



Untold stories...

families in the asylum process



UNHCR

United Nations High Commissioner for Refugees

Haut Commissariat des Nations Unies pour les réfugiés

United Nations High Commissioner for Refugees
Representation to the United Kingdom
London, June 2013

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Executive Summary

UNHCR's report *Untold Stories: Families in the Asylum Process* reviews the quality of asylum decisions for families seeking international protection in the United Kingdom. The report is a product of the Quality Integration (QI) Project – the second phase of a joint UNHCR and UK Government collaborative endeavour aimed at improving the quality of the refugee status determination (RSD) procedure in the UK. UNHCR was asked in 2011 by the UK Government's Home Office to undertake an audit of RSD decisions in family claims as part of the UK's Family Returns Process. UNHCR's involvement came about in recognition that fair return of families necessitates a thorough and fair RSD procedure which, after carefully establishing all of the facts and thoroughly assessing the claim, ascertains that no member of an asylum-seeking family is in need of international protection. Based on the findings of the audit, UNHCR provides recommendations for strengthening the asylum process for families.

Background to the Quality Integration Project

Set up in 2010, the QI Project follows and builds upon the Quality Initiative Project which ran from 2004 to 2009. Both projects have their basis in Article 35 of the *1951 Refugee Convention relating to the Status of Refugees* which stipulates that signatory states will undertake to co-operate with UNHCR to facilitate its duty of supervising the application of the provisions of the 1951 Convention. UNHCR welcomes the commitment shown by the UK Home Office to improving the quality of asylum decision-making under the auspices of the QI project.

Scope and methodology

For the purpose of this evaluation UNHCR adopted the Home Office's definition of a 'family claim' as one submitted by an adult and which includes at least one child under 18 years of age. The report examines the asylum decision-making process where an individual member of a family makes a claim upon which other family members are dependant, as well as cases involving more than one member of the family making a claim in their own right.

In 2011, 20,512 asylum claims were submitted by first-time applicants in the UK. Of these, 2,768 (14%) met the UK's definition of a 'family claim'. Asylum claims in the UK were managed and processed by the UK Border Agency (UKBA) prior to April 2013, thereafter UKBA was dissolved as an Executive Agency of the Home Office. The responsibility to manage and process asylum claims is currently with the Home Office.

Cases selected for this audit were chosen randomly from UKBA offices handling the majority of family claims (London, Northwest and the Midlands and East regions). Only those claims which were submitted after the introduction of the Family Returns Process in March 2011 were considered. In total 45 decisions and 17 asylum interviews were audited between March and September 2012.



U.K. / An Oromo family, who came to the UK as refugees from Ethiopia under the Gateway Protection Programme, going shopping in a local vegetable market. The GPP is the UK refugee resettlement programme implemented by the UNHCR and the UK Government Home Office. Eighty refugees from Ethiopia, many of whom had been living in Kakuma camp in northern Kenya, were resettled in Brighton on the south coast of England. © UNHCR / H. Davies

Key Findings

Positive findings

The audit revealed a number of examples of good practice in UKBA's processing of family claims. These include:

- ◆ Evidence of some decision-makers identifying expressions of fear of harm to family members, assessing the likelihood of that harm and thereby granting or refusing status to the family member(s) as appropriate.
- ◆ Examples of decision-makers considering and giving appropriate weight to the existence of family members in assessing the relevance and reasonableness of an internal flight alternative.
- ◆ Recent progress made by UKBA to improve the treatment of women in the asylum process, including through the development of gender-specific guidance and training to decision-makers.

In addition, UNHCR is aware of positive changes that have been implemented during the course of the audit in the Asylum Screening Unit to ensure that all adult family members are interviewed separately, ensuring confidentiality.

Shortcomings

Despite evidence of good practice, the audit identified areas in which procedure and decision-making standards would benefit from strengthening. As outlined below, UNHCR's findings indicate that the current asylum procedure does not facilitate the discharge of the duty of decision-makers to establish and evaluate the facts of an asylum claim in the family context. Furthermore, the current procedures do not provide sufficient scope to dependant family members to present their protection needs during asylum processing.

Access to procedure and identification of claims

Significant restrictions on access to procedure for family members were identified by UNHCR. In the current asylum process the only opportunity for an adult dependant to be heard verbally is at the Asylum Screening Unit (i.e. prior to the main applicant's asylum interview). After the main applicant is designated, adult dependants are not given further opportunity to be interviewed; children being considered for derivative status do not have adequate opportunity to participate and provide evidence during the asylum process. Further, dependant family members are not adequately counselled in a private setting (i.e. in the absence of other family members) with respect to their right to present separate asylum claims during the RSD procedure.

This raises serious concerns regarding not only the facility for dependants to put forward evidence relevant to the assessment of the main claim, but also the ability of dependant family members to present their individual protection needs.

The audit identified cases in which UKBA staff assessed only the evidence provided by the main applicant despite statements being made indicating that dependant(s) had serious protection needs in their own right. In one case involving a female Pakistani applicant, in addition to her own personal fear of persecution as a Christian, she recounted that her teenage daughters had been previously attacked in Pakistan and her fear that, if returned, they would be at specific risk of kidnapping by Muslim extremists due to their religion. The teenage daughters were not interviewed and only the mother's claim was assessed in the decision.

Burden of proof: shared duty

Some of the decision-makers demonstrated a lack of appreciation of the shared duty to ascertain and evaluate the facts of an asylum claim in the family context. Where it would have been relevant to the consideration of the claim, it was apparent that 'family evidence' such as statements from family members, files relating to previous applications by the applicant or relatives, and country of origin information specifically relevant to family members, had not always been considered before adjudicating the claim.

