

6.2 Summary Conclusions: internal protection/relocation/flight alternative

Expert roundtable organized by the United Nations High Commissioner for Refugees and the International Institute of Humanitarian Law, San Remo, Italy, 6–8 September 2001



The San Remo expert roundtable addressed the question of the internal protection/relocation/flight alternative as it relates to the 1951 Convention Relating to the Status of Refugees. The discussion was based on a background paper by Professor James C. Hathaway and Michelle Foster, University of Michigan, entitled 'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination'. In addition, roundtable participants were provided with written contributions including from Hon. Justice Baragwanath, High Court of New Zealand, Hugh Massey, United Kingdom, Marc Vincent, Norwegian Refugee Council, Reinhard Marx, practitioner, Germany, and the Medical Foundation for the Care of Victims of Torture. Participants included thirty-three experts from twenty-three countries, drawn from governments, NGOs, academia, the judiciary, and the legal profession. Hugo Storey, from the International Association of Refugee Law Judges (IARLJ), moderated the discussion.

There has been no consistent approach taken to the notion of IPA/IRA/IFA by States Parties: a number of States apply a reasonableness test; others apply varying criteria, including in one jurisdiction the 'internal protection alternative' approach as defined in the background paper. UNHCR has expressed its concern over recent years that some States have resorted to IPA/IRA/IFA as a procedural short cut for deciding the admissibility of claims. Given the varying approaches, it was considered timely to take stock of the different national practices with a view to offering decision makers a more structured analysis to this aspect of refugee status determination. These summary conclusions do not finally settle that structure, but may be useful in informing the application, and further developing the parameters, of this notion.

The following summary conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the understandings emerging from the discussion.

1. IPA/IRA/IFA can sometimes be a relevant consideration in the analysis of whether an asylum seeker's claim to refugee status is valid, in line with the object and purpose of the Refugee Convention. The relevance of considering IPA/IRA/IFA will depend on the particular factual circumstances of an individual case.
2. Where the risk of being persecuted emanates from the State (including the national government and its agents), IPA/IRA/IFA is not normally a relevant consideration as it can be presumed that the State is entitled to act throughout the country of origin. Where the risk of being persecuted emanates from local or regional governments within that State, IPA/IRA/IFA may only be relevant in some cases, as it can generally be presumed that local or regional governments derive their authority from the national government. Where the risk of being persecuted emanates from a non-State actor, IPA/IRA/IFA may more often be a relevant consideration which has though to be determined on the particular circumstances of each individual case.
3. The individual whose claim to refugee status is under consideration must be able – practically, safely, and legally – to access the proposed IPA/IRA/IFA. This requires consideration of physical and other barriers to access, such as risks that may accrue in the process of travel or entry; and any legal barriers to travel, enter, or remain in the proposed IPA/IRA/IFA.
4. If the asylum seeker would be exposed to a well-founded fear of being persecuted, including being persecuted inside the proposed IPA/IRA/IFA or being forced back to and persecuted in another part of the country, an IPA/IRA/IFA does not exist.
5. The mere absence of a well-founded fear of being persecuted is not sufficient in itself to establish that an IPA/IRA/IFA exists. Factors that may be relevant to an assessment of the availability of an IPA/IRA/IFA include the level of respect for human rights in the proposed IPA/IRA/IFA, the asylum seeker's personal circumstances, and/or conditions in the country at large (including risks to life, limb, or freedom).
6. Given its complexity, the examination of IPA/IRA/IFA is not appropriate in accelerated procedures, or in deciding on an individual's admissibility to a full status determination procedure.
7. More generally, basic rules of procedural fairness must be respected, including giving the asylum seeker clear and adequate notice that an IPA/IRA/IFA is under consideration.
8. Caution is desirable to ensure that return of an individual to an IPA/IRA/IFA does not arbitrarily create, or exacerbate, situations of internal displacement.