender-specific violence at a later stage of the refugee status determination procedure should not be used to undermine credibility.²¹³

5.2.6 Delay in claiming asylum

Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 requires case owners to take certain behaviours or actions of the applicant to be 'damaging for the claimant's credibility'. These types of behaviour include a failure without reasonable explanation to produce a passport on request or to claim asylum in a safe third country. It is often quoted where there is an alleged delay in claiming asylum. The section is now included in Paragraph 339N of the Immigration Rules.

Concerns have been raised that Section 8 results in case owners ignoring the underlying trauma of fleeing persecution and instead seeking evidence of deceit by focusing on behaviours outside the country of persecution, behaviour which is often in fact indicative of persecutory experience.²¹⁴

If an analysis of the delay in claiming asylum was undertaken at the beginning of the refusal letter, the negative credibility findings that result adversely affected any subsequent analysis of the credibility of the substance of the claim. For example, Tawanda came to the UK from Zimbabwe in 2002 but only claimed asylum in 2009. She explained that she was hoping the situation in Zimbabwe would improve so that she could return to her family. Subsequently, her daughter, who was a political

²¹² UKBA Asylum Policy Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised October 2006, under 'credibility'.

²¹³ UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 7.2 p. 18.-19.

²¹⁴ Ensor Jonathan (Immigration Advisory Service), 'Credibility under the 2004 Immigration Act', *Tottel's Immigration, Nationality and Asylum Law*, vol. 20(2), 2006.

activist, was killed in Zimbabwe, so she decided to claim asylum. An early section in her refusal letter refers to the delay in claiming asylum: “taking into consideration your inadequate explanation as to why you could not claim asylum sooner than you did, it is not considered that you have a well founded fear of persecution in Zimbabwe. Your actions are clearly demonstrative of this fact”.

The Tribunal has provided clear guidance on how Section 8 matters should be addressed by case owners. The case of SM (Section 8: Judge's process) Iran [2005] suggests that ‘there is no warrant at all for the claim [...] that the matters identified by section 8 should be treated as the starting point for a decision on credibility’. The correct approach to analysing credibility according to SM is ‘to look at the evidence in the round, to try and grasp it as a whole and to see how it fits together’.²¹⁵

The application of Section 8 as a starting point to the analysis of credibility jeopardises a balanced and objective consideration of an applicant's claim.

Conclusion

The assessment of credibility was found to form the core of the refusal letters examined. The issues described above, with regard to the standard of proof, inconsistencies, plausibility, understanding of gender-related asylum claims and the effect of trauma as well as arguments concerning delay in claiming asylum, were all used as a basis not to accept the credibility of the applicant's claim and refuse asylum. Although the assessment of credibility appeared rightly to be the primary consideration in assessing the claim for asylum, it took precedence over other elements of the assessment, such as establishing the Convention grounds and the availability of state protection. The overwhelming number of cases where credibility was not accepted and the large percentage of cases where negative credibility findings were reversed on appeal suggests that the UKBA is not yet able to comprehensively refute past allegations that a ‘culture of disbelief’ exists amongst the UKBA case owners. The evidence examined for this research shows that poor quality credibility assessment remains a substantial challenge for the UKBA to overcome to ensure efficient and accurate assessment of asylum claims. Decision makers need to assess the facts and the future risk to the applicant in a balanced way and in line with the correct standard of proof and applying the principle of the benefit of the doubt. This approach will help improve the quality and efficiency of the UKBA's asylum decision-making.

5.3 Use of Country of Origin Information (COI)

Key finding

- In most cases there was a significant failure to identify and consider COI that was relevant and appropriate, especially in relation to gender-related claims, and the choice of COI referred to in refusal letters was selective.

Other findings

- COI was referred to in the majority of refusal letters examined, usually extensively. Information used was generally sourced from the Home Office Country of Origin Information Service (COIS) reports. There were only three cases where COI was not cited in the refusal letter.
- In the majority of cases, the choice of COI was selective; sections that undermined the applicant's case were quoted and highlighted, while sections (often from the same reports) that corroborated the applicant's case were ignored.

215 UKIAT 00116, par 10. See also ST (Libya) v SSHD [2007] EWCA Civ 24 and JT (Cameroon) v SSHD [2008] EWCA Civ 878.

- In all but one of the cases involving gender-related persecution, the use of COI was inadequate. Although the UKBA's COIS reports now contain more information relevant to gender-related claims, relevant information was not used by case owners.
- COI appears to have been used to support decisions *a posteriori* rather than to assist case owners in coming to the correct conclusion.

Discussion

It is very important for case owners to have before them balanced and representative COI from a range of credible sources when considering asylum applications. Research has identified a gap in the availability of COI relevant to some aspects of gender-related persecution and the range of human rights violations that women may be subjected to in their countries of origin.²¹⁶ COI was analysed in relation to the specific cases of the research participants. The COI was often found to contain a section with information relevant to the woman's specific claim. However, even when this information was available, it was often ignored or selectively quoted in the refusal letter. Relevant information relating to the status of women in countries of origin was not identified. Use of COI in gender-related claims was particularly poor in relation to identifying relevant sources of COI, the selective use of COI and the assessment COI in relation to effectiveness of state protection.

5.3.1 Sources of COI

In the case of Jane, a woman from Uganda who claimed asylum on the basis of her sexual orientation, the refusal letter identified two COI sources, both Internet blogs, as a basis not to accept the plausibility of her claim. No other COI was presented:

'You were asked questions regarding your claimed sexuality. Although you provided answers to these questions it is noted that you were asked whether there are any recognised places for homosexuals in Uganda and you stated "if it is a well-known that place is for homosexuals, those people will come and would rather burn that place...its not that the place is for homosexuals, no". However, an internet search that "there's a decent-sized gay community in Kampala-and bars and so forth..."[<http://gawker.com/5422573/ask-an-expert-is-uganda-about-to-start-executing-gays>] and that there is a "once-a-week gay night at a bar" in Kampala [<http://www.queerty.com/the-gay-bar-in-ugandas-capital-has-an-armed-guard-20100211>]. As such, it is considered that your answer is inconsistent with available country information'.