Credibility

UNHCR observed that a number of decision-makers did not proactively gather evidence from family members despite its potential relevance and as a consequence the credibility assessment was negatively impacted. For example, a male applicant's credibility was doubted where he was unable to answer questions about his dependant wife's family members and their political affiliation despite his insistence that she would be better placed to provide such information. The dependant's wife was not interviewed by UKBA staff.

Further concerns relating to the assessment of credibility were identified in the 'swap over' claims audited. 'Swap over' claims involve an applicant making a claim in their own right having previously been a dependant on an asylum claim which has already been decided (the 'previous claim'). In the cases examined, adverse credibility findings were drawn due to the delay in making the claim in their own right. The current law provides that delays can negatively impact upon credibility unless 'a reasonable explanation' for the

delay is given. The UKBA guidance on ‘swap over’ claims provides no further detail as to what is meant by ‘reasonable explanation’, thereby leaving the term at the discretion of the decision-maker. In addition, when assessing credibility in ‘swap over’ claims, undue weight was given to the negative credibility findings reached in the previous claim in which the applicant was a dependant.

For example, UNHCR observed a case of a Pakistani woman whose ‘swap over’ claim was supported by several letters from her solicitor providing an explanation for her delay in making her individual claim, which was due to her experiences of domestic violence at the hands of her husband (the main applicant in the previous family claim) and her mental health. In the decision on the ‘swap over’ claim these explanations were not assessed for reasonableness nor given any weight when assessing her credibility and refusing her claim. The decision was subsequently overturned at appeal.

Furthermore, the ‘swap over’ claims audited reflected inadequate consideration of new evidence provided after the previous claims were decided as well as unwillingness to apply the benefit of the doubt. These issues compound the challenges faced by dependant family members presenting their claims in the UK asylum procedure.

Application of the Refugee Convention criteria

The audit identified a number of cases in which the criteria of the 1951 Convention were not correctly applied due to an apparent lack of appreciation of the significance of family characteristics in the claims. Examples include:

- ◆ **Well-founded fear analysis:** when assessing the likelihood of risk to the main applicant, decision-makers did not always factor relevant family-related characteristics into their assessment. For example, one decision-maker did not include in her assessment of the likelihood of harm to an Iraqi applicant, the impact of his being in a mixed-faith marriage.
- ◆ **Persecution analysis:** there were examples of a lack of recognition that, depending on the facts of the individual claim, fear of what might happen to a family member can be persecutory to the main applicant.
- ◆ **Convention grounds:** there were examples whereby decision-makers did not identify family-specific Convention grounds. Most often the examples pointed to the possible existence of a particular social group such as ‘family’ or ‘woman with a child outside of marriage’.

Refugee Status and derivative status

UNHCR observes that UKBA policy allows minors dependant on adult claims to receive full derivative status as a refugee while adults dependant on children’s claims (e.g. fearing female genital mutilation on behalf of one’s daughter) are only granted Discretionary Leave. The lesser status given to adults has the potential to jeopardise family unity and undermine the attainment of a durable solution for the family.

In practice, decision-makers demonstrate a lack of understanding of this policy in regard to which status (refugee status, Humanitarian Protection or Discretionary Leave) should be granted to whom (main applicant or dependant), when it has been recognised and accepted that a minor child is the family member to whom the risk applies. For example, in a case where it was accepted that there was a reasonable likelihood of persecution (in the form of female genital mutilation) to the main applicant’s dependant daughter, the claim was nevertheless maintained in the mother’s name. Despite the daughter having established a valid refugee claim, the mother was granted Humanitarian Protection with the daughter then granted Humanitarian Protection status in line with her mother.

Non-suspensive appeals

UNHCR audited a number of cases where the main applicant's claim was refused, certified 'clearly unfounded', and the right to an in-country appeal of the decision denied. In the family context, this significantly increases the risk of dependant family members being removed from the UK without having their protection needs identified and assessed.

Information management and statistics

In preparing for and conducting the audit it became evident that UKBA information management mechanisms do not facilitate easy identification of disaggregated information and statistics in relation to both family and 'swap over' claims.

Gender issues

UNHCR found that dependants, many of whom were women, did not have sufficient opportunity to present any independent protection needs they may have had through confidential asylum interviews. This increased the risk of individual protection needs not being properly identified, assessed and documented, and as a result, appropriate status and rights may not have been given. UNHCR also found there was inadequate counselling of the whole family - and dependants in particular - about their rights, the asylum process and the outcomes of various options.

The procedural shortcomings were highlighted strongly in one example of a Pakistani female applicant who was suffering domestic violence at the hands of her husband and, amongst other issues, feared return to Pakistan with him. However, she was not sufficiently counselled about the asylum process or the implications of not making a claim in her own right. She was not interviewed separately and in confidence away from her husband at any stage of the process. As such, her protection needs were not identified and the family's claim was refused.

Recommendations

UNHCR is of the view that the shortcomings in the family asylum procedure identified above could be addressed through the strengthening of training and guidance to Home Office staff involved in decision-making and changes to the current asylum procedure. UNHCR would welcome the opportunity to work with the Home Office to address these issues.

