“EVEN IF...”

The use of the Internal Protection Alternative
in asylum decisions in the UK

Asylum Aid

Protection from Persecution

CONTENTS

Nadia's experience

Nadia came from Pakistan with her three children three years ago. Because of the trauma she had suffered she is now having memory problems.

In my asylum interview the interviewer asked whether I could live somewhere else. I told them that I am a woman with three children without protection of a man. When the interviewer said I could be safe somewhere else in Pakistan, I said: no woman is safe in Pakistan.

It was my husband who was against me. I was fleeing from him. He had money and power. He could do anything he wished. My case was about this. My husband was very violent to me and the children.

I don't remember details of my asylum interview. But I do remember that I needed time to explain what had happened to me and that I was too worried, unwell and intimidated to explain clearly. Although the interview was long, they did not let me finish the points I was trying to make.

When I left the interview I felt I had huge burden on me because I had not expressed what I had gone for.

The asylum interview, refusal letter and Tribunal paid no attention to my mental health, and it was never referred to in their decisions that I could live safely elsewhere in Pakistan. My present solicitor has obtained full medical reports and a full psychiatric assessment of my son.

I want the decision makers to understand the difficulties of a person as a human being. They need to put themselves into someone else's shoes. They need to accept it does happen to people. Give people a chance to explain themselves and be believed.

The person on top doesn't understand the person on the bottom because they have never experienced it. They need to be more understanding and more interested in other people. Here a woman can phone the police and go out of her house without worrying about being killed or hurt. It's the opposite for a woman in my country. Here they can't imagine or believe it. Here when there is a dispute the law can protect a wife. There in Pakistan a man forces his way into a wife's house and makes threats and takes her back. They say it couldn't be like that because they have never experienced it. They do not know.

There are shelters where women go who have escaped from a violent man. The stories about the shelters are that the girls there are given to the men at night to be used. They drug them for rape. Fall pregnant. That's why women put up with it at home. The alternative is rape by a stranger.

Here the decision makers doubt people instead of investigating what we say. As a human being they should investigate what's happening to women in Pakistan. If they don't believe they should give reasons.

Chapter 1

1.1 Introduction

Internal Protection, more usually called in the UK, 'internal relocation' or 'internal flight alternative', is an exception to refugee status. The deciding authority is saying: 'you can go to another part of your country and be safe', but the premise is that the asylum seeker is at risk in their home area, and it is against this risk that the prospect of safety elsewhere can be judged. The decision is therefore taken in a context where the asylum seeker is vulnerable, since internal protection requires an assessment of safety in a situation of risk, and the reliability of that assessment is critical.

The question then arises – what if the asylum seeker is already someone who is marginalised in their own society, or vulnerable for another reason such as the impact of trauma? Asylum Aid's study of the impact of internal relocation on women asylum seekers[1] revealed that women were more likely to be subject to internal relocation, and at the same time were more likely to be in a situation on return where their rights were not respected, and they were vulnerable to harm and discrimination. The risks and impact of internal relocation were doubled.

This vulnerability is relevant also to other groups who are marginalised in their home country. The main use of internal protection is in relation to non-state persecutors. Whether there is effective protection against a non-state persecutor and whether another part of the country will be safe depends in part on the extent to which government authorities and society as a whole condone the non-state persecution. There are many countries where this needs to be examined in the case of gender-based violence or homophobic attacks.

UK law and practice has the mechanisms to take account of these needs. In particular, this may be done through Home Office Operational Guidance Notes (OGN) and country guidance decisions in the Upper Tribunal. For instance in relation to Jamaica, the OGN says:

2.4.4 The discrimination and exclusion faced by women in society should be taken account of when assessing whether it would not be unduly harsh to expect female applicants to internally relocate

3.8.2 Social and cultural norms perpetuated violence against women, including spousal abuse [2].

The Upper Tribunal described Jamaica as a deeply homophobic society, and found it was impossible for lesbians to obtain state protection or internal protection in a society where violence against lesbians is socially condoned[3]. In the case of Jamaica, both the OGN and the Tribunal recognise the cultural context as vital to whether a woman or LGB applicant can obtain protection.

> ***Nadia, Pakistan***
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> In interview for this research, Nadia described horrific incidents in her home area in Pakistan of reprisals against women who sought legal protection against their violent husbands. One had her legs cut off. Another had acid thrown in her face. Nadia sought police help, but found that her husband bribed the police to dismiss her claims, calling her 'mad'.
>
> She has constant nightmares.
>
> She told the Home Office in her interview that these problems were not isolated, but are endemic for women in Pakistan.

Other Member States have different mechanisms. For instance, in the Netherlands, where a claim is based on domestic violence, the burden of proof shifts to the state to show that there is effective protection.[4]

This study builds on the previous work to examine how, in decision making at all levels, internal protection is applied and its safety and reasonableness assessed. This is particularly with a view to examining how the use of internal relocation takes account of the vulnerability of applicants. In this context all

1 Claire Bennett, *Relocation, Relocation: the impact of internal relocation on women asylum seekers* 2008

2 OGN Jamaica, January 2013. OGNs give policy guidance to Home Office decision makers in relation to particular countries of origin.

3 *SW (lesbians - HJ and HT applied) Jamaica* [2011] UKUT 251. See also *R (on the application of JB(Jamaica)) v SSHD* [2013] EWCA Civ 666

4 APAIPA study, Netherlands national report V a (i) 1

asylum seekers are vulnerable,[5] and while there are generalisations that may be made across different countries, ultimately the vulnerability of the applicant must be assessed within the context of their country of origin, as this case from France shows.

Decision by French National Court on Asylum (CNDA)

The Colombian applicant feared persecution on political grounds from paramilitary forces who thought he was involved with revolutionary armed forces (the FARC). He was recognised by the authorities as a displaced person in Bogota. The CNDA considered on the basis of Country of Origin Information (COI) that the stigmatisation of the displaced population prevented them from accessing effective protection, even in big urban centres. The court recognised that his marginalised position in the society which he came from impeded his access to protection.

1.2 Terminology

While the Qualification Directive uses the term 'internal protection', the terms in common use in the UK are 'internal relocation' or 'internal flight alternative'. The choice of words is not neutral. The words 'relocation' or 'internal flight' suggest a move within the country of origin. They imply a different course of action the asylum seeker *could have* taken in the past to avoid the persecution. The use of 'relocation' obscures the reality that a refugee returning may be in a position more similar to that of an internally displaced person, rather than someone who has moved within their country by choice from one region to another. The UK approach, deriving from *Januzi* [2006] UKHL 5, and AH (*Sudan*) [2007] UKHL 49, may be contrasted with that in Canada and New Zealand, where the term 'Internal Protection Alternative' is used. Both approaches say that refugee status is not awarded to someone who can be protected in their own country. The Canada/New Zealand approach says that a person who has a well-founded fear of persecution in their home area cannot obtain international protection if they have an opportunity of meaningful protection elsewhere in their country. This puts the emphasis on conditions in the proposed protection region. The *Januzi*/relocation approach says that a person does not qualify for refugee status if there is a part of their country of origin where they do not have a well-founded fear and they can reasonably be expected to go there. This leaves open questions such as 'who is to prove the risk or absence of risk in the proposed region and how?' and 'how is reasonableness to be judged?'