Refusal letter, UKBA London, May2010

It is evident in the example above that not only did the information appear contradictory to the conclusion reached (as can be noted in the titles of the blog articles) but other more credible sources that were available were ignored. The UKBA's COIS report for Uganda²¹⁷ contained a reference to persecution and discrimination faced by gay men and lesbians. The 2009 United States State Department (USSD) Report also contained detailed information to that effect and a reference to homosexuality being illegal in Uganda. It confirmed that a Bill was before the Ugandan Parliament seeking to introduce the death penalty for "aggravated homosexuality" and for homosexual "serial offenders".²¹⁸ The USSD reports are considered credible sources, often relied on in refusal letters. As her sexual identity was the core of Jane's claim, the failure to take into consideration credible

216 Collier B., *Country of Origin Information and Women*, pp. 6-7; Allen N., *Analysis of the coverage of gender issues in country of origin information reports produced by the COI service for the Advisory Panel on Country Information* (London: APCI, 2007).

217 UKBA, *Country of Origin Information Key Documents, Uganda*, 6 February 2009, pp. 12-13.

218 USSD, 2009 Human Rights Report: Uganda (March 2010). Under the section: 'Societal Abuses and Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity'.

and objective country information constituted a serious flaw in the decision-making. Reducing the consideration of sexual orientation to the availability of night life ignored the serious nature of persecution on the basis of sexual identity in the relevant country. The refusal was reversed on appeal and Jane was granted refugee status.

The Asylum Instructions do not currently guide case owners on how COI should be sourced despite a recommendation that 'good practice guidelines in the use of COI should be developed and incorporated into the Asylum Policy Instructions as well as the standard training and accreditation process for Home Office case owners and should be routinely monitored as part of the Home Office Quality Assurance programme'.²¹⁹ Standards set by the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) include relevance, transparency, reliability, balance, accuracy and currency.²²⁰ Principles were also laid down in the Common EU Guidelines for Processing Country of Origin Information²²¹ and the International Association for Refugee Law Judges Judicial Criteria.²²² UKBA's Quality Audit Team now monitors the relevance and the objectivity of COI used as part of its audit of files.

5.3.2 Selective use of COI

In the case of Rachel, a claimant from the DRC, the fact that she was of mixed Congolese and Rwandan (Tutsi) nationality and was therefore perceived as Tutsi was a key aspect of her claim. The COIS Report for the DRC, which was quoted extensively in her refusal letter as a basis to justify the adverse credibility findings, contained specific and detailed reference to the risk faced by those perceived as Tutsis. Some of the information corroborated the applicant's claim. The relevant OGN on DRC also contained specific reference to the risks faced by Tutsis. None of this information was referred to in the refusal letter.

Five of the cases examined involved women from Somalia. All of them described persecution related to their gender. None of the refusal letters contained any examination of the status of women in Somalia and the way in which they are treated. Miriam, a minority clan member, described being held as a domestic slave for a period of 15 years, but despite the fact that the COIS report for Somalia at the time the decision was made contained specific reference to the practice of using minority clan members for forced labour²²³ this was not regarded as forming part of her claim and was not examined in light of this relevant COI evidence.

5.3.3 Use of COI in the assessment of state protection

Access to and appropriate use of COI is essential in assessing the effectiveness of state protection. This is particularly relevant to women's claims which often involve persecution in the private sphere, both in determining whether such state protection was accessible to and effective for a woman before she fled her country and to whether it would be accessible to and effective for her if she returned, either to her home area or to another area of her country.

219 Immigration Advisory Service, *The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives* (London: IAS, 2009), p. 9.

220 Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) & Austrian Red Cross, *Researching Country of Origin Information: A Training Manual 2004 & 2006*.

221 European Union, Common EU Guidelines for Processing Country of Origin Information (COI), April 2008.

222 International Association of Refugee Law Judges, *Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist* (Mexico City: IARLJ, 2006).

223 UKBA, COIR, Somalia, February 2009, par 31.04, pp. 132-133.

'...it was emphasised that a woman who approaches the police in order to be assisted and protected will be assisted and protected, and she will directly be admitted to a shelter...

(The Landinfo report, dated 6-23 March, COIS Report, Iraq December 2009, para. 25.27)
Refusal letter, UKBA London, June 2010

'ASUDA concurred that it is difficult for a woman to approach the police. There are reports revealing that women have been sexually assaulted by the police when reporting to a police station. However, it was emphasised that a woman who approaches the police in order to be assisted and protected will be assisted and protected, and she will directly be admitted to a shelter'.

The full quote from the Landinfo report, dated 6-23 March,
COIS Report, Iraq December 2009, para. 25.27

The above case, concerning a woman from Iraq, fearing 'honour' killing on return, represents an example of the selective use of COI. By omitting the first sentence of the report the case owner completely altered its meaning. In fact, the relevant COIS report included an overwhelming number of sources documenting the lack of state protection available to women who are at risk of 'honour' killing. Although the applicant was from the south, the letter focused on shelters in the Kurdish region in the north, as there were no such shelters in South and Central Iraq.