Access to procedure and identification of claims

In order to achieve the meaningful participation of family members in asylum procedures and to strengthen the ability of decision-makers to identify protection needs, the Home Office should:

- ◆ **Provide information** (written and verbal counselling) to family members in an age, gender and child-sensitive manner throughout the asylum process to ensure that all family members understand their right to make an independent asylum claim, the refugee criteria, and the distinction in process and outcome between being a dependant and a main applicant.
- ◆ **Strengthen the asylum screening process** for family members by ensuring that, with due regard to age and maturity, each individual family member is afforded the opportunity (via an appropriately structured interview) to communicate experiences of previous or current harm and to express fears of future harm if returned to the country of origin.
- ◆ **Provide training and guidance** to staff involved in decision-making for families to heighten sensitivity and strengthen the ability to recognise protection issues which may arise in the family context, the capacity to proactively identify cases in which family members have claims separate from that presented by the main applicant, and the ability to proactively gather and assess information provided by family members in adjudicating refugee claims.
- ◆ **Separately and confidentially interview** all family members, with due regard to age and maturity, during substantive asylum processing (i.e. after screening) in order to ensure that they understand the refugee criteria and to provide them with an opportunity to discuss any independent protection needs they may have.
- ◆ **Implement procedural safeguards** to ensure that the level of the child's participation in the asylum process is appropriate to the child's age and maturity, and in accordance with what is in the best interests of the child.

Burden of proof: shared duty

Guidance and training should be provided to ensure that decision-makers understand their shared duty in the asylum process and their obligation to ascertain and evaluate the relevant facts of an asylum claim in the family context. This includes the obligation on the part of the decision-maker to gather, review and consider relevant evidence, including statements from family members, files relating to previous applications by the applicant or relatives, and country of origin information specifically relevant to family members, while respecting confidentiality.



U.K. / In autumn 2006 eighty refugees from Ethiopia, many of whom had been living in Kakuma camp in northern Kenya, were resettled in Brighton on the south coast of England. © UNHCR / H. Davies

Credibility

To address the concerns raised regarding the assessment of credibility in family claims, UNHCR recommends that the Home Office:

- ◆ **Provides training and guidance** on the assessment of credibility in the family context, including when and how to use evidence provided by family members.
- ◆ **Provides training and guidance** on the assessment of credibility in the ‘swap over’ context. In particular, the Home Office should clarify what can be considered a ‘reasonable explanation’ in assessing how delays in making ‘swap over’ claims can impact on credibility, how credibility findings reached in previous claims should be considered, how to assess new evidence provided and how to apply the benefit of the doubt principle.

Application of the Refugee Convention criteria

Guidance and training in respect of family claims should be strengthened to ensure decision-makers' understanding of how family-related characteristics should be considered in applying the Refugee Convention criteria. For example:

- ♦ The existence and experiences of family members can affect the likelihood of harm to the main applicant or the reasonableness of an internal flight alternative.
- ♦ Fear of what may happen to a family member can be persecutory to the main applicant.
- ♦ A Convention reason can be family-specific and is often in the form of a particular social group such as 'family' or 'woman with a child outside of marriage'.

Refugee Status and derivative status

To address concerns relating to the forms of leave provided to refugees recognised by the UK authorities, and in particular the inconsistent forms of leave granted to adults and children in the same family when the latter are considered main applicants, the Home Office should:

- ♦ **Revise policy** to entitle adult parents or primary caregivers to full derivative status where they are dependent on the refugee claim of a child.
- ♦ **Provide training and guidance** to ensure that decision-makers understand and implement appropriate procedure and policy in respect of principal versus derivative status based on an appropriate recognition of the protection needs in a family claim.

Non-suspensive appeal

In acknowledgement of the complexity of family claims and in light of the findings in this report concerning the limited access to asylum procedures family members have, UNHCR is concerned that the process by which claims certified 'clearly unfounded' are denied in-country appeal rights raises the risk of family members not being heard before their claims are finalised.

UNHCR recommends that the Home Office **revise policy** to ensure that all family claims are guaranteed in-country appeals.

Information management and statistics

The Home Office should **improve its information management systems** to ensure easy collation of information and provision of disaggregated statistics in respect of both family and 'swap over' claims. These statistics should be made publicly available.

Gender issues

In addressing the above family-related issues, an **awareness of possible gender dimensions** is of critical importance. This is particularly the case when addressing issues pertaining to access to procedures and ensuring that those who may be marginalised due to gender values are given a full opportunity to present their protection needs to Home Office staff.

1. Introduction

In May 2010, the newly-elected Coalition Government made a commitment to end the detention of children (i.e. persons aged under 18) for immigration purposes.¹ In December of the same year, UKBA summarised the conclusions of its 'Review into ending the Detention of Children for Immigration Purposes' and, acknowledging that many children are detained with their families, introduced a new four-stage asylum process specifically for families.² This procedure, known as the Family Returns Process, went live on 1st March 2011. While the new process heavily focuses on the return of families found not to be in need of protection, UNHCR has welcomed the acknowledgement and inclusion of the decision-making stage and a commitment by UKBA to review, test, and strengthen decision-making for families in collaboration with UNHCR. UNHCR's involvement came about in recognition that fair return of families necessitates a thorough and fair asylum procedure which, after carefully establishing all of the facts and thoroughly assessing the claim, ascertains that no member of an asylum-seeking family is in need of international protection. This report sets out the findings of UNHCR's audit of the quality of decision-making in family asylum claims undertaken towards this end.

Over the past half-decade, the UK government and the UK Border Agency (UKBA) have demonstrated a consistent commitment to improving the ways in which children – whether accompanied or unaccompanied – experience the asylum process and how their claims are assessed. In 2007, UKBA introduced a new child-specific asylum procedure for unaccompanied asylum-seeking children. UNHCR was then requested by UKBA to review the quality of decision-making for these children and, after an audit of 100 decisions and 21 interviews, issued a confidential report to the Minister for Borders and Immigration in 2009 setting out 12 recommendations indicating how UKBA could further improve decision-making for this identified group. While some progress has been made on these recommendations, there remains work to be done to further improve the decision-making process for unaccompanied children.

