

Women's Asylum News

Women's Project at Asylum Aid

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"EVEN IF...": The use of the Internal Protection Alternative in asylum decisions in the UK

Christel Querton, pupil barrister at Lamb Building

The most recent [research report](#) published by Asylum Aid examines how, in decision making at all levels, internal protection is applied and its safety and reasonableness is assessed. The research examines in particular the extent to which decision makers take into account the vulnerability of asylum seekers when considering the availability of internal protection. Whilst the research report acknowledges that all asylum seekers may be

vulnerable, it sets out that the vulnerability of the applicant must be assessed within the context of their country of origin.

The main chapter examines the two limbs of the internal protection alternative, namely safety and reasonableness. The research found that the main concern of asylum seekers was the safety limb. This is despite the fact that, in UK law and practice, safety in the proposed area of relocation is not addressed in depth. The research also highlighted the focus in decision making on whether asylum seekers should have sought protection elsewhere within their own country before fleeing abroad. This is contrary to the EU Qualification Directive which requires a forward looking assessment of the availability of internal protection, taking into account all the relevant factors at the time of taking the decision. The report looks at a variety of factors relevant to the internal protection assessment including (i) risk from original persecutor, (ii) new risks, (iii) effective protection, (iv) access to protection and (v) durability.

The research found that decisions often dismissed any risk in the proposed area of internal protection because the original claim of risk of persecution had been considered unfounded. The report notes the absence of guidance in case law and policy on how to assess the reach of persecutors in the area of relocation. In consequence, there is a real need for better local and anthropologically based knowledge and information. Leads given by asylum seekers in their evidence were not followed by decision makers with country of origin information. On the contrary, decision makers relied on country of origin information on the size of the country/region and the size of the population to support internal relocation options.

The research found that decisions rarely considered the existence of new risks in the proposed area of relocation. When risk of harm was considered in decisions, it was often as a factor to be weighed in the reasonableness test, as opposed to a risk analysis which would lead to a conclusion that internal relocation was simply not an alternative. The research concluded that decisions often failed to adequately consider vulnerability as a factor which may affect the effectiveness of state protection.

Relying on the failure by asylum seekers to seek protection from the state authorities was a recurrent feature in the decisions considered for the research. The report notes that despite being identified in the Asylum Instruction on [*Gender Issues in the Asylum Claim*](#), obstacles facing women in gaining protection from the authorities were rarely considered. The reports points to the wealth of evidence needed to properly address the question of internal protection. Overall, the decisions analysed often merged the assessments of risk and reasonableness in the consideration of an internal protection alternative.

The research found that the most common factors considered in an assessment of whether internal relocation was reasonable were age, capacity to obtain work and education. The report notes the importance of social support networks, and how local and anthropological evidence could be crucial.

The last chapter of the report considers the application of the principle of internal protection in practice. Analysing the interview transcripts of the research sample, it appeared that most questions asked in interview focused mostly on the availability of protection in the area of relocation at the expense of an analysis of the reasonableness of internal protection. It also became clear on an analysis of the interview transcripts that the brief answers given were not followed by more detailed questions inviting applicants to explain their answers. In addition, applicants were not told the significance of the questions and that an internal protection alternative could result in the rejection of their asylum claim.

Despite the Asylum Policy Instruction on [Internal Relocation](#) requiring decision makers to set out particular areas/cities/regions suitable for relocation in their decisions, the research showed that this was not always done in practice. In one particular case, no questions relevant to internal protection had even been asked in interview.

The research highlighted the need for decisions to be grounded in sufficient country of origin information and the particular challenges in obtaining and assessing that information. What is needed is a combination of the particular information provided by the applicant coupled with relevant country of origin information. Such an approach is supported by the case law, the Immigration Rules and the EU Qualification Directive.

Another problem found by the research was the lack of local and expert knowledge and information necessary to make reasoned conclusions in Reasons for Refusal Letters. This essential information was not always in the public domain. The use of country of origin information in the Reasons for Refusal Letters to support findings that internal protection was a safe option was sparse. Information regarding geographical area and population size was most often relied on to support a conclusion that internal protection was safe and reasonable. The report highlights the need for decision makers to be aware that country of origin information on levels of domestic and other gender-based violence may be incomplete for a variety of reasons. In this respect, the report stresses the need for more effective sharing of relevant information.