The Gender API available to case owners at the time required case owners to examine relevant legislation and the response of police to women's requests for assistance.²²⁴ The relevant Operational Guidance Note (OGN) for Iraq at the time of writing the decision acknowledged that 'honour' killing was on the rise in Iraq and under the section 'sufficiency of protection' acknowledged that "the Iraqi Police Service can therefore not have been said to provide a sufficiency of protection for women who are subject to violence or 'honour' killing."²²⁵ Although the OGN is not an independent source of COI, it represents the Home Office policy. Yet a refusal letter in a case involving threat of 'honour' killing in Iraq stated that "based on the above objective information it is considered that the authorities are willing and able to provide protection in situation such as yours. Furthermore it is considered that there are women's shelters and organisations able to provide support to women in fear of violence".

Conclusion

Failure to source relevant, reliable and balanced COI, or the use of COI in a selective and unrepresentative way, can have a detrimental effect on the outcome of an applicant's claim for asylum. In particular, information about gender-related persecution, access to effective state protection and the treatment and conditions of women in countries of origin may be harder to access. Previously emphasis has been put on the lack of objective information regarding women's specific experiences in their countries of origin.²²⁶ While this remains a concern, a key finding of this research is that even when the information is available, case owners fail to use it accurately and appropriately. In some cases, case owners selectively ignored relevant information and quoted information that was used against the applicant, whilst information that could have been used to support the claim, often from the same report, was ignored.

224 UKBA Asylum Policy Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised October 2006, under 'The Failure of State Protection' now in UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 3.3 p. 7.

225 UKBA OGN, Iraq, June 2009 (re-issued July 2010). Par. 3.10.8 , p 21.

226 Collier, B., *Country of Origin Information and Women*, pp. 6-7; Allen N., *Analysis of the coverage of gender issues in country of origin information reports*.

5.4 Use of case law

Key findings

- There was a noticeable lack of understanding and awareness case law relevant to gender-related claims for asylum.
- Case law was generally used in an unbalanced and selective manner.

Other findings

- Case law was quoted in the majority of refusal letters.
- Case owners often failed to distinguish the facts of the claim from the facts of the case law relied upon.

Discussion

It was found that case law was either not used in a minority of cases or was not used appropriately in a majority of cases, similar to the trend observed with regard to COI. Up to date case law that was specifically relevant to a case was sometimes not considered.

In the case of Rachel, the fact that she was of mixed Congolese and Rwandan (Tutsi) ethnicity was not contested in the refusal letter. However, the implications of her mixed ethnicity were given very little consideration. The case of AB and DM (Risk categories reviewed–Tutsis added) DRC CG [2005] was of direct relevance to the assessment of the claim. At the first appeal hearing the Home Office Presenting Officer and the immigration judge made no reference to the case and the appeal was dismissed. The applicant had been unrepresented but subsequently found a solicitor. Following an application to the High Court, the Tribunal was ordered to reconsider its decision. The High Court judge commented that neither the refusal letter nor the Tribunal's determination had addressed the consequences of the finding of a mixed Rwandan-Congolese ethnicity and the relevant case law. On a subsequent rehearing the appeal was allowed, and Rachel was recognised as a refugee.

In the case of Jane, as described above, the case owner had relied on an out-of-date case to find that treatment of homosexuals and lesbians in Uganda did not amount to persecution.²²⁷ On appeal, the Tribunal relied on a more recent case (which was available at the time the original decision was made), which clearly stated that homosexuals and lesbians in Uganda constitute a particular social group²²⁸ and Jane was recognised as a refugee.

Conclusion

For case owners to make good quality decisions on women's asylum claims they must have access to up-to-date and relevant case law and must use this information accurately and in a balanced way. The Operational Guidance Notes (OGNs) do not refer to all cases available, do not cover all countries and do not cover sufficient cases concerning gender-related persecution. The summaries of relevant cases provided in OGNs for case owners' ease of reference are often restricted or selectively quoted from and cannot replace reading the case in its entirety.²²⁹ In some of the cases where appeals were allowed, this was due to legal representatives or immigration judges having a more accurate knowledge and more appropriate application of relevant case law than that of the case owner.

227 JM (homosexuality: risk) Uganda CG [2008] UKIAT00065.

228 SB (Uganda)[2010]EWHC 338(Admin).

229 Still Human Still Here, Commentaries on the Operational Guidance Notes, 2010.

5.5 Internal Flight Alternative (IFA)

Key findings

- Internal flight alternative was referred to in 12 cases.
- Internal flight alternative was generally considered in a cursory manner, without any detailed engagement with the specific circumstances of the applicant.

Discussion

The Gender AI directs case owners that when considering the reasonableness of relocation he/she may need to take into account gender issues. This was expressed in the previous API and elaborated on in the revised AI.²³⁰ The issue of IFA arose in just over one third of the refused cases examined as part of the research. Where it did arise, it was considered in a cursory manner and was not substantively assessed. In the majority of cases, the underlying argument was that as the credibility of the applicant's claim was rejected, it would be safe for her to return to her place of residence and that there was no need to substantially consider the issue of IFA.

Rachel stated during her asylum interview that due to her mixed ethnicity, the only place in the DRC where she could live would be Goma. The decision concluded that "as aspects of your claim have been rejected, internal relocation is not considered necessary but if you wish to internally relocate, this is a viable option for you". In fact, the applicant's mixed ethnicity was never rejected and therefore internal relocation should have been considered, regardless of any other findings made. In a subsequent appeal hearing, the immigration judge made a specific finding on the issue stating that: "she [the Appellant] says that the only place to which she could go is Goma because of her mixed ethnicity and I accept that to be the case. Internal relocation within the DRC would not be a viable option and, in any event, it would be unduly harsh to expect her and her son who is under age to accompany her and start a new life within the country. Her Rwandan/Congolese mixed ethnicity and her Tutsi background would make it impossible for her to do so in safety".