In 2008 the UK lifted its reservation to Article 22 of the Convention on the Rights of the Child (CRC). By lifting this reservation, the UK undertook a positive commitment to ensure that all of the rights enshrined in the provisions of the CRC are enjoyed by all children whatever their immigration status. To reflect this commitment the government introduced into statute a duty to ensure that various immigration functions are discharged having regard to the need to 'safeguard and promote the welfare of children'. This is found in Section 55 of the Borders, Citizenship and Immigration Act 2009 (BCI Act 2009).

¹ 'The Coalition: our programme for government,' Section 17.

² 'Review into ending the detention of children for immigration purposes,' UKBA, December 2010.



Methodology

Sample selection

As part of the planning of the audit, UNHCR reviewed statistical information in relation to the number of family cases across the various asylum regions. This information is not publicly available³ but, with the support of UKBA's 'Management Information and Data Analysis Service' (MIDAS), it was possible to determine that London, the Northwest and the Midlands and East regions assumed the majority of family claims between April 2010 and March 2011. As a result UNHCR determined that the audit sample should encompass, in so far as possible, a representative ratio of cases from the above regions.

For the purposes of the current evaluation UNHCR adopted UKBA's definition of a 'family case' as a claim submitted by an adult with at least one child under 18 years of age.⁴ In 2011 there were 20,512 asylum claims made by first time applicants. Of these, 2,768 (14%) were from adult applicants with at least one minor child.⁵

UNHCR's evaluation examines the asylum decision-making process where an individual family member makes a claim upon which the remaining members are dependant, but also where more than one member of the family unit makes a claim in their own right.

UNHCR selected its claims for audit from a list of family claims provided by MIDAS. The list consisted of all adult main applicants with at least one minor child dependant who had claimed asylum in their own right and entered the asylum process after 1st March 2011. In order to ensure that a sample of 'swap over' claims was included, UNHCR requested a specific list of such cases be provided. It should be noted that in preparing for and conducting the audit it became evident that UKBA information management mechanisms do not facilitate easy identification of disaggregated information and statistics in relation to both family and 'swap over' claims. As a result UKBA had some difficulty in identifying and extracting a list of such claims for the purposes of the audit.

UNHCR selected its sample of cases for audit randomly apart from three guiding considerations: that the sample should be reflective of regional proportions of family claims, that as wide a range of decision-makers should be sampled as possible, and that cases should be chosen from both the start of the introduction of the Family Returns Process (1 March 2011) as well as some cases a number of months after the introduction of this process.

In preparation for the audit, UNHCR reviewed the content of the training and guidance available to decision-makers handling family asylum claims.⁶ Scoping visits to the three asylum regions where the audit would take place were undertaken.

³ UNHCR is aware, through contact with Home Office colleagues based at Home Office Statistics (Asylum and Enforcement Statistics and Publication), that there are intentions to provide public statistics around family asylum claims in due course.

⁴ UKBA Asylum Policy Instruction 'Processing Family Cases,' Version 1.0 (01/03/2011), Section 1.1. Available at: <http://goo.gl/T559F>

⁵ Source: UK Border Agency. All figures quoted are management information which have been subject to internal quality checks. The numbers may differ from figures released as National Statistics in the Home Office Immigration Statistics as they are drawn from different snapshots of the UK Border Agency databases.

⁶ UKBA Asylum Policy Instruction 'Processing Family Cases,' Version 1.0 (01/03/2011) and New Family Returns Process Training, Module 1: General Overview, Version 4.0; Module 2: The Family Returns Conference, Version 1.1 and Module 3: Ensured Returns & the independent Family Returns Panel.

Final audit sample

The final audit sample comprised forty five decisions and seventeen asylum interviews. All claims included in the sample had been registered post 1st March 2011. The audit itself was conducted between March and September 2012.

Of the 45 decisions audited, 17 were from London, 17 from the Northwest and 11 from the Midlands and East region. UNHCR reviewed all decisions made in cases in which UNHCR had observed the interview bar one (as the decision had not been issued at time of analysis). The final sample of decisions included a range of nationalities: Afghanistan (1), Albania (1), Algeria (2), Dominican Republic (1), Egypt (1), Gambia (2), Georgia (1), Iraq (3), Iran (4), Kenya (2), Libya (5), Malaysia (1), Morocco (1), Nigeria (1), Pakistan (8), Somalia (2), Sri Lanka (2), Uganda (1), Vietnam (1) and Zimbabwe (5). The gender ratio was 30 female applicants and 15 male main applicants. There were a total of 64 children dependant on the 45 claims assessed. 35 of these children were under six years old. 29 children were between seven and 18. 38 children were female, 26 were male. UNHCR assessed decisions from 37 different decision-makers.

Of the 17 asylum interviews observed, six interviews took place in London, six interviews in the Northwest and five interviews in the Midlands and East region. This sample also included a range of nationalities: Algeria (1), Bangladesh (1), Georgia (1), Iraq (1), Kenya (1), Libya (3), Nigeria (1), Pakistan (3), Sri Lanka (2), Uganda (1), Vietnam (1) and Zimbabwe (1). The gender ratio was 11 female main applicants and 6 male main applicants. UNHCR assessed interviews conducted by 17 different decision-makers.