Where not quoting an existing UK source, this report will generally use the term in the Qualification Directive (QD): 'internal protection', since the QD is binding in the UK unless and until it is found to be inconsistent with the Refugee Convention. While the text of the QD is close to *Januzi,* the use of 'internal protection' indicates that this is about protection for someone who would otherwise be a refugee. Elements of both approaches are evident in practice in the UK.

1.3 Methodology and Background note

The research findings which form the body of this report came from a project of ECRE (the European Council on Refugees and Exiles) to investigate the application of Actors of Protection and Internal Protection (APAIPA) in EU Member States at a time when the recast QD was in the course of being implemented. One of the aims of the project was to influence the application and interpretation of the recast by identifying good practice and problems of application. The result was a detailed analysis of the use of these concepts in 11 Member States, revealing the potential of the recast Directive. The UK was one of the Member States studied. The analysis of UK law and practice was based on individual asylum case files obtained from lawyers, NGOs, and asylum seekers; interviews with key stakeholders (UNHCR representative, Home Office, barrister, Country of Origin Information (COI) expert and three asylum seekers); conversations with solicitors, and reported cases of the Upper Tribunal, Court of Appeal and House of Lords. A total of 20 Home Office refusal letters were analysed, 11 First Tier Tribunal decisions, 21 decisions of the Upper Tribunal, 8 of the Court of Appeal and five of the House of Lords. The total sample was 65 cases. The sample excluded Home Office decisions granting protection since these are not reasoned.

5 *MSS v Belgium and Greece* Application no. 30696/09

The full findings of the research relevant to the UK can be read in the forthcoming Actors of Protection and the Application of the Internal Protection Alternative (APAIPA) Comparative Report and ECRE's UK national report. This report identifies some issues that arose in the course of the UK research, and highlights areas for further discussion and exploration.

1.4 Preliminary issue – 'Even if...' reasoning

Despite the premise of internal protection being that there is a well-founded fear of persecution in the home area, all the Home Office decisions in this research[6] applied internal protection as a fall back to a finding of no risk in the home area. This practice was confirmed as typical by interviewees. The reasons for it and its drawbacks are discussed in more detail below, but awareness of this as a preliminary issue is necessary to appreciate the implications of the research findings for analysis of internal protection generally.

6 This means all the decisions actually read and all those whose appeal was analysed, whether or not the researcher had access to the Home Office decision.

Chapter 2
Two limbs: safety and reasonableness

The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 SI 2525 (the Protection Regulations) implement parts of the 2004 QD, but not internal protection. Internal protection, or relocation, came into use through case law and the wording of Article 8 of the 2004 QD is included in the immigration rules paragraph 339O:

> Protection may be refused if there is a part of the refugee's country of origin in which there is no real risk of persecution or serious harm
>
> and the applicant can reasonably be expected to stay there

It may be seen from this that internal protection has two limbs: safety and reasonableness. UNHCR Guidelines on internal protection[7] describe the two limbs as 'relevance' and 'reasonableness'.

Although the Court of Appeal and Country Guidance (CG) cases in the Upper Tribunal have made important refinements to the application of internal protection, the legal principles governing it have been shaped by *Januzi* and *AH* (*Sudan*). The two limbs are expressed in Januzi, describing the proposed location as a place where the refugee:

> would have no well-founded fear of persecution, where the protection of that country would be available to him and where, in all the circumstances, he could reasonably and without undue harshness be expected to live.

2.1 Safety

Safety specifically in the proposed protection region is not addressed in depth in its own right in UK law and practice, nevertheless, safety was the main concern of asylum seekers interviewed in the research. The safety limb of internal protection in *Januzi* was treated, on the facts of the case, as a precondition of considering internal protection, and was not at issue. Nevertheless, the way in which the House of Lords framed the issues influenced the way that safety in the internal protection region is approached in UK decision-making. The House of Lords was considering the future conditions for the appellants should they return to Sudan, but this was interposed with considering whether a refugee *should* have sought protection elsewhere in their country before fleeing abroad. This backward-looking orientation has the effect of making internal protection relevant to determining whether there is a well-founded fear. It can result in requiring an applicant to exhaust all possibilities of protection in their home country before seeking asylum. This is problematic in practice and is not required by the Refugee Convention. Recognising this is important when questions are asked in asylum interviews such as 'Could you not go somewhere else in your country and be safe?' The use and purpose of that question is discussed below.

The QD assessment of internal protection is forward-looking. This appears in Article 4.3 which says that the assessment of an application for international protection is to be carried out taking into account 'all relevant facts as they relate to the country of origin *at the time of taking the decision*' [emphasis added]. It also appears in Article 8 itself where the question is whether the applicant 'can reasonably be expected to stay' in that part of the country. This is a future question. For UK decision makers, the question of whether the refugee did in fact seek protection elsewhere before fleeing abroad can only now be relevant to assessing the future risk. Where a refugee has not sought the protection of the authorities or not moved elsewhere in their own country, there is a gap in the evidence as to what would happen if they now did that. This may be filled by a combination of their own testimony and COI. It cannot be filled by treating internal protection as something that should have been tried, and therefore should now be relied on.

Safety entails the following questions:

- Is there a risk from the original persecutor in the relocation region?
- Is there a new risk of persecution or serious harm?
- Is there protection from any such risk and is it effective?
- Does the applicant have access to that protection?
- Will the protection be durable?

7 *'Internal flight or Relocation Alternative' in the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* 23 July 2003

2.1.1 Risk from original persecutor

The Asylum Policy Instruction (API) on internal relocation states without elaboration that the decision maker must ask:

Is there a part of the country in which the applicant would not have a well-founded fear of persecution or face a real risk of suffering serious harm?

It does not guide the decision maker on how to assess whether the applicant will be at risk in the proposed location.

In the decisions read for the research, at all levels of decision-making, risk in the protection region was generally treated as the original risk of persecution. Since this had usually been considered unfounded, the rejection of this risk was extended to the relocation region on the basis of the same evidence.

The additional question which was normally considered was the reach of the persecutor in the protection region. This was an important issue for women fleeing gender-based violence, and there was a notable absence of guidance either in case law or APIs on how to approach it.

How a person is found by someone who wishes to harm them is a subject that is not addressed in the main human rights reports. It requires knowledge of how that society works. This was an area where the research revealed a need for more local and in some cases anthropologically based knowledge and information. Often the main source of evidence was the applicant themselves. However, in the files analysed, leads given by the applicant as to the reach of the persecutor were not followed up by COI. They were rejected on the basis of ideas about the persecutor or the country of origin which were untested with the applicant and not grounded in the context of the country in question.