None of the Reasons for Refusal Letters analysed as part of the research concluded that the applicant was at risk of persecution in her home area but was able to internally relocate. The trend observed in the research was that the internal protection alternative

was relied on as an alternative to the claim being rejected on credibility grounds. Strikingly, the practice is similar in Austria, Belgium, Germany, Italy, Poland and Spain. The research points to the internal difficulties in decision making that considers an internal protection alternative despite having concluded that there is no risk of persecution in the home area. As a result, the reasoning in relation to an internal protection alternative in the Reasons for Refusal Letters was not fully explored. Overall, the research found it was common that an internal protection alternative was argued in an incomplete and subsidiary manner and as a fall back to an adverse credibility finding which itself was incomplete.

Although the burden of proof in showing that internal protection is neither safe nor reasonable is on the applicant, decision makers have a duty to facilitate the submission of information, including facilitating disclosure through interview, as part of their duty to assess the asylum claim.

The research concludes that internal protection is a complex concept that requires substantial evidence of conditions in the country of origin. The conclusion of the report points to the risks associated with relying on the concept of internal protection as a fall-back position when making adverse credibility findings. The impact of this approach is most serious for applicants from vulnerable or marginalised groups whose persecution is socially condoned in their country of origin. An adequate application of the concept of internal protection can only be achieved as part of an evidence-based assessment. This is further compounded by placing the burden of proof on the applicant. Overall, the main concern expressed by asylum seekers interviewed for the research was one of internal protection, namely whether they would be safe in the proposed area of relocation.

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Sector update

Double standards for women and girls at risk of FGM and forced marriage

The government has faced renewed criticism this month over its hypocrisy in the treatment of violence against women and girls. On 22 July, the government hosted the [Girl Summit 2014](#), an event aimed at mobilising support both nationally and internationally to end the practices of female genital mutilation (FGM) and child, early and forced marriage (CEFM).

As with the previous month's [End Sexual Violence in Conflict Summit](#), the government's laudable efforts to address gender-based violence are undermined by its failure to protect

women seeking asylum from the very same abuses. In the last issue of WAN, we drew attention to the case of [Afusat Saliu](#), a Nigerian mother of two whose application for protection had been denied, and who had recently been returned to Nigeria, where she fears her daughters will be cut. While Afusat and her daughters are currently being sheltered in a secret location in Lagos, many other women have similarly had their protection claims rejected, and face return to unsafe countries.

In a recent [blog](#) for Reuters, Asylum Aid highlighted another case, of another African woman, Alice*, who fled to escape her violent husband who insisted she undergo FGM. In Alice's case, the judge did believe her story, he conceded that Alice's husband had been abusive and that he demanded she be cut, but he pointed to the efforts of an international organisation in Alice's country, which aims to educate and protect women from FGM, saying that it would provide her with sufficient protection.

The hypocrisy of this judgment is brought home when put in the context of the raft of new and wide-ranging measures that it has been deemed necessary to bring in to the UK, in order to adequately protect girls here from FGM. All this in a country where the practice is already illegal and widely condemned, yet Alice is expected to return to a country where FGM is legally practiced on three quarters of women and girls and where her husband and family would support her being cut because the efforts of one international organisation are considered sufficient to protect her from harm.

As MPs [decry](#) the scandal of any girl being cut in the UK where it could have been prevented, it is all too easy to turn a blind eye to the preventable cutting of the women we turn away. And the same holds true of CEFM, also grounds for asylum that are often difficult to document and evidence, meaning women's well-founded fears are too easily dismissed. This [blog](#) covers the issue in more depth.

It is vital that in making the case for the protection of women and girls from gender based violence and repression, we do not forget to include refugee and asylum seeking women, and insist that the government improve asylum decision making to reflect a parity of respect for the safety of all women, regardless of their asylum or immigration status.

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Significant Legal Issues

Hounga v Allen & Anor [2014] UKSC 47 (30 July 2014)

The Supreme Court has [held](#) that the defence of illegality was not available to defeat a complaint of discriminatory dismissal because public policy militated against the

application of the defence where the employer had been guilty of trafficking.