The viability of IFA was often considered 'in the alternative'. For example, in the case of a lesbian from Uganda, it was suggested that "even if it were accepted that you are a lesbian, it is considered that you could relocate to another area of Uganda". In the majority of cases it appeared that IFA was considered only to 'cover all bases' in the event of the decision being appealed to the Tribunal. The UNHCR has previously commented that decisions based on 'alternative' arguments tend not to sufficiently engage with case specific facts.²³¹

Consideration of IFA did not take into account objective evidence or the concept, taken from case law, of relocation being unduly harsh. For example an applicant from Iraq who feared that her brother might kill her was told she could "seek protection from other family members such as your sister and her husband". It was also suggested that she could relocate by staying in a shelter for victims of domestic violence in another area of Iraq. Not only did the COI show that no such shelters were available, but no consideration was given as to whether such relocation would be 'unduly harsh' when taking into consideration all the relevant circumstances pertaining to the applicant and her country of origin.²³² In fact the UNHCR had produced detailed Eligibility Guidelines for Assessing

230 UKBA Asylum Policy Instruction, *Gender Issues in the Asylum Claim*, 2004, revised October 2006, under 'Internal Relocation'; UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 5.2, pp. 14-15.

231 UNHCR, *Quality Integration Project First Report*, undated, p. 3.

232 The test formulated by Lord Bingham in *Januzi v Secretary of State for the Home Department* [2006] UKHL 5.

the International Protection Needs of Iraqi Asylum Seekers which contained detailed information about specific risk categories, including lone women, and recommended a two-stage approach to the question of IFA: whether such relocation is relevant; and if so, whether it is reasonable.²³³ No reference was made in the decision to these guidelines.

A more systematic approach was taken by the immigration judge when considering the appeal. Prompted by counsel for the Appellant, who made detailed submission on the issue of IFA, after accepting that the applicant's account was credible, and that no sufficient state protection would be available to her in her home area, the immigration judge proceeded to systematically analyse whether relocation to different areas of Iraq was relevant and reasonable. After examining the Appellant's circumstances, the country situation and the guidelines provided by the UNHCR on the country situation, he found that this option was not available. He concluded by examining the possibility of relocating to a women's shelter. He accepted that requiring the appellant to remain in such a shelter would amount to the 'Anne Frank principle', described thus by Pill LJ in HJ (Iran) [2009] EWCA Civ 172:

"It would have been no defence to a claim that Anne Frank faced well-founded fear of persecution in 1942 to say that she was safe in a comfortable attic. Had she left the attic, a human activity she could reasonably be expected to enjoy, her Jewish identity would have led to her persecution. Refugee status cannot be denied by expecting a person to conceal aspects of identity or suppress behaviour the person should be allowed to express."²³⁴

The 'Anne Frank principle' serves to illustrate how concepts that were relied upon to refuse claims within the research sample are not, on examination, a reasonable basis upon which to refuse a claim. When examining the possibility of IFA, case owners are expected to take into consideration the particular circumstances of the individual woman's case.²³⁵ In the case of the applicant discussed above, the immigration judge accepted, based on the particular circumstances of the case, that it would be 'unduly harsh' to expect her to relocate to a women's shelter or to any other area within Iraq. The appeal was allowed and the applicant was recognised as a refugee.

Conclusion

In the research sample, IFA was considered in a cursory way with inadequate consideration being given to women's specific circumstances, to access and effectiveness of state protection and to country of origin information about the situation for women. In addition, there was evidence that the "undue harshness" test was not being appropriately applied.

233 UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers* (Geneva: UNHCR, 2009), pp. 144-151, 195-196, 42-43.

234 HJ (Iran) & Anor v Secretary of State for the Home Department [2009] EWCA Civ 172 (10 March 2009), para. 10.

235 UKBA Asylum Policy Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised October 2006, under 'Internal Relocation'; UKBA Asylum Instruction, *Gender Issues in the Asylum Claim*, March 2004, revised September 2010, para 5.2 pp. 14-15.

Conclusion

This research demonstrates a failure by the UKBA to adequately assess claims for international protection made by women asylum seekers.

In the majority of cases examined for the research, the quality of initial decision-making was found lacking, especially where claims were gender-related. A disproportionately high number of refusals of applications from women were reversed on appeal. As published statistics on appeals are not gender-disaggregated, this has not been identified before. When the UKBA were informed of the emerging findings of this report, they kindly provided management information confirming that there appears to be a significant difference between the rates of appeals allowed in women's asylum claims when compared with the number of appeals allowed in men's asylum claims. Despite the size of our sample, this appears to confirm that the numerical analysis in this report is representative of this national picture.

Gender-related claims for asylum are often more complex than traditional types of refugee protection claims. They may involve cases of persecution by non-state actors requiring the assessment of the availability and effectiveness of state protection. Gender-related cases often fall within the membership of a particular social group (PSG) ground which, broadly speaking, requires more complex legal consideration than other Convention grounds. They may require medical evidence documenting torture, domestic violence or FGM. Country of origin information (COI) on the position of women in a certain society may be less readily available and more difficult to access. For all these reasons, considering women's asylum claims needs particular knowledge and understanding of gender issues.

