IN THE HOUSE OF LORDS

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL (CIVIL DIVISION) (ENGLAND)

BETWEEN:

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-v-

AH (Sudan)

IG (Sudan)

NM (Sudan)

Respondents

THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervener

CASE FOR THE INTERVENER

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1. INTRODUCTION

1.1 The Intervener is the Office of the United Nations High Commissioner for Refugees (hereinafter "UNHCR").

1.2 The Intervener has neither sought nor been granted leave to intervene on the merits of the present appeal, but intervenes solely in respect of the narrow but important issue of principle it raises as to the proper interpretation and application of the 1951 Convention and 1967 Protocol relating to the Status of Refugees 1951 (the "1951 Convention"). In particular, the issue of principle concerns the proper interpretation of the concept of "internal relocation alternative"[1] and the requirement that any internal relocation alternative be "reasonable" (and, where applicable, not "unduly" harsh).

1.3 Any ruling by Your Lordships' House has potentially significant impact on the Intervener in carrying out its statutory functions both in the United Kingdom and globally. The Intervener has been mandated by the General Assembly to provide international protection to refugees under the auspices of the United Nations and, more specifically, is recognised by the High Contracting Parties to the 1951 Convention as having been charged with supervising the application of the Convention. Reference is made in this connection to

(a) the final paragraph of the Preamble to the 1951 Convention,

(b) Article 35 of the same Convention, which places an obligation upon Contracting Parties to cooperate with UNHCR in the exercise of its functions – in particular by facilitating the Office's duty to supervise the application of the provisions of the 1951 Convention; and

(c) the Intervener's Statute.

The United Kingdom of Great Britain and Northern Ireland is an original Party to the 1951 Convention.

2. RELEVANT FACTS AND ISSUES IN THE CASE

2.1 The Respondents are all Sudanese nationals who have requested permission to remain in this country as refugees under the 1951 Convention. The Respondents' cases have a long procedural history; they have previously been considered by

(a) the Asylum and Immigration Tribunal ("AIT"),

(b) the Administrative Court,

(c) the Court of Appeal ([2005] EWCA Civ 1219); and

(d) ultimately Your Lordships' House (*Januzi et al v Secretary of State for the Home Department* [2006] 2 AC 426)

on issues which are no longer live between the parties and will not be revisited in this statement of case.

2.2 When this case was previously considered by Your Lordships' House, the Intervener had also applied for and been granted permission to intervene. However, on that occasion only written submissions were made.

2.3 When these appeals first came before Your Lordships House, in *Januzi*, Your Lordships remitted the cases to the AIT for reconsideration:

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[1] To adopt the terminology of Lord Bingham in *Januzi*

(a) In the cases of AH and IG by consent on the basis that the Secretary of State had accepted that original determinations in these cases had been inadequately reasoned "even applying the test for internal relocation set out in *E v Secretary of State for the Home Department* [2004] QB 531" (*per* Lord Hope at [55]); and

(b) In the case of NM on the basis that:

> *…there are sound reasons for doubting whether the risks to which Mr Mohammed would be exposed in any event if he were to be expected to return to live in a camp in Khartoum were properly explored and analysed.* (*per* Lord Hope at [59])

Lord Hope continued to note, at [60], that:

> *Any assessment of the current situation in Sudan is, of course, beset with uncertainty. Assurances provided by the Sudanese Government about conditions in the camps and voluntary returns of IDPs to their home areas are patently unreliable. The situation is unstable and it is unpredictable. The almost total absence of civil, political and socio-economic rights which those in the camps experience is not in itself, for the reasons already given, a ground for holding that it would be unduly harsh for Mr Mohammed to move to a place of relocation in Khartoum. It is the risk to his most basic human rights that being required to live there would expose him that requires to be evaluated, as does the risk that sooner or later he will be forced by the state or those acting with its connivance or under its authority to return to Darfur where on the grounds of his ethnicity he would almost certainly be persecuted. An evaluation of those risks may also give rise to other reasons why on humanitarian grounds he should not be required to return to Khartoum.*

2.4 On remittal, the AIT, in a determination promulgated on 3 August 2006 ([2006] UKAIT 00062) held that returning the Respondents to Sudan would not involve an infringement of the UK's obligations under the 1951 Convention on the basis that:

(a) "The evidence does not show that any returnee of either of the origins described in sub-paragraph (4) will, regardless of their personal circumstances, have no option but to live in an IDP camp or a squatter area, if returned from the United Kingdom to Khartoum. It has not been suggested that the Sudanese authorities have a policy of requiring a returnee of either of the origins described in sub-paragraph (4) to go and live in IDP camps or squatter areas. The burden of proof is on the appellant to show a reasonable likelihood of having to live in such a place. This will involve showing that it is not

reasonably likely that the returnee will have any money, or access to money, or access to friends or relatives who may be able to assist in helping the returnee to establish him or herself" (AIT's summary at [309(5)]); and

(b) "But even if a such a person shows that it is reasonably likely he or she will end up in such a camp or area, conditions there, though poor, are not significantly worse than the subsistence level existence in which people in Sudan generally live. Applying the principle set out in *Januzi*, the conditions in such camps or areas are not generally such as to amount to unduly harsh conditions." (AIT's summary at [309(6)])

2.5 By judgment handed down on 4 April 2007, the Court of Appeal (Lords Justices Buxton, Moore-Bick and Moses: [2007] EWCA Civ 297) unanimously allowed the Respondents' appeals from the AIT and quashed the Appellant Secretary of State's decision refusing to grant asylum, holding that the only lawful conclusion the AIT could have reached on the evidence before it was that relocation of the Respondents to Khartoum would be unreasonable and unduly harsh.

2.6 As the Intervener indicated in his written submissions in *Januzi*, the situation where it is alleged that a fear of persecution relates only to the applicant's place of origin in his or her home country and that there is another specific area of the country where there is no risk of persecution and consequently no well-founded fear of persecution:

> *… is referred to variously in the academic literature and international documents as the 'Internal Flight Alternative', 'Internal Relocation Alternative' or 'Internal Protection Alternative'. For simplicity, the Intervener will adopt the terms 'Internal Flight Alternative' or 'Internal Relocation Alternative' for the purposes of this application as these terms most accurately reflect the Intervener's understanding of the requirements of Article 1A(2) of the 1951 Convention in situations where the persecution claimed arises only in one area of the country of origin.* [3.2]

2.7 In the intervening period no consistency of terminology has emerged and even the Intervener, in his publications, continues to refer to this situation as "Internal Flight Alternative" or "Internal Relocation Alternative".

2.8 However, as indicated above, for the purposes of these submissions, the Intervener will simply adopt the terminology used by Lord Bingham in his speech in *Januzi* and refer to 'Internal Relocation Alternative' throughout (abbreviated as "IRA").

2.9 As outlined in greater detail below, it appears that the issues before Your Lordships House, as identified by the parties, can broadly be summarised as:

(a) The correct approach to be applied in determining reasonableness (and/or its component elements of "without undue hardship" and/or normal life") as an element of the assessment of IRA cases; and

(b) Whether the Court of Appeal had taken a too restrictive approach, and erred in law, when considering the findings of fact made by the AIT, in holding that the only conclusion open to the AIT was that it would be unduly harsh to expect subsistence farmers from Darfur, as a broad category, to relocate to IDP camps or squatter settlements in Khartoum.

2.10 In relation to the former issue, it appeared from the original Petition for Leave to Appeal that the issue could be even more narrowly phrased as whether the Court of Appeal was right to base its decision that the IRA is unreasonable on a comparison between the situation in the individual's area of habitual residence and the situation in the identified area of relocation, if that is the basis of their decision (which is in dispute between the parties)[2], rather than, as the Appellant seemed to be submitting,

[2] In [45] of its judgment the Court of Appeal held *inter alia* that: *"… if an asylum-seeker who was a subsistence farmer in Darfur ends up in a camp in Khartoum he will not be living a relatively normal life, either compared with the life from which he has been expelled, or compared with the general standards of his country. That is not just because of the oppressive conditions themselves, but also because he lacks all or most of the resources necessary for economic survival in the way that he survived previously"*

on a comparison between the identified area of relocation and the situation in the remainder of the country as a whole.