Laila

'Your father is a retired accountant and your mother a secretary. Therefore it is considered that they do not have the resources or connections to search for you throughout [X country] should they have the inclination to do so.'

The interaction of the individual and expert evidence can be seen below

Jami, Gambia

Asylum Interview:

Q: is there any reason why you can't relocate to an area such as [x region] and be safe there?
A: I only know [2 cities] and anywhere my father would find me.
Q: But if he went somewhere you were not known how could he find you there?
A: my father is a famous man. People know him. Nowhere I could be safe. He would find me in the village. Gambia is v. small and information would get out.
Q: the population of [city] is 151,000 - how could you be found there?
A: I would go out and when I go out I would find people who know me no matter how big the place is.

It can be inferred from this that the applicant knows from her experience how things happen in Gambia but she cannot describe the mechanisms. This does not mean that her observations about Gambia are wrong.

The refusal letter drew an inference from her evidence that her father was a famous man in her local area that he was not famous elsewhere and would have no influence to find her. It inferred from her evidence that she does not know other towns in Gambia that she would be safe in because she would not be known. Population of Gambia (1.7 million) and she is educated so could find work. Existence of GAMCOTRAP[8] and a newspaper reference to a conference were relied on to show that she could get help from an NGO.

In the Upper Tribunal, an expert report described how newcomers to an area must be reported by chiefs and imams to elected officers, who must in turn report higher up the chain of command. This and other details given by the expert made it abundantly clear that a lone woman could not return to any part of Gambia without attracting attention. Internal relocation was not an option.

8 Gambia Committee on Traditional Practices Affecting the Health of Women and Children

In the unreported case files read for the research, COI was used in refusal letters to support conclusions that the persecutor would not be able to trace the applicant in the protection region, but this was usually limited to size of the country or the region and the population size of the region or city. City populations anywhere between 11.4 million and 151,000 were cited as big enough for the applicant to be safe.

2.1.2 New risks

Since the use of internal protection in the Home Office decision was mainly as a supplement to an adverse credibility finding, it is not surprising that new risks in the proposed region were not usually considered. A notable exception was the case of *AMM Somalia* where the Upper Tribunal explicitly found new risks in the conditions in Internally Displaced Persons (IDP) camps and other areas of Somalia where women were at risk of rape if they were required to travel through checkpoints.

Particularly, in Country Guidance (CG) cases and Operational Guidance Notes (OGNs), factors were identified for particular groups in particular countries which would weigh against internal protection, some of which would have constituted a new risk of serious harm. A full review of Country of Origin Information Reports (COIRs), OGNs and CG cases is outside the scope of this report, but an example is the case of *NS (Afghanistan)*, where the applicant was found to be at risk as a lone woman of sexual assault and forced marriage. However, these risks of serious harm were not identified as such but were treated as an aspect of reasonableness and the question of whether relocation would be 'unduly harsh'. The problem in not identifying risks of serious harm as such is that, as an aspect of reasonableness they become part of a weighing-up exercise rather than an obstacle to internal protection under the first limb. Weighing up levels of harshness which the applicant can be expected to tolerate is unlawful if there is a real risk of serious harm.[9]

2.1.3 Effective protection

In most decisions read for the research, the reasoning and evidence that effective protection existed in the home area was relied on for the protection region also. This meant reliance on established reasoning about sufficiency of protection which is part of the refugee status decision.

The UK's Protection Regulations[10] implement Article 7 QD 2004, replicating its wording:

> Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.[11]

These provisions are treated in Home Office and tribunal decisions as consistent with leading cases *Horvath* [2000] UKHL 37 and *Bagdanavicius* [2005] UKHL 38, which also say that an effective legal system does not necessarily protect against all harm. Its effectiveness is judged by a practical standard, taking into account the state's duty to its own nationals. There must be a reasonable willingness to enforce the law:

> The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; *Horvath*; *Banomova* [2001] EWCA Civ.807; *McPherson* [2001] EWCA Civ 1955 and *Kinuthia* [2001] EWCA Civ 2100…
>
> Notwithstanding systemic sufficiency of state protection in the receiving state a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require. (*Bagdanavicius*)

The appellant in *Horvath* argued that the police were unwilling to protect him, as a Roma, but the tribunal found as fact this was not so and so the issue of systemic ineffectiveness in relation to a minority group was not addressed. Leading cases in the UK have not yet considered the application

9 *Saadi v Italy* (Application no. 37201/06)

10 Refugee or Person in Need of International Protection (Qualification) Regulations 2006 SI 2525

11 Article 7 QD 2011 adopts the same wording, but prefaces it with 'Protection against persecution or serious harm must be effective and of a non-temporary nature.'

of 'effective protection' to a woman or other person who is vulnerable in their society where it is accepted that the state condones their persecution by non-state agents. Weaknesses in the protection available have been more often treated as failures of a willing system. Some of the cases of gender-based violence analysed for the research raise the question of whether the system is in fact willing, and call for closer attention to the use of internal protection in such a situation.

This issue was raised as a problem in gender-based violence claims in a number of Member States in the APAIPA study. It has been addressed in cases in Australia, Canada and New Zealand, where the Federal Courts and the New Zealand Refugee Status Appeals Authority have found that a generally effective police force did not give effective protection to women in particular situations of vulnerability.[12]

In cases studied for this research, COI relied on to demonstrate effectiveness included the size and structure of the police force, legislation criminalising the feared act (e.g. Female Genital Mutilation (FGM) or domestic violence), descriptions of government bodies charged with social change or enforcement, NGOs, and so on. However, even this may be misunderstood if the real power structures in the country are not understood. See the Abraham's comments concerning the pervasive influence of the ruling party in Zimbabwe.

Where there is a detailed inquiry, as in some Upper Tribunal cases, the enquiry tends to be practically focused, citing *Horvath*, and access to effective protection is treated as largely a factual question. In *AM* and *BM* (*Trafficked women*) *Albania* CG [2010] UKUT 80 (IAC), the tribunal considered factors which could influence whether a trafficked woman would be able to access effective protection. These included:

1. The social status and economic standing of the trafficked woman's family.
2. The level of education of the trafficked woman or her family.
3. The trafficked woman's state of health, particularly her mental health.
4. The presence of an illegitimate child.
5. The area of origin of the trafficked woman's family.
6. The trafficked woman's age.

12 *SZAIX v Minister for Immigration and Multicultural Affairs* [2006] FCA 3 (10 January 2006); *Bibby Jacobs v Canada* [2012] FC 1176 (9 October 2012); *Flores v Canada* [2013] FC 938 (6 September 2013); *Refugee Appeal* No. 71427 (16 August 2000)

Where the inquiry was not so detailed, it was generally the individual application and impact which was missing, as stated by the Upper Tribunal in *AW* (*sufficiency of protection*) *Pakistan* [2011] UKUT 31 IAC at para 25:

> The Immigration Judge in our view never progressed beyond considering the issue of whether the appellant had established systemic insufficiency or a criminal system operated on a discriminatory basis. He at no point in his determination considered that the individual circumstances of the appellant were capable of making a difference to the question of whether there would be sufficient protection available in this case.