In January 2007, Ms Hounga came to the UK from Nigeria, aged around 14 years old. She entered under a false identity and on a visitor's visa of 6 months duration. The arrangements for her trip were made by the family of the respondent, Ms Allen. For the first 18 months of her stay in the UK, Ms Hounga lived in the respondent's home where she was employed to look after the 3 children and undertake housework, despite having no right to work or remain in the UK after the first 6 months. She never earned any wages and was not enrolled in a school. Although not completely confined to the house, she had very limited movement. She was regularly threatened with punishment on account of her illegal presence in the UK and subject to violence at the hands of the respondent.

Ms Hounga was dismissed from the job in July 2008, in terrible circumstances. She was beaten, had water thrown over her and was thrown out of the house. The respondent told her to leave the house and die. She was not allowed back into the house, and made her way to a supermarket the following morning where she was found and taken to social services.

Ms Hounga brought proceedings based on the dismissal which she claimed was discriminatory on the basis of nationality, which were successful at the Employment Tribunal and the Employment Appeals Tribunal. However, on cross-appeal, the Court of Appeal set aside the decision because the illegality of her employment was "a material part" of her claim and to uphold the complaint would be to condone that behaviour.

The issue before the Supreme Court was whether the Court of Appeal was correct to hold that the illegality defence defeated the complaint of discrimination. Part of the test for the defence of illegality involves a consideration of public policy: "So it is necessary, first, to ask 'What is the aspect of public policy which founds the defence?' and, second, to ask 'But is there another aspect of public policy to which application of the defence would run counter?'"

In answer to the first question, Lord Wilson (with whom Lady Hale and Lord Kerr agreed) held that the considerations of public policy in favour of applying the defence to defeat Ms Hounga's complaint "scarcely exist[ed]" because for example, she had not been prosecuted and sought to evade any penalty and the integrity of the legal system was not compromised because the award of compensation would not encourage others in Ms Hounga's situation to enter into illegal contracts of employment. Conversely, Lord Wilson indicated that the imposition of the defence of illegality would compromise the integrity of the legal system by potentially "engendering a belief that [employers] could even discriminate against such employees with impunity".

In relation to the second question, Lord Wilson examined whether the respondent was guilty of trafficking. At paragraph [49], with the assistance of an intervention by Anti-Slavery International, he found that at least three of the ILO's indicators of forced labour were present (physical harm or threats of it, withholding of wages, and threat of denunciation to the authorities where the worker has an irregular immigration status). At [52], Lord Wilson considered current government measures, including the Draft Modern Slavery Bill and a proposed amendment thereof that would provide a statutory defence to a trafficked person who had been compelled to commit a crime. Wilson noted that Ms Houniga was not in that category, it was held that:

“The decision of the Court of Appeal to uphold Mrs Allen's defence of illegality to her complaint runs strikingly counter to the prominent strain of current public policy against trafficking and in favour of the protection of its victims. The public policy in support of the application of that defence, to the extent that it exists at all, should give way to the public policy to which its application is an affront; and Miss Houniga's appeal should be allowed.”

Asylum Aid and Rights of Women are working together on joint strategic work to disseminate legal information on gender, asylum and refugee issues. Asylum Aid would like to thank Rights of Women's Adrienne Anderson for sharing the above case summary.

For more information and case summaries, you can join the Women's Migration and Asylum Network. Email wman@row.org.uk or visit www.rightofwomen.org.uk/current.php

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National News

In the midst of hostile reforms, strategic litigation protects asylum seekers' rights

A number of recently passed measures, including the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (LASPO) and the [Immigration Act 2014](#) have curbed access to basic services for refugees and asylum seekers, including access to free legal aid. However, civil society groups have had some success in the past months in bringing strategic litigation against both new and existing measures:

Asylum Support

On 9 April 2014, the High Court of England and Wales [ruled](#) that the Home Secretary had acted unlawfully in freezing asylum support rates following a flawed assessment. In a

judicial review brought by [Refugee Action](#), it was found that she had failed to gather information needed to assess whether support levels are sufficient to meet essential living needs. The judge also found that the cost of essential pregnancy and baby equipment including formula milk and nappies had not been considered when setting extra allowances for pregnant women and new mothers. Asylum support rates have been frozen and have not risen with inflation, as have all other UK benefits, since 2011.