2.11 As explained above, the Intervener will only seek to address the issues of legal principle arising from these points as informed by his role as the entity charged with supervising the operation of the 1951 Convention. In this context, the key issues now before Your Lordships' House are

(a) The correct approach to the "reasonableness" test, and the role of its component elements of "normal life" and "without undue hardship";

(b) What factors should be considered in making these assessments (as identified in the Handbook and the Guidelines as set out below) and, in particular, the role played by the individual asylum seeker's personal circumstances in this assessment; and

(c) the true nature of the guidance given and/or derived from the *obiter dicta*[3] of Your Lordships in *Januzi* and the Court of Appeal in *E*.

In considering these issues, the Intervener would emphasise, as he did in his intervention in *Januzi*, the fundamental importance of considering the particular circumstances of each individual applicant holistically and without undue legal technicality when considering whether internal relocation would be unreasonable.

[3] *Obiter dicta* because in neither case were the courts concerned with deciding the issue as now before Your Lordships' House. In so far as *E* was concerned with a question of "comparison" it was solely concerned with the question of whether the appellant's situation in the United Kingdom was a relevant comparator for the purposes of determining "reasonableness" and they concluded that it was not. In *Januzi* the comparison under consideration was that between "civil, political and socio-economic human rights which the appellant would enjoy under the leading human rights conventions and covenants and those which he would enjoy at the place of relocation" [1].

2.12 As a consequence and in summary, it is the Intervener's position that neither comparison identified above is or can be determinative when considering whether a proposed IRA is reasonable or not in relation to a particular individual refugee/asylum seeker. While both the situation in his or her area of habitual residence and/or in the country as a whole may well be relevant factors in the consideration, the real issue is whether, in the particular circumstances of the individual in question, relocation to the identified area of relocation would be reasonable in the sense of enabling him or her to lead "a relatively normal life without undue hardship".

3. INTERNAL RELOCATION ALTERNATIVE' – THE BACKGROUND

3.1 As is well known, Article 1A(2) of the 1951 Convention, as amended by the 1967 Protocol to the Convention, defines a 'refugee' as:

> *[any person who] owing to 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 is unable or, owing to such fear, is unwilling to return to it …* (hereinafter the "Refugee Definition").

3.2 However, as Your Lordships' House explained in *Januzi*, the language of Article 1A(2) does not expressly deal with the situation where an asylum-seeker has a well-founded fear of persecution under Article 1A(2) but that fear relates only to the applicant's place of origin in his or her own country and there is another specific area of the country where there is no risk of persecution and consequently no well-founded fear of persecution.

3.3 As a result, while, of course, the starting point of any analysis of a Contracting State's obligations under the 1951 Convention is the actual language of the provisions contained therein, in the present case that language is of very limited assistance.

3.4 However, as paragraph 91 of The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Doc. no. HCR/IP/4/Eng/REV.1, 1979, re-edited January 1992 ('the Handbook')[4] explains, in the context of an individual's necessary "well-founded fear of persecution":

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

3.5 This is further underlined by paragraph 2 of the 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, Doc. no. HCR/GIP/03/04 of July 2003 (the "Guidelines")[5]

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[4] The Handbook was drafted at the request of the Member States of the Executive Committee of the High Commissioner's Programme, the Office's governing body comprising States including the United Kingdom.[4] The Handbook's authority has been widely recognised. Indeed, the House of Lords itself has described the Handbook as having 'high persuasive authority' in *R. v Secretary of State for the Home Department ex parte Adan and Aitseguer* [2001] 2 AC 477 .

[5] These Guidelines were issued by the Intervener in the Context of the "Agenda for Protection", which was endorsed by the Executive Committee in October 2002 at the end of UNHCR's 2000–2002 Global Consultations on International Protection (See Agenda for Protection, UN Doc. A/AC.96/965/Add.I, 26 June 2002, Goal 1, Objective 6; Executive Committee Conclusion No. 92 (LIII), 2002, paragraph (a). They resulted,

> *The concept of an internal flight or relocation alternative is not a stand-alone principle of refugee law, nor is it an independent test in the determination of refugee status. A 1951 Convention refugee is a person who meets the criteria set out in Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (hereinafter "1951 Convention"). These criteria are to be interpreted in a liberal and humanitarian spirit, in accordance with their ordinary meaning, and in light of the object and purpose of the 1951 Convention. The concept of an internal flight or relocation alternative is not explicitly referred to in these criteria. The question of whether the claimant has an internal flight or relocation alternative may, however, arise as part of the refugee status determination process.*

3.6 As indicated in the Guidelines, the assessment of an IRA requires, first, consideration of the relevance of any proposed internal relocation and then, second, an assessment of the reasonableness of proposed relocation. The issue of relevance was addressed by Your Lordships in *Januzi & Others v SSHD* [2006] 2 AC 426 and consequently this aspect is no longer in issue in the present case.