Of the decisions assessed, 10 resulted in a grant of refugee status, three resulted in grants of Humanitarian Protection, five resulted in grants of Discretionary Leave and 27 were outright refusals of asylum, Humanitarian Protection and Discretionary Leave. Of the 27 refused cases, six cases were certified as 'clearly unfounded' and subject to non-suspensive appeals, and in a further case the refusal letter was subsequently withdrawn and the applicant granted asylum. All of the remaining rejected applicants appealed the refusal (20). Over half of those decisions were then allowed at the appeal stage (11) while a third of decisions appealed were dismissed (7). At the time of writing two cases were yet to be heard.

Assessment methods

UNHCR based its audit findings on a review of the original UKBA paper file, observation of the interview where this took place, and any additional information available about the claim on UKBA Case Information Database (CID).⁷ UNHCR used the same quality audit form as that used by UKBA's Quality Audit Team (QADT) to ensure consistency between UNHCR's audit methodology and that used by UKBA and to allow comparison of quality findings.

In addition, UNHCR used a 'family pro-forma' to gather information about variables that may impact upon quality of decision-making as well as features specific and unique to family asylum claims. This pro-forma recorded information about screening processes for dependants, family-specific training of decision-makers, evidence collection from family members, use of the family welfare form, information about 'swap over' claims, certification under Section 94 of the Nationality, Immigration and Asylum Act 2002 and other important variables that are relevant to the context of decision-making quality.

⁷ The decision assessment involved a UNHCR team member reviewing the asylum decision in light of the case file, supporting evidence and, where relevant, specific Country of Origin Information (COI). Substantive written comments on the quality of individual decisions were recorded for use at feedback visits to the regions after issuance of the report. The interview assessment, as with previous audits, involved a UNHCR QI team member observing each 'live' interview with the informed consent of the applicant. The consent of all applicants was obtained formally at the outset of the interview and each applicant was informed that consent could be withdrawn at any time. The UNHCR observer prepared for the interview in much the same way as decision-makers are required to (i.e. by consulting the information contained in the applicant's file and conducting country research relevant to the applicant's claim). The interview assessment form was completed post-interview based on the observer's own notes.

2. Age and Gender Dimensions in Family Asylum Claims

In this audit UNHCR was asked by UKBA to consider family cases in the asylum process, which inevitably led to considerations of how dependants (likely to be women and children) experience the process. Ensuring women and children have equal access to the procedures is fundamental.⁸ So too, is ensuring that even if they chose to remain as dependants on a main applicant's claim, they have given consent and are aware of their right to participate in the process.⁹ Substantive guarantees include the right of access to the procedure for all family members while procedural fairness includes ensuring dependants can participate and that this happens in practice. Age and gender perspectives are therefore very relevant to considerations of how the Home Office designs and improves its family asylum process. Below we draw together findings that raised age and gender considerations and consider the normative framework around age and gender dimensions in the family asylum process.

2.1 Women

UNHCR recognises the significant progress made recently by UKBA to improve the treatment of women in the asylum process, including the development of gender specific guidance and training for decision-makers.¹⁰ However, progress has been largely in response to the identified needs of single women claiming asylum in their own right. Asylum seeking women within a family unit have received less attention in the design of policy and guidance. Recognising that women are likely to be dependants in family claims, it is important that gender issues are also considered for those women claiming asylum within a family unit.

The Convention on the Elimination of Discrimination against Women adopts a view of equality that goes beyond formal and legalistic terms. It makes clear that to achieve equality, it is not sufficient for laws and policies to be neutral, rather, their actual impact and effect must be considered.¹¹ In this research UNHCR found that despite the existence of policy that enabled dependants to make a claim in their own right, in practice dependants were not sufficiently participating in the process from the outset to be aware of their right to make an independent asylum claim and the consequences of not making a claim in their own right and the rights that derive from different immigration statuses.

A high proportion of women who claim asylum are likely to come from cultures where it may be more usual for women to be confined to the private sphere. They may experience discrimination and may also have

⁸ Procedure Directive; Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status ('APD'). Article 6 (2) of the Directive provides that Member States 'shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.' See also UNHCR Executive Committee Conclusion on the Protection of the Refugee's Family, No. 88 (L) -8 October 1999 at (iii) which states "provisions and/or practice allowing that when the principal applicant is recognized as a refugee, other members of the family unit should normally also be recognized as refugees, **and by providing each family member with the possibility of separately submitting any refugee claims that he or she may have**".

⁹ Article 6(3) APD provides that Member States 'may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.' The second sentence of Article 12 (1) APD states that: 'Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3) APD.'

¹⁰ UKBA Asylum Policy Instruction, 'Gender Issues in the Asylum Claim,' (29/09/10) available at: <http://goo.gl/k96og> and training for decision-makers 'Gender Issues in the Asylum Claim,' first rolled out in 2012.

¹¹ See for example, CEDAW General Recommendation No. 25: Article 4, para. 1 of the Convention, (Temporary Special Measures) available at: <http://goo.gl/C6CSb>



Syrian refugees Alaa, aged 21, and her mother Mariam, 49, seek financial assistance at the offices of Islamic Relief in Cairo. Alaa arrived in Egypt five months ago. She lost all of her possessions when her home in Damascus was destroyed during the fighting. © UNHCR / S. Baldwin / May 2013

experienced violence in their country of origin or during their journey to the UK.¹² Recognising that most violence experienced by women is at the hands of an intimate partner, women who are part of a family unit may be intimidated or discouraged from making an individual refugee claim by their husband's presence.¹³ A further barrier could be that women who have experienced persecution may not have disclosed the details of the persecution to family members and so may be reluctant to initiate an independent claim if they fear information they provide will be shared with their family members. This is likely to be of particular relevance if a female dependant has experienced gender-related persecution or sexual violence.¹⁴