On 11 August the Home Office announced the completion of its new review of asylum support rates, this time taking into account more data regarding the cost of essential living needs. The review concludes, however, that the [current rate is sufficient](#) and therefore the freeze remains in place.

Legal Aid for Family Reunification

On 13 June 2014, the High Court [ruled](#) that legal aid funding should still be made available to refugees pursuing family reunification. Funding for asylum cases has been protected from legal aid cuts brought in by LASPO in 2012, but family reunification was not included within the scope of this exception. In a test case brought by [Islington Law Centre](#), however, the Court found this too restrictive, given that family reunification is an issue falling under the Refugee Convention, and argued that it should therefore also be covered by legal aid. Funding will remain available while the government pursues an [appeal](#).

Detained Fast Track

On 9 July 2014, the High Court [ruled](#) that the operation of the 'Detained fast Track' (DFT) system "carries an unacceptably high risk of unfairness" and declared its running unlawful. The case, brought by [Detention Action](#), found that inadequate screening of suitability for DFT means that survivors of torture and sexual violence, victims of trafficking, and other vulnerable groups are being wrongfully detained under DFT. The judgment further criticised the lack of access to legal support for detainees and the insufficient time allowed to prepare a legal defence under the system, often less than 24 hours. Despite the strong wording of the judgement, the court did not find that DFT is unlawful per se, but only as currently operated, and the process [will not be suspended](#), nor those detained under it released. In response to the ruling, the Home Office has said it will guarantee a full four working days during which asylum seekers can discuss their case with legal advisors before their substantive interview.

Legal Aid Residence Test

On 15 July 2014, the High Court [ruled](#) that the residence test, which would remove access to legal aid funding for any person who cannot prove lawful residence in the UK for 12

consecutive months, is unlawful. In a strongly-worded judgment in the judicial review brought by the [Public Law Project](#), it was found that the Secretary of State for Justice had over-stepped his powers in introducing the test, and that it would discriminate unjustifiably against certain vulnerable groups, running counter to the principle of equality before the law.

The UK government is appealing these last three judgments.

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International News

New Zimbabwean Constitution: Implications for Women's Rights

A new [Constitution of Zimbabwe](#) was voted in with overwhelming support in a referendum that took place on 16 March this year. The UN Women's Agency has [praised](#) the document's strong gender equality provisions that outlaw discrimination against women, calling it a "victory" which brings Zimbabwe's law into line with the international gender equality instruments it has ratified. Beyond the new Supreme Law mandating gender equality, the new Constitution includes quotas for women's representation in parliament and the senate, extended maternity leave rights and the outlawing of child and forced marriage, as well as other more general changes including the right for Zimbabweans to hold dual nationality.

The process of realignment of Zimbabwe's 400 laws to reflect the provisions of the new Constitution is the next step, and leading Zimbabwean women politicians have made clear that they will continue to work within this process to ensure that achievements on gender are translated into tangible benefits for women and girls throughout the country. Vice President, [Joice Mujuru](#) and Minister for Women, Gender and Community Development, [Oppah Muchinguri](#), have both called on the women of the country in recent weeks to participate in this process in order to ensure concrete results and change.

It is hoped that Zimbabwe will use the opportunity of taking over the chair of the Southern African Development Committee (SADC) in 2014 to speed up the implementation of measures to meet the [SADC's Gender Protocol targets](#) before the 2015 deadline.

However, there have been concerns expressed regarding the realignment process, the implementation of-which has already been [delayed](#). One female MP has [raised](#) concerns that extending statutory maternity leave may have the effect of increasing discrimination against hiring women, if not accompanied by measures to compensate businesses for the time off required by mothers. Meanwhile, there are [wider fears](#) that the "glacial" pace of

realignment leaves Zimbabwean women at continued risk of discrimination and gender-based violence in practice, despite the development of progressive laws on paper.