3.7 It is in the context of the "guidance" given by the Handbook and the Guidelines that this appeal raises the important but narrow question as to when it will be "reasonable", for that individual to seek refuge in the identified "other part of the same country". As Lord Bingham noted in *Januzi* this "reasonableness test of internal relocation was readily and widely accepted" [8].

3.8 However, as Your Lordships' House identified in *Januzi* there is relatively little international jurisprudence relating to the principles underlying the concept of IRA (and, in particular, the question what is "reasonable") and its detailed application that could be called upon as an aid in resolving the issue now before Your Lordships'

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inter alia, from a meeting of international legal experts which examined the subject in San Remo, Italy, in September 2001. For further information regarding their status see V. Türk, 'Introductory Note to UNHCR Guidelines on International Protection', *International Journal of Refugee Law*, vol. 15, no. 2, 2003, pp. 303–06. The Guidelines were issued pursuant to UNHCR's mandate and, as noted on their cover page, 'are intended to provide interpretative legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field'.

House. Furthermore, there is also no consistent state practice concerning the application and operation of this principle. As Your Lordships' House identified in *Januzi*, broadly speaking, international practice appears to have been divided into those states/courts applying the "Hathaway/New Zealand rule"[6] and those, like the Canadian and English courts, who have followed a more restrictive approach.

3.9 In *Januzi*, Your Lordships' House expressly concluded that "the broad approach of the Court of Appeal in *E* must be preferred to the Hathaway/New Zealand rule": Lord Bingham at [15], see also Lord Nicholls at [23], Lord Hope at [45], Lord Carswell at [67] and Lord Mance at [70].

3.10 However, beyond the assistance derived from the Judgment of the Court of Appeal in *E* (see below) it is legitimate to draw further guidance from the Guidelines. Lord Bingham, in his speech in *Januzi* (at [20]) expressly described the guidance provided by these Guidelines (and, in particular, [7] and [28] to [30]) as "valuable":

> *Valuable guidance is found in the UNHCR Guidelines on International Protection of 23 July 2003. In paragraph 7 II(a) the reasonableness analysis is approached by asking "Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?" and the comment is made: "If not, it would not be reasonable to expect the person to move there".*

4. 'INTERNAL RELOCATION ALTERNATIVE' – THE APPLICABLE TEST

4.1 As indicated above, in *Januzi* Your Lordships' House expressly "preferred" the approach adopted by the Court of Appeal in *E* to the "Hathaway/New Zealand rule".

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6 So-called by Lord Bingham at [13]

4.2 In this context, it is respectfully submitted that the Court of Appeal in *E*, as Lord Bingham identified in [13] of his speech in *Januzi* had:

> … *considered the leading authorities in Canada, New Zealand and this country (including* Robinson*, which it declined to follow on somewhat questionable grounds: para 66), but was not persuaded to a different view.*

4.3 The judgment in *E*, endorsed by Your Lordships' House in *Januzi* despite the "questionable grounds" on which it declined to follow an otherwise binding precedent, therefore amounted to a departure from the established case law of the English courts rather than a mere continuation thereof. It is therefore essential to consider the passages in *E* which were cited with approval by Your Lordships' House in *Januzi*, namely paragraphs 23 and 24 of the judgment: Lord Bingham at [13] and Lord Carswell at [65] as well as Lord Nicholls at [23], Lord Hope at [45] and Lord Mance at [70].