The key finding from this research is that the majority of women's claims were simply disbelieved by UKBA case owners. 87% of research participants were refused at first instance, almost all on the basis of credibility. The assessment of credibility formed the core of the decision to refuse; other aspects of the decision-making process such as identifying the Convention ground and assessing issues of state protection were marginalised. 50% of refusals were reversed on subsequent appeals and the negative credibility findings at the initial decision-making were overturned. In fact, the main reasons identified for appeals being allowed were that immigration judges adopted a different approach to credibility and had a broader and more accurate knowledge and understanding of relevant case law and COI than the UKBA case owners. The fact that inconsistencies in evidence presented by the women may have been due to trauma did not inform the UKBA's assessment of credibility. Instances were identified where late disclosure of sensitive information led to adverse credibility findings being made despite guidance that seeks to prevent this. Across the three regions researched, the rate of initial decisions overturned at appeal was found to vary considerably.

The Convention ground which case owners consistently and appropriately considered was that of political opinion and, within that, imputed political opinion. However, where the sole reason for persecution was gender-related, the Refugee Convention was never held to be engaged. The case owner never recognised applicants as refugees on the basis of gender-related persecution. This, in effect, created a higher threshold for women whose claims for asylum involved a gender element, a threshold which none of the claims were able to meet. Case owners appeared reluctant to engage with the membership of a particular social group ground, for example in relation to claims involving trafficking, sexual orientation or 'honour' killings.

Even when information was available in the Country of Origin Information Service reports with regard to the treatment and conditions of women in countries of origin, or when there was relevant case law in existence, country of origin information and case law were often used selectively and sometimes unrepresentatively in support of negative decisions. In addition, the concept of Internal Flight Alternative was generally considered in a cursory manner without any detailed engagement with the specific circumstances of the applicant.

When the New Asylum Model was introduced in 2007 it was hoped that the single case owner model would lead to better decision-making. Three years on, the concept of a single case owner has been eroded and the duties initially envisaged significantly reduced. The research shows that in the majority of cases more than one case owner dealt with a case, with up to five individuals responsible for a case before the initial decision was made. The advantage of a single case owner in women's cases is that women are able to build up trust, facilitating earlier disclosure of details related to gender-related persecution and thereby leading to better quality decisions. None of the women interviewed for this research had met her case owner more than once.

Two thirds of applicants were interviewed by female case owners. Having a female case owner is considered important in establishing a suitable environment for women to disclose sensitive information. The UKBA asks all applicants at the screening interview whether they have a preference for a male or female interviewer. Whilst this is well-intentioned, and indeed Asylum Aid and the UNHCR lobbied for this in the past, the research found that women expressed no preference in most cases. Women interviewed for this research stated that the question was asked under conditions which made it difficult for them to understand its implications and they felt unable to give an informed response. With hindsight, the majority would have requested a female interviewer.

The research found that questions at the asylum interview were often inappropriate, in particular regarding gender aspects of the claim and demonstrated a lack of knowledge on the part of case owners regarding gender-related harm and persecution. Psychological trauma was neither acknowledged nor considered as a form of harm and its effects were downplayed. Interviews were often long, especially for victims of trafficking. Case owners were not attuned to hints indicating the necessity to provide a break or terminate the interview. Childcare facilities were not consistently available across regions.

Women interviewed for this research recounted being seriously affected by the asylum process. They described feeling uninformed and finding the process distressing. Some said that not being believed by the case owner after disclosing information relating to sexual violence contributed to their depression.

Women found it difficult to get legal representatives outside London. Lack of legal representation is an increasing cause for concern, especially in Cardiff. The research was conducted at a time when drastic changes were taking place with regard to the provision of legal aid which could have a disproportionate impact on women.

In summary, women are more likely than men to have a negative decision reversed at appeal. The consistent theme in the initial decisions on the applications for asylum by women examined by the research was negative credibility assessments. In half the cases examined, these findings were overturned at appeal. If their claim involved gender-related persecution, the Refugee Convention (and particularly the membership of a particular social group ground) was never engaged. Case owners' poor knowledge of gender-related persecution and selective use of COI and case law had a detrimental effect on women's cases as did the involvement of more than one case owner and irrelevant and inappropriate questioning at interview.

Many of the women who took part in this research were not politically involved but experienced persecution by non-state actors and struggled to survive under oppressive societal and cultural structures in their countries of origin. This research shows that their experiences were considered marginal and not significant enough to warrant international protection by the UKBA case owners. The experiences of women such as Sanam, who was forced into marriage at the age of 14, suffered domestic violence for years and eventually fled Iran fearing her father would kill her following allegations of adultery; of Jane, struggling to live in accordance with her sexual orientation in a country where the death penalty is imposed for gays and lesbians; of Kaltun, beaten and raped after not covering herself up when fetching water from a well, were not considered to engage the Refugee Convention and the women were assessed as not being in need of international protection by the UKBA. In all these cases, the Tribunal reversed the initial decision, providing protection and preventing potential return to their country of origin in breach of international refugee and human rights law obligations.

One third of people applying for asylum in their own right in the UK are women. Given the need to consider women's asylum claims under the Refugee Convention in a gender sensitive manner, the poor quality of decision-making evidenced in this research is unsustainable and must be addressed through systemic action and reform.