In 2010 Zimbabwe was the largest country of origin for women seeking asylum in the UK, according to [research](#) carried out by Asylum Aid. The situation for women's rights in the country remains extremely poor, with the UK Department for International Development [estimating](#) that almost a third of girls are married before age 18 and Save the Children ranking it 141st in its [Motherhood Index](#).

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Rape as Torture in the DRC

Freedom from Torture released a report in June which deals with female victims of torture from the DRC. '[Rape as torture in the DRC: sexual violence beyond the conflict zone](#)' looks in particular at the experiences of women who have been victims of torture, including rape and sexual torture, in detention outside of the main conflict zones.

The report examines the experiences of 34 women detained in the DRC and documents their experiences of torture and what has happened to them subsequently.

It then makes recommendations for the DRC government, the international community and the UK government on how to tackle the issue effectively.

The report calls for the UK Foreign and Commonwealth office to extend the application of its [Preventing Sexual Violence Initiative](#) to the whole of the DRC, in acknowledgement of how the conflict in the east helps to normalise sexual violence and forms of torture in the country as a whole. It also recommends that the Home Office update its policy on the DRC to recognise the "high incidence of sexual violence outside the conflict zone (ii) that the use of rape and other forms of sexual violence by state actors is widespread and (iii) that sexual violence as a form of torture is extensively used against women detained in the DRC" and also update its Country of Origin information in its asylum policy to recognise this torture risk.

The report notes how travel abroad may have been a factor in some of the women's detention, and points out that three were detained and tortured in the DRC directly after having been forcibly returned from countries where they had sought asylum, in two instances from European countries.

The detention and forced return of asylum seekers from the DRC, particularly in relation to the risk of torture on return was also highlighted in a [report](#) published in Autumn 2013 by Justice First, which highlighted the fact that the Country of Origin information used for

the DRC has not been update since March 2012, despite a rise in violence and retributive action by the government during and post-election.

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Women Alone: The fight for survival by Syria's refugee women

UNHCR published a major new [report](#) on 8 July focused on the plight of Syrian refugee women. According to UNHCR's research, 1 in 4 of Syrian refugee families in Egypt, Lebanon, Iraq and Jordan are headed by a lone woman. The report is based on the testimony of 135 women in this situation, some of whom's husbands have been killed in the conflict, while others have become separated.

The report reveals the daily struggles to survive that the women face, including difficulty in finding work, as well as the risk of violence and exploitation. Of the women interviewed for the report, 1 in 5 had paid work, while others depend on their savings, selling off their possessions, or support from relatives. Some of the women depend entirely on aid from UNHCR or other organisations working in the region, and some send their children to work in order to help support the family, but despite this a third said they do not get enough to eat. The women also say they face daily harassment and are not respected because they do not have the protection of a man. The report raises the risk of sexual violence for these women, but notes that many of the interviewees would not discuss the issue.

UNHCR has called for more donations to meet the needs of growing numbers of lone women heading refugee families from Syria, and has called on host countries to facilitate family reunification for those for whom it is possible.

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UK Training and Events

Save the Date: Goodenough Annual Scholars Lecture and Book Launch

On Monday 29th September Goodenough College will hold its Annual Scholars Lecture, including a panel discussion and the launch of [Gender in Refugee Law: From the Margins to the Centre](#), edited by Efrat Arbel, Catherine Dauvergne and Jenni Millbank (Routledge, 2014).

The panel will be chaired by Trudeau Fellow and Professor Catherine Dauvergne, University of British Columbia Faculty of Law, and will include Debora Singer MBE, Policy and Research Manager at Asylum Aid and author of chapter 12 on gender-related asylum claims in Europe.

The event will take place from 17:30 to 19:30 in the LH Churchill Room, Goodenough College, Mecklenburg Square, London WC1N 2AB. A review of the book by Adrienne Anderson published in the May/June issue of Women's Asylum News can be read [here](#).

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Women and Girls Network Trainings

WGN are offering [two OCN London-accredited training courses](#) that will shortly be open for applications.

The first, *Gender Responsive Trauma Focused Approach for Engaging Women's Recovery from Sexual Violence: Supporting survivors' resilience, moving beyond and through experiences of sexual violence* is a free two-day course running in central London on Tuesday 9th and Wednesday 10th December 2014, which aims to build on practitioners' existing skills to support best practice in effective interventions supporting women's recovery from sexual violence.