4.4 In paragraph [23] of *E* the Court of Appeal held that:

> *Relocation in a safe haven will not provide an alternative to seeking refuge outside the country of nationality if, albeit that there is no risk of persecution in the safe haven, other factors exist which make it unreasonable to expect the person fearing persecution to take refuge there. Living conditions in the safe haven may be attendant with dangers or vicissitudes which pose a threat which is as great as or greater than the risk of persecution in the place of habitual residence. One cannot reasonably expect a city dweller to go to live in a desert in order to escape the risk of persecution. Where the safe haven is not a viable or realistic alternative to the place where persecution is feared, one can properly say that a refugee who has fled to another country is 'outside the country of his nationality by reason of a well-founded fear of persecution'.*

4.5 In paragraph [24] the Court of Appeal went on to hold that:

> *If this approach is adopted to the possibility of internal relocation, the nature of the test of whether an asylum seeker could reasonably have been expected to have moved to a safe haven is clear. It involves a comparison between the conditions prevailing in the place of habitual residence and those which*

> *prevail in the safe haven, having regard to the impact that they will have on a person with the characteristics of the asylum seeker. What the test will not involve is a comparison between the conditions prevailing in the safe haven and those prevailing in the country in which asylum is sought.*

4.6 This latter passage must, to some extent, be read bearing in mind that the issue with which the Court of Appeal was concerned at that juncture was whether the conditions prevailing in the United Kingdom were an appropriate or relevant comparator when assessing whether relocation would be unreasonable or unduly harsh. The Court of Appeal was not, however, concerned with the question whether that assessment always necessitates a comparison at all and/or whether that comparison, if necessary at all, would always have to be between the place of internal relocation and the place of habitual residence rather than the country as a whole (the issue that is now before Your Lordships' House).

4.7 In addition to the above passages from the Court of Appeal's judgment in *E*, Your Lordships' House further endorsed as "valuable" the guidance contained in paragraphs [28] to [30] of the Guidelines:

> ***Respect for human rights***
> *28. Where respect for basic human rights standards, including in particular non-derogable rights, is clearly problematic, the proposed area cannot be considered a reasonable alternative. This does not mean that the deprivation of any civil, political or socio-economic human right in the proposed area will disqualify it from being an internal flight or relocation alternative. Rather, it requires, from a practical perspective, an assessment of whether the rights that will not be respected or protected are fundamental to the individual, such that the deprivation of those rights would be sufficiently harmful to render the area an unreasonable alternative.* [underlined emphasis added]
>
> ***Economic survival***
> *29. The socio-economic conditions in the proposed area will be relevant in this part of the analysis. If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence. At the other end of the spectrum, a simple lowering of living standards or worsening of economic*

> *status may not be sufficient to reject a proposed area as unreasonable. Conditions in the area must be such that a relatively normal life can be led in the context of the country concerned. If, for instance, an individual would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life at more than just a minimum subsistence level.* [underlined emphasis added]
>
> *30. If the person would be denied access to land, resources and protection in the proposed area because he or she does not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable. For example, in many parts of Africa, Asia and elsewhere, common ethnic, tribal, religious and/or cultural factors enable access to land, resources and protection. In such situations, it would not be reasonable to expect someone who does not belong to the dominant group, to take up residence there. A person should also not be required to relocate to areas, such as the slums of an urban area, where they would be required to live in conditions of severe hardship.* [underlined emphasis added]

4.8 It is respectfully submitted that, in so far as Lord Bingham noted at the conclusion of his citation of the relevant passages from the Guidelines that "these guidelines are, I think, helpful, concentrating attention as they do on the standards prevailing generally in the country of nationality", this was intended to do no more than underline the point sought to be made by the Guidelines (at [29]) that the concept of "normality" must be considered by reference to what would be "a relatively normal life … in the context of the country concerned" rather than by reference to the individual's "normal life", currently, in the United Kingdom (as underlined by the Court of Appeal in *E*).

4.9 The reference to "a relatively normal life … in the context of the country concerned" in paragraph 29 of the Guidelines was intended to reflect the Intervener's submission that conditions in the country of asylum cannot be a relevant reference point for purposes of assessing what is "normal" but was certainly not intended to introduce any form of (mandatory) comparison, let alone a mandatory comparison between the situation in the area of habitual residence and the country as a whole, capable of being

conclusive of an assessment of "reasonableness". It is respectfully submitted that Lord Bingham's comment in [20] were equally not intended to do so.