Recommendations

The UKBA should:

- 1) Fulfil its obligations in respect of its treatment of asylum seekers and refugees under the Public Service Equality Duty which requires public services to mainstream equality to ensure that all individuals are able to benefit equally from public services and that promoting equality becomes part of a public body's core business.
- 2) Undertake equality impact assessments on all its policies in respect of asylum seekers and refugees and follow up the results.
- 3) Incorporate recognition of gender as a strategic objective in all planning processes in respect of asylum seekers and refugees.
- 4) Ensure gender is a prominent theme for developments arising from the Asylum Improvement Project.
- 5) Implement fully the revised Asylum Instruction on *Gender Issues in the Asylum Claim*. To ensure this:
 - a) Provide adequate and timely training of all case owners on the Asylum Instruction.
 - b) Amend the current Quality Assurance marking standards to ensure they reflect consideration of the revised Asylum Instruction.
 - c) Train auditors on gender issues.
 - d) Ensure auditors encourage gender appropriate decision-making through encouraging good practice and pointing out concerns where relevant.
 - e) Use the results of quality audits to improve the quality of decision-making by case owners.
- 6) Provide asylum applicants with information concerning their entitlements reflected in the Asylum Instruction on *Gender Issues in the Asylum Claim*.
- 7) Guarantee that women asylum applicants are provided with female officers and interpreters at the screening interview
- 8) Improve the environment at the screening interview to allow for confidential disclosure of information.
- 9) Guarantee that women asylum applicants are provided with female case owners and interpreters.
- 10) Extend childcare provision during asylum interviews to cover every region effectively.
- 11) Ensure the single case owner model is implemented from the first reporting event until the decision is made.
- 12) Ensure case owners:
 - question asylum applicants appropriately both through the nature and phrasing of questions and through their tone and attitude
 - identify signs of vulnerability and trauma during interviews and conduct interviews accordingly
 - understand how trauma affects memory and concentration
 - interpret the Refugee Convention appropriately in relation to gender

- identify and apply the ground of membership of a particular social group appropriately
 - research, read, interpret and use all case law relevant to gender appropriately
 - have knowledge of types of gender-related persecution
 - assess credibility based on the core facts of the claim taking all facts into account including any medical evidence or country of origin information available in the round
 - apply the correct standard of proof and give applicants the benefit of the doubt where appropriate
 - do not make assumptions about behaviour or cultures
 - do not make unfounded conclusions on plausibility
 - seek out gender issues in country of origin information and apply this appropriately
 - accurately consider medical evidence
 - take the applicant's personal circumstances, gender persecution, discrimination, cultural and economic issues into account when considering whether an internal flight alternative is reasonable
 - give consideration to the applicant's statement as well as to the substantive interview for the purpose of fact-finding
 - not use Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as the starting point for an assessment of credibility
- 13) Provide case owners with access to up to date and comprehensive country of origin information sources.
- 14) Allow case owners sufficient flexibility so that they have time, for example, to build up a relationship with the asylum applicant to encourage disclosure of relevant evidence and before the interview to research relevant objective evidence including case law and country of origin information related to gender specific facts of that particular claim.
- 15) Include in the Operational Guidance Notes relevant information relating to gender persecution, discrimination, cultural and economic issues that impact disproportionately upon women and regularly review that guidance to ensure that it is up to date.
- 16) Maintain and make publicly available gender-disaggregated statistics to allow the UKBA to focus on gender-specific concerns, in particular statistics regarding the outcome of appeals.
- 17) Implement the recommendations on gender from the UNHCR Quality Initiative/Integration reports.
- 18) With the Legal Services Commission ensure that the evaluation of the Early Access to Legal Advice Project takes account of the particular needs of women claiming asylum.

Country of Origin Information Service should:

In its country of origin information reports expand on gender specific issues including gender persecution, discrimination, cultural and economic issues that impact disproportionately upon women.

Legal Services Commission should:

Guarantee access to free high quality legal advice and representation to all asylum seekers in advance of their initial asylum interview.

Monitor and address the problem of scarce legal representation for initial decisions in certain regions of the UK.

Monitor and address the problem of scarce legal representation for appeals throughout the UK.

Revise the graduated fee scheme to ensure that it encourages good quality representation and does not act as a disincentive in complex cases.

Review the operation of the CLR merits test to ensure that it does not result in women asylum seekers being deprived of legal representation at appeal.

Legal Services Commission, Office of the Immigration Services Commissioner and the Law Society should:

Effectively monitor legal advice to ensure good quality.

Legal representatives should:

Supervisors should ensure that supervisees are appropriately trained and supported when representing women asylum seekers.

In so far as the funding regime allows, adopt an approach of frontloading the preparation of asylum applications including drafting a statement that can be submitted to the case owner in advance of the substantive interview.

Ensure that the CLR merits test is applied with caution in the cases of women asylum seekers, taking into account the gender issues that might be overlooked and having appropriate regard to where the merits may be 'unclear' because further investigation is required.

Ministry of Justice should:

Conduct a full equality impact assessment on its recommendations following the review of Legal Aid to ensure that women are not disadvantaged by any changes to the Legal Aid scheme.

The Chief Inspector of the UKBA should:

Include the consideration of gender issues in all inspections.

In addition:

In the longer-term, Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 should be repealed

Appendix A - Decision assessment form

Reference:

Decision Assessment Form

	CRITERIA	ASSESSMENT				COMMENTS/ REASONS
		YES	PART	NO	NA	
Background						
1A	Does the letter set out the facts of the case correctly?					
1B	Does the letter set out the facts in a balanced way?					
Harm/Persecution						
2A	If relevant, does the letter correctly identify gender-related/specific serious harm? In particular: (note: list is non-exhaustive)					
	Sexual violence					
	FGM					
	Domestic violence					
	Forced marriage					
	Transgression of social mores					
	Forced sterilisation/abortion					
	Sexual orientation					
	Trafficking					
	Domestic slavery					