The API on *Considering the Protection Claim* advises that decision makers should take into account 'whether or not the applicant has sought the protection of the authorities… and any outcome of doing so or the reason for not doing so.'

Drawing inferences where an applicant had not sought the protection of the authorities was a recurring issue in this research. Most often not having sought protection was relied upon as damaging credibility, not only about the effectiveness and availability of protection, but about the well-founded fear itself. This may in some cases be contrary to the Refugee Convention, since fear of persecution as a result of approaching the authorities falls within the refugee definition. Fear of being at risk through contacting the police was expressed by women fleeing domestic violence in Bolivia, Gambia and Albania.

This section of the API is not cross-referenced to the APIs which describe obstacles to access to protection in claims based on gender, gender identity, sexual orientation or from children.

2.1.4 Access to protection

In this research it was apparent that access to protection was a key issue for applicants from groups who were vulnerable or marginalised. Obstacles that particular groups face in gaining access to protection were identified in APIs on *Gender Issues in the Asylum Claim*, *Gender Identity in the Asylum Claim*, *Sexual Orientation Issues in the Asylum Claim*. These described obstacles to access to protection as including 'lack of police response to pleas for assistance and reluctance, refusal or failure to investigate, prosecute or punish individuals.'

The API *Processing an Asylum Application from a child* explains that 'a child's relationship with the state is normally mediated through parents or other adults, who may condone the harm, providing active encouragement, participate directly in it or threaten the child with the negative repercussions of non-cooperation'. The general guidance on deciding claims, *Considering the Protection Claim* refers in far more limited terms to obstacles to access to protection:

> Decision makers should consider whether protection … is available to an individual regardless of their race, ethnicity, sexual orientation, disability, religion, class, age, gender, occupation or any other aspect of their identity.'

This section does not cross-reference the specialised guidance mentioned above, and can be applied in a way analogous to classic 'gender-blindness' or 'race-neutrality'. In other words, if there is no provision debarring a particular group, the protection may be assumed to be available since a level playing field is implied.

While case law on access to protection is undeveloped, arguably this is anyway a factual question. Obstacles to access to protection for particular groups were addressed in some country-specific materials, for instance the current Afghanistan OGN which states: 'Women cannot currently rely on protection from the Afghan authorities' (para 3.12.10).[13]

Although the obstacles facing women in gaining protection from the authorities were referred to in the API on *Gender Issues in the Asylum Claim*, in the decisions read for the research, this did not appear to influence the decision maker's interpretation of the applicant's evidence. This is clear in Nadia's case (page 3) where she had experience of the effectiveness of the police for her, consistent with the API on Gender Issues, and yet was disbelieved. The following problems were noted with decision quality relating to assessing safety and access to protection when internal relocation was proposed:

- The comments of the applicant in interview might not be given any weight
- The refusal letter applied COI selectively. Even when COI substantiating the applicant's assertion was quoted, the link was not made, and the COI might even be used to opposite effect.
- Leads given by the applicant were not followed up by COI research.

13 Afghanistan OGN June 2013

Tanya, Albania, claimed to have been trafficked

Questions and response at interview re: lack of protection	HO reasoning that protection sufficient	COI quoted in decision letter
Q: 'why would you not be able to report him to the police and assist them to locate him if it is that easy to locate someone in Albania?' A: 'if they find out I have gone to the police first they would kill me and then go to my family.' Q: 'why do you believe the police would give your details [to persecutor]?' A: "It's easy in Albania. If you have money you can do anything.'	'This does not demonstrate that the authorities would be unwilling to grant protection to you. You have never encountered any problems with the police and there is no evidence that they would be unwilling to assist you'	COIR citing US Trafficking in Persons presents a mixed picture of steps taken by government, removal of funding from shelters, NGOs undermined, lack of witness protection. 'Pervasive corruption at all levels of society continued to affect government's attempts to address trafficking.' Amnesty International and European Commission (EC) Staff working paper both say that law does not adequately protect victims

2.1.5 Durability

The API on internal relocation advises 'Protection in that area must be effective and of a durable nature'.

The 2004 QD does not refer to durability, but the recast QD provides that protection must be effective and non-temporary, and durability is sometimes treated as a relevant factor in UK decisions, implicitly or explicitly. The context in which durability appeared in the research was in relation to shelters and refuges.[14] The distinction was often blurred between the reasonableness limb and the safety limb, and this obscured the possibility that reliance was placed on an NGO as an actor of protection. This was also relevant in cases where family support was cited (as argued by the Home Office in *KA (Pakistan)*). If, in fact, a person supported by family would not be targeted by persecutors, then the existence of family could legitimately lead to a finding that there was no well-founded fear. If the persecutors would pursue, but the family be expected to protect the applicant, this would cast the family as an actor of protection, which would not be legitimate under the Refugee Convention or QD Article 7. If the presence of family was considered *after* the question of risk had been settled, it could be relevant to the reasonableness of relocation. These distinctions were not clear.

In a Nigerian case, issues about the shelters set out in the COI relied on in the Home Office refusal letter were relevant to the conditions of life which the applicant was expected to tolerate, and were thus legitimately an aspect of reasonableness:

> Women prefer to go to friends or relatives... the general perception amongst Nigerians is that shelters hide battered women and women with many problems who have no relatives to turn to. Many women, even victims of violence themselves, do not want to be associated with such women....seen as violators of own culture and may feel ashamed...

The refusal letter concludes that internal protection is available because she can seek help from these shelters.

The issue of availability of shelters was considered in detail in the context of the applicant's circumstances and COI in another unreported Upper Tribunal case of a woman whose nationality was disputed. The Tribunal held that in the proposed region she would stand out as a single mother with a baby who could only speak a language uncommon in that region. She would face a heightened risk of re-trafficking and the state mechanisms, which were accepted to exist and be effective in some cases, would be unable to protect her. The tribunal considered the availability of a National Agency for the Prohibition of Traffick in Persons and Related Matters (NAPTIP) shelter, but following the Court of Appeal decision in *PO Nigeria* there was no country guidance on whether a woman with a young child would be admitted to a shelter, or how long for, and what mental health support would be available. Internal relocation would be unduly harsh.

It is instructive to note that the appellant's representative produced evidence from the Poppy Project, 2 country experts, medical reports, a psychiatric report, a church, a health visitor, a nursery, a children's society and a COI bundle. The volume of evidence to deal properly with an internal protection issue can be extensive.

2.1.6 Risk and reasonableness

The discussion of reliance on shelters is a particular example of a more general phenomenon in the decisions analysed, which is that risk and reasonableness tend to merge in decisions at all levels, and the availability of internal protection is considered as a single question.

The QD clearly treats reasonableness as an additional question, after the issue of risk of persecution and serious harm has been settled. In *AH (Sudan)* which followed *Januzi* in the House of Lords on the same facts, the House made it clear that that it would be an error of law to use non-derogable rights, most relevantly Article 3 ECHR, as a standard for measuring reasonableness. Reasonableness was a further question after risk had been considered. As shown above, where risk of persecution or serious harm and reasonableness become one question, serious risks in the proposed region are not identified as such, but are regarded as only relevant to reasonableness or harshness.