A lack of confidentiality in the process can impact a woman's ability to access the asylum procedures and so a confidential personal interview, that is gender and culturally sensitive, should be guaranteed in the asylum process, to help ensure access.¹⁵ It is important that women can speak confidentially about any

¹² See research conducted by Scottish Refugee Council and the London School of Hygiene and Medicine *Asylum Seeking Women – Violence and Health - Results from a Pilot Study in Scotland and Belgium* which found that 70% of women reported having experienced physical and/or sexual violence in their lifetime, available at: <http://goo.gl/qWiec>

¹³ See Procedural Standards for Refugee Status Determination under UNHCR's Mandate Unit 3.2.6 Registration Interview of Family Members / Dependants, available at: <http://www.unhcr.org/4317223c9.html>

¹⁴ Ibid

¹⁵ Guidelines on International Protection No.1: 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 (2002), III para. 36 (i) 'Women asylum-seekers should be interviewed separately, without the presence of male family members, in order to ensure that they have an opportunity to present their case. It should be explained to them that they may have a valid claim in their own right' and (v) 'the claimant should be assured that his/her claim will be treated in the strictest confidence, and information provided by the claimant will not be provided to members of his/her family.' Available at: <http://www.unhcr.org/3d58ddef4.pdf>. See also UNHCR's Executive Committee Conclusion No. 64 (XLI) – 1990 which provides that states should 'ensure appropriate access by women asylum-seekers to asylum procedures, even when accompanied by male family members.' Available at: <http://www.unhcr.org/refworld/pdfod/4bace8f62.pdf>. See also Asylum Procedures Directive, Article 14(1) 'where a person has made an application for international protection on behalf of his/her dependants, each adult concerned shall be given the opportunity of a personal interview.'

harm they fear or are currently experiencing both in the UK¹⁶ and in their country of origin. Screening staff should emphasize the confidentiality of screening interviews and all dependants should be provided with the appropriate information and advice about the asylum process and their individual rights.¹⁷ Dependants should be advised in private of their rights and the consequences of any decision they might take.¹⁸

While UNHCR recognises the need to ensure the participation of all dependants, decision-makers must acknowledge and appreciate the difficulties faced by female dependants in presenting their claims. Furthermore, in assessing credibility, decisions-makers should maintain and demonstrate appropriate expectations regarding the level of knowledge women have of their husband's problems.¹⁹ Minor inconsistencies should not undermine the credibility of the applicant's core submissions. As UK guidance makes clear, a woman may be unaware of her husband's experiences in their home country.²⁰ Decision-makers must bear in mind that men may not share the details of their professional, political, military or social activities with their family members, particularly in certain cultures where women tend to be relegated to the private sphere. The interviewer should be aware that lack of knowledge or even contradictory answers, by female members of the family does not necessarily mean the testimony lacks credibility.²¹ Furthermore, where a dependant's reasons for applying for international protection relate to sexual or gender based violence and persecution or sexual identity/orientation, it is important to bear in mind that due to reasons of shame and stigma, they may not have disclosed these details even to family members.²² In family claims it is necessary and relevant to look at the evidence from family members 'in the round' and to discuss the evidence with the applicant to fully establish the claim, as well as exploring any discrepancies around material facts, where they exist.

¹⁶ Separate interviews with dependent women in the asylum process would provide an opportunity without the presence of a husband, for women to speak about any domestic violence that may be occurring. See research conducted in Scotland and Belgium which finds a high prevalence of violence against women in the context of the country of asylum; available at: <http://goo.gl/7vC52>

¹⁷ See Procedural Standards for Refugee Status Determination under UNHCR's Mandate Unit 3.2.6 Registration Interview of Family Members/Dependants, available at: <http://www.unhcr.org/4317223c9.html>. Guidelines on International Protection No.1: 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 (2002), III para. 36 (ii) "It is essential that women are given information about the status determination process, access to it, as well as legal advice, in a manner and language that she understands". Available at: <http://www.unhcr.org/3d58ddef4.pdf> and the APD Article 15 (3) which requires Member States to "take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner".

¹⁸ See APD Article 10, 11 and 13

¹⁹ UKBA Asylum Policy Instruction 'Considering Asylum Claims and Assessing Credibility,' Version 8.0 (30/07/2012) p.15, para. 4.3.1 provides that consistency in the facts asserted by the applicant with any statements made by dependants, other family members or witnesses may be considered an indicator of credibility ('consideration of internal credibility requires an assessment of whether the applicant's claim is [...]consistent with claims made by witnesses and/or dependants'). However, the guidance also makes clear that mitigating reasons must be considered, see para. 4.3.1 'In assessing the internal credibility of a claim, decision-makers should be aware of any mitigating reasons why an applicant is incoherent, inconsistent and unable to provide detail. [...] These reasons should be taken into account when considering the credibility of a claim and must be included in the reasoning given in the subsequent decision. Factors may include the following (the list is not exhaustive): age; gender; mental health issues; mental or emotional trauma; fear and/or mistrust of authorities; feelings of shame; painful memories particularly those of a sexual nature and cultural implications. It is also important to consider whether a particular line of questioning was reasonable.' Available at: <http://goo.gl/V53Ry>

²⁰ UKBA Asylum Policy Instruction 'Gender Issues in the Asylum Claim,' Version 2.0, (24/09/2010), available at: <http://goo.gl/gHGcY>

²¹ UNHCR, Interviewing Applicant's for Refugee Status (RLD 4), 1995, available at: <http://goo.gl/M811o>

²² UNHCR 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 1976 Protocol relating to the Status of Refugees, para 63(i)-(viii).