	CRITERIA	ASSESSMENT				COMMENTS/ REASONS
		YES	PART	NO	NA	
Agents of Persecution and Sufficiency of Protection						
3A	Does the letter identify whether persecution/harm is caused by state/non state agents?					
3B	If caused by non-state agents, does the letter identify whether persecution/harm is tolerated by the authorities?					
3C	Has the case owner considered the sufficiency of state protection generally and in relation to women? Failure of state protection may include:					
	Legislation (has the case owner assessed whether the law itself is persecutory)					
	Lack of police response to pleas for assistance					
	Reluctance, refusal or failure to investigate or punish individuals					
	Encouragement or toleration of particular social/religious/customary laws, practices behavioural norms or an unwillingness or inability to take action against them					
Convention Reason/s						
4A	Does the letter identify the correct Convention reason(s) or the absence of Convention reason?					
	i) As stated by the applicant (explicit) ?					
	ii) As identified by the case owner (implicit)? NB the applicant is not required to identify accurately the reason					

	iv) if more than one reason is engaged, are all reasons identified?					
	v) if more than one reason is engaged, are all reasons examined?					
4B	Does the letter correctly identify the Convention reason in relation to gender (if applicable)?					
	Race					
	Religion					
	Nationality					
	Political opinion (imputed, low level, indirect)					
	PSC					
4C	Where persecution is non-gender specific, but for reasons relating to gender, is the gender reason identified?					
Discrimination						
5A	Does the letter correctly identify if gender-related discrimination is engaged?					
5B	Does the letter identify whether the gender-related discrimination amounts to persecution?					
Consideration of the Claim						
6A	Does the letter give due consideration to all significant facts of the claim?					

Appendix A - Decision assessment form continued

6B	Has the correct burden of proof been applied? (Note Art 4.2 QD, 'in cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application')					
6D	Has the correct standard of proof been applied?					
Credibility						
7A	Has the case owner taken into account gender related elements when assessing credibility? E.g.					
	i) Gaps in a woman's knowledge					
	i) Reluctance to disclose information					
	i) Effect of culture on demeanour					
	i) Trauma					
7B	If the case owner made negative credibility findings, did s/he correctly rely on:					
	i) Objective country information?					
	i) Inconsistencies					
	i) Plausibility					
7C	Where relevant, has the case owner appropriately dealt with lack of evidence in cases of sexual violence?					
7D	Did the case owner correctly assess credibility taking into account guidelines on vulnerable and victims of torture, in particular in relation to medical evidence?					

7E	Did the case owner correctly assess credibility taking into account guidelines on vulnerable and victims of torture, in particular in relation to inconsistencies between the applicant's interviews/statements?					
7F	Did the case owner appropriately deal with trauma related symptoms in evaluating credibility?					
7G	Did the case owner appropriately deal with late or non-disclosure where the case is gender related?					
7H	Did the case owner refrain from making any subjective assumptions of the asylum claim in relation to credibility findings?					
COI						
8A	Does the letter identify objective country information relevant to the applicant's claim?					
	i) In general					
	i) In relation to gender?					
8B	Did the case owner seek additional/alternative sources of objective country information? If yes, was it relevant?					
8C	Did the case owner sufficiently rely on the available country information? (Including that submitted by the applicant and that provided by the case owner)					

8D	Did the case owner adequately rely on the available country information? (Including that submitted by the applicant and that provided by the case owner)					
	(i) Was the information balanced (i.e. not selective)					
	(ii) Was the information relevant?					
	(iii) Was the information current?					
	Did the absence of COI lead to negative credibility findings?					
8E	Does the letter refer to OGNs? If yes, has the information in the OGN been presented as a guide to decision-making and not as objective country information?					
8F	If gender related/specific persecution is involved, does the letter identify (in the relevant State/society):					
	Positions of women before the law					
	Political rights of women					
	Social and economic rights of women					
	Consequences for women who refuse to abide by or who challenge social/religious or cultural norms regarding their behaviours					
	Incidence and form of violence against women					
	Efficacy of protection available to women and the sanctions or penalties on those who perpetrate the violence					
	Consequences that may befall a woman on her return					
Case Law						

Appendix A - Decision assessment form continued

9A	Does the letter identify objective country information relevant to the applicant's claim?					
	i) In general					
	i) In relation to gender					
Internal Relocation						
10A	If internal relocation was suggested, was it relevant and reasonable?					
10B	Has the case owner considered that due to gender, relocation might place the applicant at risk of a new form of persecution?					
10C	Did the case owner consider the API on Internal Relocation that "protection in that area must be effective and of a durable nature"?					
10D	Did the case owner consider whether relocation would be unduly harsh? I.e.: Can the claimant live a relatively normal life there judged by the standards that prevail in his country of nationality generally (Januzi)?					
10E	Did the case owner consider whether the route to the proposed area of relocation is safe?					
10F	Were the individual circumstances of the applicant taken into account when considering the availability of IFA?					

10G	Did the case owner take into account that the "practicalities and possible risks for the individual concerned of moving to and settling in a different part of a country must be assessed in the light of the available information about the country concerned, such as the means of travel and communication, cultural traditions, religious beliefs and customs, ethnic or linguistic differences, health facilities, employment opportunities, supporting family or other ties, and the presence and ability of civil society (eg non-governmental organizations) to provide practical support" (revised Gender API)?					
10H	Did the case owner consider the API on Internal Relocation and whether "what must be shown to be lacking is the real possibility to survive economically, given the particular circumstances of the individual concerned (language, knowledge, education, skills, previous stay or employment there, local ties, sex, civil status, age and life experience, family responsibilities, health, available and realisable assets and so on)"?					
ECHR						
11A	Has the letter correctly identified ECHR Articles raised:					
	i) Explicitly?					
	ii) Implicitly?					
11B	If asylum has been refused, has entitlement to HP been correctly considered?€€					

11C	In Articles 2 and/or 3 ECHR cases, did the case owner correctly identify whether there were "substantial grounds for believing that return will expose the applicant to a real risk of serious harm" (API on Considering Human Rights Claims, see also Immigration Rule 339C)?					
11D	In Article 8 ECHR cases, did the case owner: <ul style="list-style-type: none"> Consider all the relevant factors, weigh up relevant considerations and decide whether refusal or removal will result in a disproportionate interference with Article 8 rights. If refused, explain fully the consideration of these factors in the refusal letter Whether it is proportionate to require the individual to leave the UK and apply for Entry Clearance, having regard to the factors set out by the House of Lords in Chikwamba; and What effect any delay in decision making has had on the proportionality test, having regard to the factors set out by the House of Lords in EB Kosovo (Casework Instruction Article 8 ECHR)? 					
11C	If asylum and HP have been refused, has entitlement to DL been correctly considered?					