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

2.2 Reasonableness

The issue in *Januzi* concerned the second limb of internal protection. The question before the Court was:

> Whether, in judging reasonableness and undue harshness in this context, account should be taken of any disparity between the civil, political and socio-economic human rights which the Appellant would enjoy under the leading international human rights conventions and covenants and those which he would enjoy at the place of relocation.

This inclusion of 'without undue harshness' was derived from Canadian cases[15] and had been incorporated previously into the UK approach by the Court of Appeal.[16] UNHCR Guidelines[17] also referred to terms used by states in interpreting reasonableness, and these included that internal protection be without 'undue hardship' to the refugee.

The House of Lords held that reasonableness should be judged by whether the applicant 'can live a relatively normal life there judged by the standards that prevail in his country of nationality generally'. They rejected what they described as the 'Hathaway/New Zealand approach,' drawn from the Michigan Guidelines and New Zealand case law. In doing so they appeared to merge the standard laid down in the Refugee Convention with norms of civil, political and socioeconomic human rights drawn from international law. They also appeared to equate assurance of rights and Refugee Convention standards with the standard prevailing in the host country. This equation appeared to have been infected with a concern that refugees not incidentally benefit from a rise in living standards as a result of 'not having sought' protection in their own country. However, as the Michigan Guidelines made clear, the standard imposed by the Refugee Convention is not an international standard of human and socioeconomic rights, but requires that refugees not be discriminated against by comparison with others: 'the relevant measure is the treatment of other persons in the proposed site of internal protection, not the putative asylum country.'[18] Full exploration of this question is outside the scope of this report, but following the adoption of the Common European Asylum System and the EU Charter of Fundamental Rights, the question of the standard to measure reasonableness of the Internal Protection Alternative (IPA) is open and unresolved. The rest of this section examines how the UK is presently approaching it.

2.2.1 Home Office Guidance

The API on internal relocation sets the question to be considered as: 'Is it reasonable to expect the applicant to stay in that part of the country?'

The slight difference between this and Article 8 QD, which asks whether the applicant can reasonably be expected to stay in that part of the country, risks losing emphasis on what is reasonable for this applicant and could suggest that the question is what a hypothetical reasonable person could be expected to do. The UNHCR guidelines make the point:

> It is not an analysis based on what a hypothetical 'reasonable person' should be expected to do. The question is what is reasonable, both subjectively and objectively, given the individual claimant and the conditions in the proposed internal flight or relocation alternative.

As the QD requires, the API says that the decision maker must consider:

- The general circumstances prevailing in that part of the country; and
- The personal circumstances of the applicant.

Guidance is given based on sources quoted in *Januzi*:

> Relocation would be unreasonable if life for the individual applicant in the place of relocation would result in economic annihilation, utter destitution or existence below an adequate level of subsistence. So, for example, an applicant should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or the jungle, if those are the only areas of internal safety available. On the other end of the spectrum a simple lowering of living standards or worsening of economic status would not be unreasonable.

15 Thirunavukkarasu v Canada (Minister of Employment and Immigration) [1994] 109 DLR (4th) 682 and Ranganathan v Canada (Minister of Citizenship and Immigration) [2001] 2 FC 164
16 Karanakaran (Nalliah) v Secretary of State for the Home Department [2000] 3 All ER 449
17 See note 7 above.
18 International Refugee Law: The Michigan Guidelines on the Internal Protection Alternative, James C. Hathaway, April 9-11 1999

> 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). In assessing economic viability, the possibility of avoidance of destitution by means of financial assistance from abroad, whether from relatives, friends or from governmental or non-governmental sources, should not be excluded.

The legacy of *Januzi* is also apparent here: 'internal relocation should not be dismissed just because the applicant would experience the drawbacks of living in the country from which he originally came.'

The API specifically points to consideration of the situation where an applicant had lived or stayed in another part of their home country before leaving: 'recent residence or ties in the safe area would clearly reinforce the argument that internal relocation was the more reasonable option.' This takes the focus away from internal protection as a forward-looking assessment of future risk. In such an assessment, past actions are evidence towards assessing that risk, not necessarily a strong indicator that they can be repeated.

Case law is clear that a person cannot be expected to stay in hiding to stay safe,[19] but application of this includes an appreciation of the whole context in which the person is living.

Alice, felt this had not been appreciated in her case:

I did spend 2 months with my auntie at [town] but I was not comfortable there. My husband called my relatives asking about me and they said they didn't know. I tried to keep going to work but it was frightening and I couldn't live a normal life. After work I stayed in the house. I could not keep going like that.

While *Januzi* and the guidance derived from it conjure up the picture of a single man who has a level of freedom of movement, and do not refer to the factors which might impact on, for instance, lone women or LGBTI applicants, this emphasis is counterbalanced in other APIs and some of the OGNs. These routinely refer to internal protection, and some set out circumstances for particular groups in which it will not be available, e.g.

- Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for women who are genuinely fleeing a risk of serious domestic violence.
- Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option.
- Educated and professional women may however find it possible to support themselves in alternative locations.[20]

The API on *Gender issues in the Asylum Claim* alerts decision makers to some issues that may affect women's ability to relocate, including:

- Financial, logistical, social, cultural factors.
- Difficulties for divorced women, unmarried women, widows or single/lone parents in countries where women are expected to have male protection.
- Discrimination so that a woman is unable to work and cannot survive.

The API on *Sexual Orientation Issues in the Asylum Claim* makes points in very similar terms. Neither API refers to violence and harassment.

Following *Januzi* there is no restriction on characteristics of the applicant or features of the region which may be relevant to the reasonableness of an IPA. By way of example, the Albania OGN of December 2013 says that caseworkers need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

The most common factors seen in this research were age, capacity to obtain work, and education. In informal conversation during the research, asylum seekers expressed puzzlement that the Home Office considered their education would keep them safe.

19 *SA (political activist – internal relocation) Pakistan* [2011] UKUT 30 (IAC)

20 OGN Pakistan January 2103 para 3.10.10

Safety was uppermost for them, and they felt that the risks of internal protection had not been understood. In one First Tier Tribunal case, the judge refused internal protection for a well- educated young woman, on the grounds that if she sought to use her education she would draw attention to herself and she would be vulnerable to re-trafficking.

The relevance of a social support network was a factor whose importance depended entirely on the personal circumstances of the applicant in the context of the particular country and the impact of being alone in that place. This was another subject where local and anthropological evidence could be critical. In some cases the position of lone women was publicly documented, and guidance given to caseworkers about it e.g.