2.2 Children

UNHCR recognises significant recent efforts made by UKBA in terms of seeking to improve the asylum process for children including commitments made under Section 55 of the BCI Act 2009. However, training has to-date tended to focus on unaccompanied children rather than children who are dependent on a main applicant.²³ Despite UKBA policies making clear that accompanied children have the right to be heard by making a claim in their own right even when they are dependants,²⁴ the audit found no evidence of accompanied asylum seeking children being heard independently of family members.²⁵

Children within a family may have an independent claim to refugee status and, as with all family dependants, it is important that the asylum process can properly identify, assess and document those claims ensuring that the appropriate rights and status derive from that. Yet, a concerning finding in this report was that none of the dependent children in the cases reviewed had been interviewed at any stage of the asylum process. While the UK Immigration Rules allow for the interviewing of dependent children²⁶ and UKBA's training ensures decision-makers are equipped with the necessary skills for interviewing children, for reasons related to procedure, information about children was instead pursued via the parent.

The Committee on the Rights of the Child has identified the right of children to be heard (Article 12) as constituting one of the fundamental values of the CRC.²⁷ Thus, the right is both a substantive right and a general principle, which affects the procedural guarantees afforded to the child. Ensuring the voice of the child is heard is necessary for the interpretation and implementation of all other rights in the Convention.²⁸ The Committee has identified that difficulties in implementing the child's right to express his or her view and to have their views taken into account particularly affects children who belong to marginalised and disadvantaged groups.²⁹ Refugee children, as a disadvantaged group, are particularly at risk. Article 12 provides that children capable of forming their own views should be able to express those views in matters which affect them and for such views to be given due weight in accordance with the child's age and maturity.³⁰ Particularly in regard to judicial or administrative proceedings, children should be afforded the right to be heard.³¹ UKBA guidance on the policy and procedure to follow when dealing with an asylum application from a child also makes clear the importance of the general principle of Article 12 and the right of the child to be heard and have their views taken into account.³²

²³ See for example, UKBA Training Tier 3 for Unaccompanied Asylum Seeking Children (UASC) first delivered in 2007.

²⁴ UKBA Asylum Policy Instruction 'Processing Family Cases,' Version 1.0 (01/03/2011) available at: <http://goo.gl/IV85G>

²⁵ UNHCR Guidelines on International Protection No 8: Child Asylum Claims under Articles 1 A(2) and 1 (F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 Dec 2009, HCR/GIP/09/08, available at: <http://www.unhcr.org/refworld/docid/4b2f4f2d>

²⁶ Immigration Rule 349 (sub section 'Dependants') states 'An applicant under this paragraph including an unaccompanied child, may be interviewed where he makes a claim as a dependant or in his own right.'

²⁷ The other general principles of the Convention are the right to non-discrimination, the right to life and development, and the primary consideration of the best interests of the child.

²⁸ UN Committee on the Rights of the Child, General Comment No. 12 (2009) The Right of the Child to be Heard, para 2.

²⁹ See Committee on the Rights of the Child, General Comment No. 12 (2009) The Right of the Child to be Heard, para. 4.

³⁰ Article 12, paragraph 1 of the Convention on the Rights of the Child.

³¹ Article 12, paragraph 2 of the Convention on the Rights of the Child. See Committee on the Rights of the Child, General Comment No. 12 (2009) The Right of the Child to be Heard, para. 1.

³² UKBA Asylum Policy Instruction 'Processing an Asylum Application from a Child,' Version 5.0, (11/08/2010), available at: <http://goo.gl/OXPiL>



Three Syrian siblings, aged between three and eight, register as refugees in UNHCR's office in Zamalek. Almost 80,000 Syrian refugees have registered in Egypt. These children and their parents came to Egypt three months ago after their Damascus home was destroyed by bombing. ©UNHCR / S. Baldwin / May 2013

According to the Committee on the Rights of the Child, participation describes an ongoing process, including 'information-sharing,' and 'dialogue between children and adults based on mutual respect and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes.'³³ Participation of the child is necessary to facilitate UKBA's Section 55 duties, and if necessary, to make an informed referral to social services to identify any issues of concern (such as neglect, physical abuse, emotional abuse or sexual abuse), concerns about the level of support a child is receiving, concerns about a child's developmental needs and trafficking. Participation also helps ensure that the voice of the child, as set out in Article 12, is realised.³⁴ Thus, participation of children should be facilitated in the family asylum process so that the views of children in the family unit can be incorporated into the decision-making process.³⁵

Children should be provided with advice and information in a child-appropriate manner³⁶ to enable them to understand the process so that they can ensure they are heard if they wish to be and they know the rights that derive from different migration statuses. Subject to age and maturity, children should be interviewed confidentially, to ensure that their voices are heard and that they have appropriate access to and participation in the asylum process.

³³ UN Committee on the Rights of the Child, General Comment No. 12 (2009) The Rights of the Child to be Heard, para 3.

³⁴ Article 12 of the Convention on the Rights of the Child

³⁵ UN Convention on the Rights of the Child, Article 12 (1) and (2). According to the child's right to freedom of expression in the Convention on the Rights of the Child, children should be able to give information in a way they choose, including by talking, drawing or writing (Article 13 CRC).

³⁶ Children have the right to get and share information as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others (Article 13 CRC).

3. Quality of Decision-Making in Family Asylum Claims

This section sets out the findings made by UNHCR regarding the quality of the refugee decision for the family claims audited. Recognising the remit of the audit, particular attention was paid to the extent to which decision-makers took into account the presence of family members when considering the application of the Refugee Convention criteria and when assessing credibility in the context of a family claim.