Appendix A - Decision assessment form continued

11E	Did the case owner consider Article 15c EU Qualification Directive whether there was a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict"?					
11F	Did the case owner consider whether there was a heightened risk of serious harm for women in armed conflicts?					

Appendix B - Appeal determinations indicators

Appeal Determinations Indicators:

Our Ref:

A. Initial Appeal Hearing		
Date: Promulgated:	Venue:	Appeal outcome: Asylum: Allowed Dismissed Human Rights: Allowed Dismissed
Legal rep: Yes No	Case owner presenting the appeal: Yes No	Notes:

Indicators:	Assessment				Comments/Reasons
	Yes	PART	NO	NA	
1 Did the IJ comment on the initial decision?					
2 Was any additional evidence presented by the Appellant/ legal rep?					
Medical evidence					
Country report					
COI information					
Case law					
Language analysis					
Other					
3 Were there any witnesses?					
4 Was the IJ's analysis of the objective country information different than that of the initial decision maker?					
5 Was the IJ's use/interpretation of the case law different than that of the initial decision maker?					
6 Was the IJ's attitude towards the burden of proof different than that of the initial decision maker?					

7 Was the IJ's attitude towards the standard of proof different than that of the initial decision maker?					
8 Was the IJ's approach to credibility different than that of the initial decision maker?					
9 If relevant, did the IJ take a different approach to late disclosure than that of the initial decision maker?					
10 Was there a reference in the determination to a gender sensitive approach?					
(table repeated for subsequent appeals)					

Appendix C - Interview schedule_

Researcher introduces herself, introduces the research, addresses issues of confidentiality.

Introductory questions:

- 1 When did you arrive in the UK?
- 2 Who did you come with?
- 3 When did you claim asylum?
- 4 What was the outcome of your claim?
- 5 What is your status at the moment?

Asylum interview:

- 6 When was your interview held?
- 7 Where?
- 8 Who conducted the interview? Case owner? Have you met your case owner before? Did you have the same case owner throughout the procedure? Did you know how to contact the case owner?
- 9 Was the interpreter provided by the Home Office male or female?
- 10 Would you have preferred a male or female interpreter to be present?
- 11 Did you experience any difficulties communicating via the interpreter?
- 12 How did you feel during the asylum interview? Did you feel comfortable?
- 13 Do you think you were able to describe all relevant aspects of your claim? If not why?
- 14 Do you consider the questions put to you by the interviewing officer were relevant?
- 15 What suggestions would you make to improve the conduct of the interview?

Decision:

- 16 How were you given the decision? (In person/by post/through legal rep...)
- 17 Was the refusal letter of the Home Office read back to you?
- 18 If yes, by who? (Legal rep, friend...)
- 19 Did you understand the decision?
- 20 Why do you think the Home Office refused your claim?
- 21 How did you feel when you heard your case was refused?
- 22 Do you think all aspects of your claim were considered properly? If not, why?

Appeal stages: (in relation to the initial decision)

- 23 If relevant, did you provide additional evidence after being refused asylum and prior to your appeal hearing? If so, why?
- 24 Why didn't you disclose it before?
- 25 How would you compare the attitude of the judge at the appeal hearing to the attitude your case owner when conducting your asylum interview?
- 26 Did you have the same legal rep at the initial stage and at the appeal stage?

Conclusion:

- 27 How does being a women asylum seeker impact on your experience of the asylum process?
- 28 During the process of claim, did you feel informed about the procedure?
- 29 Who did you contact for information/support?
- 30 What was your view of the whole time frame of the process, from start to finish? (Prompts – was it to long? Did you have sufficient time to submit relevant evidence?)
- 31 How would you describe the experience of claiming asylum in the UK? Was it different from what you had expected?

Appendix D - Monitoring form

Monitoring form		
Our reference:	Region:	Team:
	Legal Rep:	Date:
Personal Characteristic:		
Age: Under 15 45-55 15-18 55-65 18-24 Above 65 25-34 35-45	Marital status: Single Married/cohabiting Married but separated Divorced widowed	
Education: Non Primary completed Secondary completed High School completed Degree completed Certificate or equivalent Other (specify)	Nationality: Ethnic origin (if applicable)	
Employment (in country of origin)	Medical condition:	
Came in the UK with:	Notes:	
Asylum process:		
Date of arrival in the UK	Date when claim for asylum was made:	
Date of screening interview	SEF issued Yes No	
IO: Q 11.3 (M/F)	Interpreter:	

Statement submitted prior to the asylum interview: Yes No	Date of asylum interview:
IO:	Interpreter:
Further representations made after the asylum interview: Yes No	Date of Decision:
Decision: Refused Granted Refused but granted DL or HP	Comments:
case owner identified himself: Yes No How and when?	Case owner who conducted the interview drafted the decision: Yes No
Appeal lodged: Yes No	Appeal hearing date:
Appeal outcome: Asylum: Human Rights: A allowed Allowed Dismissed Dismissed Other: (specify)	Subsequent appeals (specify)
Date Status papers	Notes:
Legal Representation:	
Legal representation: Non Legal aid CLR Other (specify)	Comments:
Notes:	

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

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