> Cultural prohibitions on free travel and leaving the home unaccompanied prevented many women from working outside the home and reduced their access to education, health care, police protection, and other social services[21]

The standard set by *Januzi* , of living a 'normal life' in the country of origin, was set in the context of the ultimate acceptance that Darfuri farmers could, if necessary, reasonably be expected to live in IDP camps on the edge of Khartoum. The standard was low – the real possibility to survive economically. However the Albanian OGN mentioned above included factors which *Januzi* had excluded, and, ultimately, the question comes down to that set out in the QD, whether the claimant can reasonably be expected to stay in the proposed region.

Internal protection in a number of specific situations is governed by country guidance cases. E.g. women at risk of FGM in Kenya,[22] lesbians in Jamaica,[23] lone women in Afghanistan[24]. Each of these cases sets down detailed guidance for which women will be at risk and in what circumstances, and consider the reasonableness of relocation. In this respect the UK follows a similar pattern to other some other Member States in the APAIPA research, which acknowledge particular groups to be at risk in particular countries.

21 OGN Afghanistan June 2013 para 3.12.7 quoting USSD report.

22 *VM (FGM, risks, Mungiki, Kikuyu/Gikuyu)* [2008] UKIAT 49 and see FK (Kenya) v SSHD [2008] EWCA Civ 119

23 *SW (lesbians - HJ and HT applied) Jamaica* CG [2011] UKUT 00251(IAC)

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

2.2.2 Safe and legal travel

The assessment of whether internal protection is available includes the question of whether the refugee can safely and legally travel to the proposed region. Although this did not find its way into the QD until the 2011 recast, the question of safety of travel to the proposed region is considered in UK case law. In *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 00445 (IAC) the Tribunal said:

> Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection.

The Tribunal found that travel overland to Somaliland was not safe and internal travel was not safe for women on their own. This meant that internal protection was not available for a woman who would be required to travel without male relatives in order to reach the proposed region.

The API says that 'technical' obstacles to return, such as the unavailability of travel documents, does not make internal relocation unavailable and thus warrant a grant of refugee status. This caveat is in the 2004 QD, though not the recast. It is in accordance with cases in the higher courts as regards return to the country of origin since HH & Others [2010] EWCA Civ 426 says that a real risk of serious harm on the return journey would found a grant of humanitarian protection, but a (temporary) obstacle such as lack of documentation does not. However, although the API does not mention it, a legal obstacle to internal travel which cannot be circumvented is accepted by the courts to make internal protection unavailable, as demonstrated in *AMM* above.[25]

25 The appeals in *MK (Iraq)* were conducted on the basis that internal relocation would not be available if requirements for entry to the KRG such as a sponsor and documentation were consistent and insuperable ([2013] EWCA Civ 1276).

Abraham's experience

Abraham came to the UK in 2004 as a student with his son. He claimed asylum in 2010 on the basis of political opinion. His anti-Mugabe communications were intercepted, an arrest warrant issued for him, and his wife subjected to harassment. He was refused asylum.

There was no reference to internal protection in my first interview nor in the initial refusal, nor in the tribunal's refusal of my appeal.

The idea that I could live somewhere else in Zimbabwe was never raised until, in 2012, a solicitor made further submissions, and these were refused on the grounds that the Home Office did not believe me, but they also said I could move to Bulawayo.

They said it would be safe to stay there as an opposition supporter. They said that because it is an active MDC area there would be no militia attacks there. This is true to an extent because in an area like that people are not pressurised to attend e.g. party meetings. The MDC popularity in an area affects day to day social interactions but it doesn't change the power structure. It does not have any effect on the state pursuing you. The MDC doesn't control the police.

It is a flawed argument to say I would not be at risk in Bulawayo. I can understand it might be different in a country where areas are divided between warlords who control certain areas. Zimbabwe is not a failed state –it's an intact and robust administration which controls police, army and intelligence services. They can follow you wherever you are. There is a relatively well formed infrastructure – phone, internet, road connections. A friend of mine who worked for the telephone exchange showed me how the intelligence services listen to phone calls. It's easy. Post and tele-communications is a quasi government department. Its head is government appointed.

A repressive unitary state will trace and persecute if they want to. What would create safety would be a new administration in Zimbabwe.

In naming Bulawayo the Home Office also said that I could get employment there because Zimbabwe is economically sound. There is no chance of this. Unemployment is very high in Zimbabwe. Jobs are for the boys; you have to be Zanu PF to get one.

In saying I could go to Bulawayo they said nothing about me. They did not mention how it would be OK for me specifically.

There is no legal route to challenge the refusal of my further submissions. I initially thought my solicitor was going to apply for judicial review, but the barrister advised against it so she did not. So I had no avenue to challenge the use of internal protection in my case.
The fact I am from Harare is not an issue in relation to relocation in Bulawayo. There would be no health issues – the facilities are much the same as in Harare. Language is not a problem. I have Shona speakingrelatives who live in Bulawayo. The issue is risk.

Chapter 3
Internal protection in decision making, practice and procedure

3.1 The asylum interview

API on Internal Relocation says that possible alternative safe locations should be suggested at the asylum interview, that asylum seekers should be given an opportunity to respond to that suggestion at the interview, and any issues raised by the asylum seeker in support of a claim that the relocation would be unduly harsh should be addressed in the reasons for refusal letter, if the argument for IPA is maintained.[26]

In 12 of the 14 cases where information on interview was available, internal relocation was raised; the following questions were asked in interview:

- 'Why could you not move somewhere else in your country?'
- X is a big country, how would [the persecutor] find you there?
- Why can you not move to x city? It has a population of xxx. How could [the persecutor] find you there?
- How would [persecutor] know that you had returned to your country?
- Is there any reason why you could not move to x region and be safe there?

These questions related mainly to safety. Conditions of life in the region were not explored. Answers given by applicants were commonly brief and related potentially both to safety and reasonableness. For instance, 'I have never been there' or, 'I don't know anyone there.' The possible significance of these responses was not followed up with a question inviting comment or description. The interviewee who said 'I don't know anyone there' was a traumatised rape victim from Uganda, and implications for her as a woman alone were not addressed.

While interviewers did not open up these issues, interviewees were also not made aware of the need to explain. None of the interview records or extracts read for the research included an explanation by the interviewer of the reason for asking about another safe region. The applicant was not notified that this could be a legal objection to their claim. The APIs on interviewing and internal relocation do not require this explanation to be given.

Alice, Gambia

Fleeing violence from her husband and his family, and the culture which supports FGM and which does not respect women.

I was incompletely circumcised as a child. This is shameful in Gambia. Everyone points at you and says you are not a proper woman. My husband wanted to insist that I was fully circumcised. He used to beat me. I was not an activist against FGM, but in my work as a teacher I sometimes talked about the dangers of circumcision and especially if children had questions I would answer and give them information. We had GAMCOTRAP to speak at the school. I did not want to be fully circumcised. My husband threatened to kill me if I was not. He said I disgraced him.

They did not ask me in my interview whether I could live safely somewhere else in Gambia. They said this first in the refusal letter. They said I could I go somewhere else in Gambia, for instance to [city B]. [City B] is the place where my husband was educated. He went to high school and college there. Our home together was in [city C]. This is a short bus ride from [city B] – about 20 to 30 minutes. If the Home Office had asked me about this I would have explained. I don't know why they said [city B].