4.10 In any event, even the concept of "normality" referred to in [29] of the Guidelines is only one of a number of possible factors relevant to what the Intervener submits must be a holistic assessment of what is "reasonable"; another such possible factor is "undue hardship".

4.11 It is respectfully submitted that all of these factors are (potentially) relevant aspects of the overall assessment of whether relocation would be "reasonable" to be determined by reference to the personal circumstances of the individual concerned and not by reference to theoretical and technical comparisons. After all, even circumstances which may be "normal" in the circumstances of the country concerned may well be "unduly harsh" for the particular individual whose claim is being assessed.

4.12 The test is not, therefore, whether "a" reasonable person can be expected to move to the area of relocation but whether "this" applicant, given his or her circumstances could "reasonably" be expected to move there. As a result, it is respectfully submitted that it is, at best, misleading when reference is made to the IRA being "objectively reasonable".

4.13 As [23] of the Guidelines makes clear:

> *The "reasonableness test" is a useful legal tool which, while not specifically derived from the language of the 1951 Convention, has proved sufficiently flexible to address the issue of whether or not, in all the circumstances, the particular claimant could reasonably be expected to move to the proposed area to overcome his or her well-founded fear of being persecuted. 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.*

4.14 As a consequence, rather than seeking to draw on (potentially misleading) comparisons the only factors necessary for the determination of whether the IRA is "reasonable" are:

(a) the conditions in the identified place of relocation; and

(b) the circumstances of the individual applicant.

4.15 This approach also finds support in [67] of the Court of Appeal's judgment in *E*, quoted with approval by Lord Bingham in [13] of *Januzi*:

> … *consideration of the reasonableness of internal relocation should focus on the consequences to the asylum seeker of settling in the place of relocation instead of his previous home.*

4.16 As both the Guidelines and the English courts have recognised, this is a forward-looking assessment.

4.17 While, in the context of such an assessment, the situation in the area of habitual residence may well be relevant (as potentially informing the circumstances of the individual), as may the situation in the country as a whole, neither of them is or can be determinative. It is in this context that the criteria set out in paragraphs [28] to [30] of the Guidelines, endorsed by Your Lordships' House in *Januzi* as "valuable", become highly relevant.

4.18 When considering the reasonableness of the situation so identified in the context of the personal circumstances of the individual, the approach identified e.g. in section 53 of the Handbook falls to be applied by extension:

> *'In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well founded fear of persecution on "cumulative grounds". Needless to say, it is not possible to lay down a general rule as to what cumulative grounds can give rise to a valid claim for refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context'.*

4.19 In this context, the Guidelines indicate what may be aspects of an individual's circumstances relevant to the assessment of whether an IRA is reasonable:

> *The personal circumstances of an individual should always be given due weight in assessing whether it would be unduly harsh and therefore unreasonable for the person to relocate in the proposed area. Of relevance in making this assessment are factors such as age, sex, health, disability, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, educational, professional and work background and opportunities, and any past persecution and its psychological effects. In particular, lack of ethnic or other cultural ties may result in isolation of the individual and even discrimination in communities where close ties of this kind are a dominant feature of daily life. Factors which may not on their own preclude relocation may do so when their cumulative effect is taken into account. Depending on individual circumstances, those factors capable of ensuring the material and psychological well-being of the person, such as the presence of family members or other close social links in the proposed area, may be more important than others.*

4.20 Furthermore, the Intervener welcomes the clarification given by the Court of Appeal in this case of Your Lordships' judgment in *Januzi* that it may be unduly harsh for an individual to be relocated where their Article 2 or 3 rights would not be breached (see paragraph 30 of the *Januzi*). While, clearly evidence of a real risk of a breach of Articles 2 or 3 will suffice as evidence of undue hardship, such a real risk is not a necessary precondition to show that it would be unreasonable to return an individual to a particular location within their country of origin.