The second, *Counselling and Therapeutic Interventions for Working with Women Overcoming Experiences of Violence: A multicultural and feminist approach* is a 12 day course plus two days of assessment resulting in a qualification equivalent to an A level. The course will run in central London in 12 one-day sessions throughout the early months of 2015 and will provide a comprehensive introduction to the issues involved with working with women survivors of gender-based violence.

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Asylum Support Appeals Project Training

On Friday 19th September ASAP is holding a training course, [An Introduction to Asylum Support](#), in Stratford, London. The aim of the course is to provide an overview of the asylum support system in order to assist front line advisor staff working for voluntary sector organisations that provide assistance to asylum seekers and refused asylum seekers, in identifying clients who may be eligible and preparing successful applications.

The cost of the course is subject to the income of the organisation, and free for staff from small organisations with a budget of less than £100,000 per year. An application form is available to download from ASAP's website and sent to dianah@asaproject.org.uk

Any queries can be addressed to the same place.

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Publications

Save The Children Annual Report: State of the world's mothers

Save the Children has published its 15th Annual Report entitled [State of the World's Mothers 2014](#). It documents the progress various countries have made in terms of maternal health and children's wellbeing, as well as highlighting where improvements remain to be made.

The report focuses on the challenges faced by mothers and their children in areas of new and ongoing conflict and where there have been natural disasters. Although it covers over 50 countries and territories, the report draws out four case studies for particular attention: the DRC, Syria, the Philippines and the United States.

The report is accompanied by an updated [Mother's Index table](#), which ranks countries according to the situation for mothers and children in each. Somalia, the DRC, Niger, Mali and Guinea-Bissau make up the bottom five on the list.

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Charter of rights of women seeking asylum



Endorsements: 350

Google group membership: 165

28 Too Many

Every 10 seconds a girl somewhere in the world is affected by female genital mutilation (FGM). This horrific statistic is supported by research on FGM which indicates that 30 million girls are at risk in the next decade if current trends persist (UNICEF, 2013).

FGM is a recognised human rights violation and extreme form of gender based violence. It causes devastating pain, lifelong physical and emotional harm and can result in death due to excessive bleeding, shock or infection. Many of those affected are amongst the most vulnerable girls and women in the world and have little access to support and protection. Therefore it is not surprising that some girls run away from home to avoid FGM and need refuge. Similarly, parents protecting their daughters may also be forced to leave their communities and sometimes their country.

28 Too Many is a charity working to end FGM through research, networking and advocacy. We work with anti-FGM activists around the world to enable community based action to protect those at risk, support survivors, educate about the practice and encourage its abandonment. Our ambitious [research programme](#) aims to produce detailed country profiles on FGM for each of the 28 African countries where FGM is traditionally practised. We have published reports on FGM in Ethiopia, Kenya, Tanzania, Uganda and Sierra Leone which are available as free downloads on our [website](#). Our next country profile on FGM in Mali will be available in the autumn.

We hope that our research will help organisations working to end FGM make faster progress and provide useful information to those supporting women and girls affected by FGM. There is a growing international movement to end FGM and by working together, sharing knowledge and developing best practice we can end this harmful practice and create a world where all girls and women live free from FGM.

For more information contact info@28toomany.org

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She was detained without charge

Nobody believed her story and no-one spoke up for her

Her family and friends didn't know where she was

Afraid...isolated...

She had no idea what would happen to her next

And that was after she sought asylum in the UK

Our asylum system is now so tough that, all too often, this is how people seeking help are treated. And that can't be right.

We believe the system should be fair and just and that every asylum seeker should have legal help to make their case - only then can we say in good conscience 'let the law take its course'.

Asylum Aid is an independent, national charity that secures protection for people seeking refuge in the UK from persecution in their home countries.

We provide expert legal representation to asylum seekers and campaign for a fair and just asylum system. Founded in 1990, we have since helped 30,000 people to get a fair hearing. In 2009 85% of our clients were granted leave to stay in the UK when decisions were made on their claims for protection.

Please support us

Your donation will safeguard our independence and enable us to stand up for fair asylum rights without fear or favour.

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