This worried me a lot. Gambia is very small. My husband is a businessman. He travels around a lot. He knew a lot of people because of that.

In my interview they did not ask me much about my husband and his life. That's why I did not tell them he went to school in [city B]. They asked me why I came here. They asked 'why do you fear going back to Gambia?' I told them, including that my husband nearly killed me. They did not ask about my husband, only about what happened to me. All the questions they ask me – I have the answer. If they ask me I can tell them. If they had asked me about my husband more it would have made a difference.

This interview illustrates the importance of appreciating the shared duty to gather the elements relevant to the claim. See the section on burden of proof below. Substantiated information about conditions in the proposed region was realistically not something applicants could prepare in advance of interview.

Where the possibility of living elsewhere was raised in interview, the interviewer usually also began to address

26 Asylum Policy Instruction, Internal Relocation, June 2007, p.2.

the question of the reach of the persecutor. Again the points made by the applicant were not followed up.

A specific location was not always identified. As Alice's case above demonstrates, the omission of internal protection at all from the interview had a significant impact on the applicant.

3.2 Assessment of facts and circumstances

In making a decision as to whether there is a part of the country in which there is no real risk of persecution or serious harm and where the applicant can reasonably be expected to stay, the immigration rule para 339O, replicating the QD, provides that the Secretary of State 'will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.'

The challenge is that, as in Sedley LJ said in *Daoud v Secretary of State for the Home Department* [2005] EWCA Civ 755:

> Internal relocation is … a serious and frequently problematical issue, requiring proper notice, proper evidence and proper argument….

It became increasingly apparent in the research that a soundly based internal protection decision required a significant amount of information, and it presented particular challenges in obtaining and assessing evidence.

As the immigration rule suggests, and as Article 4.3 QD requires, the combination of the applicant's own evidence together with COI was needed to produce a well-reasoned and well-grounded decision. This could be seen in some leading cases.[27] As shown above in relation to assessing the reach of the persecutor and access to protection, there were problems with evaluation and use of the applicant's evidence in the context of COI, also illustrated here.

Tanya, Albania

Q: why do you believe the police would give your details [to persecutor]?'
A: 'it's easy in Albania. If you have money you can do anything.'

COI cited in the refusal letter: 'Pervasive corruption at all levels of society continued to affect government's attempts to address trafficking.'

Refusal letter in asserting internal relocation: 'You have not demonstrated that [persecutors] have the status or influence that would enable them to identify that you had even returned to Albania, or trace you...'

Neither the applicant nor the COI said that status and influence were the most potent factors enabling persecutors to trace her. The applicant says that bribery and corruption makes this possible, and this is supported by the COI.

These issues are not unique to internal protection, but the fact-intensive nature of internal protection, and the special burden it places on evidence, makes them particularly significant.

Article 4.3 QD[28] sets out an important requirement for interview and decision practice which is pertinent to these issues in assessing internal protection:

> The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
>
> (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;
>
> (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm.

27 E.g. PO (Nigeria) v SSHD [2011] EWCA Civ 312, AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC)

28 replicated in the immigration rules para 339J

Some of UNHCR's exposition of this paragraph in the context of credibility assessment is also very relevant to internal protection.[29]

These paragraphs of Article 4.3 are not just procedural but have implications for the substance of the decision. In particular, the question of whether a vulnerable applicant has access to protection in their country of origin requires careful consideration of 'the laws and regulations of the country of origin and *the manner in which they are applied*'.

The requirement to take account of 'relevant statements…presented by the applicant' is relevant to the assessment of evidence not only as regards the reasonableness of internal protection but also as regards risk in the protection region, since the applicant has particular knowledge of her country of origin and often of the persecutor.

In UK practice, as illuminated by the research, these provisions were not referred to. It appears that the rules are treated as satisfied by the routine asylum process, and the full impact of Article 4.3 may not be utilised.

A key problem of evidence in internal protection decisions was a lack of the local and expert knowledge and information which would enable internal protection to be properly assessed.

Beyond conclusions about the reach of the persecutor based on their circumstances and those of the applicant, the COI-based reasons given for considering an internal protection region to be safe were usually sparse. In the unreported case files read for the research, geographical area or population size was the main reasons advanced to demonstrate the safety and suitability of an alternate location. In reported cases and cases mentioned by interviewees, other factors were relied on which related to the asylum grounds, such as predominant religious or ethnic group.

The position of refugees returning to their home country was observed by some interviewees to be more similar in some countries to that of Internally Displaced People (IDPs), rather than people who had chosen to move within their country of origin. Information about IDPs' situation might be more relevant than some of the mainstream human rights reports but was not always available and was rarely considered. A number of the issues that were critical to actual conditions on return could be addressed only by local knowledge. Examples were, how a persecutor traces a person they wish to harm; what is the attitude of the local population to a woman on her own; how are LGB people treated in that area. This information might sometimes be available, particularly through experts, but was not always in the public domain.

In assessing risk on return, these difficulties specific to internal protection are added to existing problems of evidence in gender-based and LGBTI claims. Accurate information on levels of domestic and other gender-based violence[30] and on violence against LGBTI people may be difficult to obtain, including because statistical data or reports may not be available, due to under-reporting of cases, or lack of prosecution.[31] Since information of this kind is sometimes in Home Office COI, it is important to be aware that it may be incomplete.

The case of Jami, above, in which the expert provided information which explained and supported the applicant's assertions, illustrated the importance of local knowledge. The information in that report was potentially relevant to other Gambian cases, and an issue raised by an interviewee was the need for more effective sharing of relevant information.

Occasionally the research showed a comment by an applicant on the COI. Alice from Gambia said, in relation to COI relied on by the Home Office to refuse her further submissions:

Regarding the UNIFEM initiative and things like this, officials sign the agreements publicly but that doesn't affect what happens at home. The president and the imam don't know what's going on in my house. My husband nearly killed me.

29 See UNHCR's exposition of the proper application of Article 4.3 in *Beyond Proof: Credibility Assessment in EU Asylum Systems* May 2013

30 Gender Related Asylum Claims in Europe: A Comparative Analysis of Law, Policies and Practice Focusing on Women in Nine EU Member States (2012)

31 UNHCR, Guidelines on International Protection : Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees para 37 and Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (2012) para 66

3.3 'Even if...' reasoning

Interestingly, the API on internal relocation does not suggest what might be the triggers for considering it. While sometimes an applicant is accepted to be at risk of persecution in their home area, but is refused asylum on the basis of internal relocation[32] this was not so in any of the cases analysed for the research and in the experience of interviewees it was unusual. Far more common was the use of internal protection as an alternative where the protection claim was disbelieved, i.e. 'it is not accepted that you face a real risk of persecution in your home area, but even if you do you could relocate to x region'.

This 'even if' reasoning was one of the most striking findings of the APAIPA research, and the UK had this in common with most other countries (Austria, Belgium, Germany, Italy, Poland, Spain).