5. THE JUDGMENT OF THE COURT OF APPEAL

5.1 In [33] of its judgment, the Court of Appeal's summarised the approach adopted in relation to the question of "reasonableness test":

> *An analysis of the judgment of Lord Phillips in* E *and of the speech of Lord Bingham in* Januzi *therefore yields the following propositions as to the approach to whether internal relocation is available in a particular case; bearing in mind always that the standard for rejecting the availability of internal flight is rigorous (per Brooke LJ in* Karanakaran v SSHD *[2000] 3 All ER 449 at p 456, and Lord Carswell in* Januzi *[2006] 2 AC 426 [67]):*
>
> *i) The starting-point must be conditions prevailing in the place of habitual residence*
>
> *ii) Those conditions must be compared with the conditions prevailing in the safe haven*
>
> *iii) The latter conditions must be assessed according to the impact that they will have on a person with the characteristics of the asylum-seeker*
>
> *iv) If under those conditions the asylum-seeker cannot live a relatively normal life according to the standards of his country it will be unduly harsh to expect him to go to the safe haven*
>
> *v) Traumatic changes of life-style, for instance from a city to a desert, or into slum conditions, should not be forced on the asylum-seeker.*

5.2 The Intervener broadly welcomes the fact that the propositions identified by the Court of Appeal specifically recognise the importance of the individual characteristics of the asylum seeker and goes some way to recognising the range of factors relevant to the analysis and consideration of the reasonableness test. However, it is respectfully submitted that caution must be taken in affirming wholesale the approach adopted by the Court of Appeal for general application to the inevitably wide range of countries and even wider range of individuals and individual circumstances in relation to which the reasonableness of a proposed IRA may have to be assessed.

5.3 It is respectfully submitted that the Court of Appeal, in its summary, by referring to the place of habitual residence adopted the wrong starting point for the reasonableness analysis which should always be the circumstances of the individual and the situation in the place of proposed relocation. Furthermore, it is respectfully submitted that the Court of Appeal erred in its general approach leading to the conclusion at [47] of its judgment that,

> [If] *the correct test, had been applied to the facts found in the present case there could have been only one right answer to the question of whether it would be unduly harsh to expect a subsistence farmer from Darfur to relocate to a camp or squatter settlement in Khartoum.*

5.4 It is respectfully submitted that, as a matter of principle, it is generally not possible to state that it will be unduly harsh to expect all those working in a particular occupation to relocate to a specific location within their country of origin or *vice versa*. It is only through consideration of the particular individual circumstances of each applicant, including past persecution and anticipated effect of the relocation on the applicant, both physically and psychologically, that one can come to a conclusion as to whether or not it would be unreasonable to return them.

5.5 The Intervener respectfully submits that the assessment of what is reasonable, cannot be distilled in the manner proposed by the Court of Appeal and that instead the approach suggested by the Guidelines should be adopted by Your Lordships House. Hence, in order to determine if the applicant could lead a relatively normal life without undue hardship, an assessment of the conditions in the place of relocation should first be made in the context of a broad analysis of the individual circumstances facing a particular asylum-seeker. As indicated above, factors which need to be taken into account would include the personal circumstances of the applicant, effects of past

persecution experienced or fear of persecution, safety and security, respect for basic human rights, psychological well-being, and economic survival.

6. SUMMARY OF CONCLUSIONS

6.1 While the Intervener welcomes the Court of Appeal's recognition that in the context of IRA it is important to recognise the central importance of the individual characteristics of the asylum seeker in question, it is respectfully submitted that the assessment of what is reasonable, cannot be distilled in the manner proposed by the Court of Appeal (or, it appears, by the Appellant) by limiting it to a mere comparison between the proposed area of relocation and either the area of habitual residence or the country as a whole.

6.2 The Intervener would submit that the holistic approach set out by the Guidelines and previously endorsed by Your Lordships' House provides the most appropriate, non-technical approach to the question whether it would be reasonable to expect the individual to relocate to the identified IRA.

6.3 As identified above, it is submitted that the correct approach when considering the reasonableness of IRA is to assess all the circumstances of the individual's case holistically and with specific reference to the individual's personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation, (including basic human rights, security conditions, socio-economic conditions, accommodation, access to health care facilities), in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could live a relatively normal

life without undue hardship. Comparisons as between the place of habitual residence or the country as a whole and the proposed place of internal flight may be relevant in the context of a broad analysis of the individual circumstances facing a particular asylum-seeker but are very unlikely to be, by themselves, determinative of the question.

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