> ***Nadia, Pakistan***
>
> In Nadia's case, the Home Office did not believe that she was at risk from her husband, but said that even if she was,
> she could live safely elsewhere in Pakistan.

There are arguments in favour of this approach, based on fairness and efficiency. There are also substantial difficulties in practice.

The applicant needs an opportunity before the decision to know that internal protection will be raised, and to give their reasons for opposing it. The variable practice in Home Office interviews has already been discussed. There is only one asylum decision letter. Normal Home Office practice is to raise internal protection in the decision letter, and indeed if this is not done, the applicant does not have an opportunity to respond to it when lodging their appeal. In the refusal letter, internal protection is usually raised as an alternative to an adverse credibility finding. For instance, in *MN and others* (*Ahmadis – country conditions – risk*) *Pakistan* CG [2012] UKUT 00389 (IAC), the Home Office disbelieved an applicant's account and *in the alternative* asserted they could relocate to Rabwah or Karachi.

This 'belt and braces' approach developed from Home Office Presenting Officers being asked by immigration judges what their position would be if the judge found the applicant credible. In this case the Home Office needs to be ready to advance the internal relocation argument at the appeal hearing, and the appellant needs to be ready to respond to it. The more expensive alternative is an adjournment and a new hearing to deal with internal protection.

In terms of the substantive decision, some judges consider the belt and braces approach to be good practice also in refugee law, on the basis that a refugee assessment is not complete without consideration of internal protection, since a person has no right to international protection if in fact their home country can protect them. In some Tribunal cases however, internal protection was not addressed where no risk of persecution was found. In *MD Ivory Coast* the Upper Tribunal said that internal relocation is predicated on finding risk of persecution in the home area. In *SL Azerbaijan*, the Upper Tribunal said: 'As we have found that the appellant would not face persecution in Baku, the issue of internal relocation is not relevant' (para 132).[33] In the cases read for this research, First Tier Tribunals sometimes made findings in the alternate, but, as in the Upper Tribunal, the judge did not always consider internal protection if they had not found a well-founded fear of persecution.

A key problem with advancing internal protection when no risk has been found, as identified by interviewees and evident in the decisions analysed, is that it is difficult to write a good decision which deals fully with both primary grounds of refusal and internal protection. Home Office decision makers are under time pressure and it requires a switch of thinking from finding no risk to finding that if there is a risk, there is internal protection. To be properly reasoned, internal protection needs to be based on protection against a risk, but this is a risk which the decision maker has found not to exist.[34]

The result was that Home Office decisions read for this research rarely fully argued internal relocation, but rather used it in a manner commented on by Sedley LJ in *Daoud* quoted above:

32 The asylum refusal of Mr Januzi, the lead appellant in the House of Lords case, was on this basis.

33 See also *KH* (*Article 15(c) Qualification Directive*) *Iraq CG* [2008] UKAIT 00023: 'It is unnecessary for us to consider whether the appellant in this case would have a viable internal relocation alternative because we have not found he faces a real risk of serious harm in his home area.' (para 219).

34 Interview with UNHCR.

> Internal relocation is not…a throw-away submission in case other arguments fail. It is a serious and frequently problematical issue, requiring proper notice, proper evidence and proper argument, and it is governed by legal tests to which this court has more than once devoted attention.

While there was general agreement among interviewees that it was desirable to make the internal protection decision at the initial asylum decision stage, practitioners confirmed the impression given by the research sample that internal protection argued in an incomplete and subsidiary fashion, as a fall back to an adverse credibility finding which itself was incomplete, is common.

The risk of this practice is apparent in the case of Nadia. If she is at risk from her husband as she claims, internal protection for her in Pakistan would need to be very carefully considered, as described in the section from the Pakistan OGN quoted above, and on the basis of full individual evidence and COI. The risk of adding in internal protection on an 'even if' basis is that provides an illusion of protection in case the decision maker is wrong, but the reality is that the opposite is the case. If the decision maker is wrong, the risks for a woman in Nadia's position could easily preclude internal protection, and mean that she is at risk of being killed on return. Internal protection does not lessen the risk, but in a case of this kind, increases it.

3.4 Burden of proof

The QD does not provide where the burden should lie of proving that internal protection is (un)available. In the UK, the position is as stated by the tribunal in *AMM Somalia*:

….the respondent may (indeed, usually will) be required to raise the issue, so as to put it "in play" in any appellate proceedings, but it is then for the appellant to discharge the burden, as part of the requirement to prove, to the lower standard, that he or she is entitled to international protection. (para 498)

The burden is on the applicant to show that protection is insufficient and internal protection is not safe and is unreasonable in their case.

Article 4.1 permits the Member State to 'consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application' and the UK does this.

The Article separates the duty to substantiate from the duty to assess the application, which is said to be a duty: 'in cooperation with the applicant". The Home Office, however, accepts as UNHCR suggests, that the authority has a duty to facilitate the submission of information. The duty to assess 'in cooperation with the applicant' does not mean that the applicant shares the duty of assessing, but must mean that the Member State's duty of assessment should be carried out in a cooperative way, including facilitating disclosure through interview.

The UK's approach to the burden of proof, placing it on the applicant as regards all elements, including the unreasonableness, of internal protection, obscures this duty of cooperation, and, given the demanding nature of the internal protection inquiry, places an enormous burden on the applicant.

Conclusion

Internal Protection is a very demanding concept to apply, requiring substantial evidence of conditions in the country of origin as they would affect a returnee with the applicant's particular characteristics.

The basis in law for internal protection is as an exception to refugee status. If it is used instead as a fall-back to an adverse credibility decision, it creates a risk for the applicant. This is particularly so for applicants from vulnerable or marginalised groups whose persecution is socially condoned in their home country. Because the source may be other citizens rather than the state, it may be supported by less formal social practices and structures, the risks and ill-treatment may be less well-documented, and the ideology which supports the ill-treatment may be less acknowledged. At the same time, under current practice, such a person is more likely to have internal relocation applied to them. They may face risks of serious ill-treatment including violence. These considerations apply most obviously in the research sample to women fleeing gender-based violence, but potentially apply to any person who is marginalised in their society. The critical requirement is a fully evidence-based assessment. The risks created by this situation are compounded by placing the whole burden of proof on the applicant.

The API and leading cases focus on the asylum seeker's capacity to make a life in the proposed region of relocation; this is important and formally a part of the reasonableness analysis. The preoccupation of asylum seekers interviewed was with safety. Ironically, despite the detailed attention in some Upper Tribunal cases, this is generally an underdeveloped subject in UK decision making. What asylum seekers are saying is that the question should be one of internal *protection*. The ultimate question is 'will I be safe?'

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Asylum Aid
Club Union House
253 – 254 Upper Street
London N1 1RY

Tel: 0207 354 9631
Fax: 0207 354 5620
info@asylumaid.org.uk
www.asylumaid.org.uk

Charity number 328729
Company Number
2513874