The findings demonstrate that there can be a detrimental impact on the quality of decisions in family claims through a lack of appreciation of the unique aspects of decision-making in family cases. In general, the findings demonstrate that currently there are areas which need to be strengthened to ensure a 'family-sensitive' interpretation of the Refugee Convention.

3.1 Basis of claim

A quality asylum decision requires that the decision-maker thoroughly assess all relevant aspects of the applicant's claim. In order to demonstrate this has been done, the 'basis of claim' section of the decision letter is used to outline the decision-maker's understanding of the applicant's account of why he or she is seeking protection. Only facts that are material should be included.

In the context of a family asylum claim, the basis of claim should also acknowledge any and all facts and relevant testimony from family members as well as expressions of fear of harm to family members.³⁷ A failure to recognise and reflect information relevant to family members can have serious implications for a full and proper assessment of risk to all members of the family.

UKBA's own guidance stipulates that the basis of claim does not need to be too detailed or lengthy. Rather, what is important is that it is logical, concise, and clearly set-out. The basis of claim should include the 'who, what, why, when and where' elements of the claim, the reason for the claim, immigration history and the applicant's future fear.³⁸

The current audit pointed to some good practice around the drafting of the basis of claim, namely evidence that the decision-maker had considered information relating to dependants and outlined this information in the decision.

Good practice examples included an instance where the basis of claim reflected not only the main applicant's fear for her own return to The Gambia as an unwed mother, but also her fear that her family would insist that her daughter be circumcised.

Despite examples of positive practice, the general observation was that decision-makers do not sufficiently reflect relevant information relating to dependants in the basis of claim. Of the sample audited, UNHCR found that more than half the decisions reviewed did not reflect adequately, or in some instances reflect any, information relevant to dependants which should have been summarised in the basis of claim. This was

³⁷ See 'Written Protection Decision Checklist' in 'Building In Quality: A Manual on Building a High Quality Asylum System Further Developing Asylum Quality in the European Union (FDQ),' September 2011.

³⁸ UKBA Asylum Policy Instruction 'Considering the Asylum Claim and Assessing Credibility,' Version 8.0 (30/07/2012), Section 11.1. Available at: <http://goo.gl/cuXsAy>

true both in respect of detailing past instances of harm to family members as well as expressions of feared future harm to family members including rape, female circumcision and death. In addition, there were instances where, despite reference to a threat to a family member in the basis of claim, thereafter there was no further reference to this aspect of the claim in the consideration of the claim.

In one instance, while the initial basis of claim reflected a Pakistani applicant's expressed fear that, if returned, her one-month-old baby would be killed, thereafter nowhere in the decision was there any consideration of the expressed threat to her child, notwithstanding the fact that the source of the threat was the same as that to the main applicant.

3.2 Assessing credibility and establishing the facts of the claim

UNHCR recognises recent engagement between the Home Office and UNHCR to work toward improving the guidance to decision-makers on the assessment of credibility and establishing the facts of the claim.³⁹ For the purposes of this audit, UNHCR focused on how credibility is assessed in the context of family claims. In family claims there is potential for evidence to come from more than one family member, which may be relevant for establishing the facts and assessing the credibility of the family claim. UNHCR has found that the asylum procedure as it is currently designed does not adequately facilitate the collection of evidence from dependant family members, in particular oral evidence.

Current guidance requires decision-makers to prepare for the substantive asylum interview by gathering and reading all available information. This includes initial checks on the Home Office file and CID as well as any files relating to family members. Evidence will include written statements, letters from friends or family and files relating to previous applications by the applicant or his/her relatives.⁴⁰ In addition to preparation for interview, UKBA guidance to staff on how to assess internal credibility refers to the need to assess whether the applicant's claim is internally consistent with claims made by dependants.⁴¹ In this regard, UNHCR points to the need for ensuring a sensitive balance in that inconsistencies between family members' testimonies may not necessarily mean the testimony is not credible.

At the same time, when there is evidence from family members and a dependant is being interviewed there is a need to be sensitive to expectations regarding what knowledge a family member might have about the experiences of other family members.⁴² Family members simply may not have knowledge on the specific experiences of their relatives. For example, a woman dependant may be unaware of certain details of her partner or husband's experiences. Her lack of knowledge could well stem from the fact that in certain cultures men do not share the details of their professional, political, military or social activities.⁴³

Another example is in the case of victims of torture or sexual violence, which may cause shame and stigma for the victim and result in their reluctance to disclose their experience, even to their closest family members. In line with current UK guidance, decision-makers are required to be aware and take into account the profile of the applicant in terms of assessing the level of knowledge they can reasonably be expected to have and

³⁹ This works stems from UNHCR's engagement with three EU member states, including the UK, to improve credibility assessment in asylum claims. See 'Beyond Proof; Credibility Assessment in EU Asylum Systems,' June 2013.

⁴⁰ UKBA Asylum Policy Instruction 'Considering the Asylum Claim and Assessing Credibility,' Version 8.0 (30/07/2012), Section 3.2 available at: <http://goo.gl/TRHxR>

⁴¹ UKBA Asylum Policy Instruction 'Considering the Asylum Claim and Assessing Credibility,' Version 8.0 (30/07/2012), Section 4.3.1 available at: <http://goo.gl/fk4Wr>

⁴² See UNHCR's Interviewing Applicants for Refugee Status (RLD 4), 1995 available at: <http://goo.gl/HpYov>; 'UNHCR Handbook for the Protection of Women and Girls and UNHCR 'Presentation on Gender Sensitivity and Procedural Issues' available at: <http://goo.gl/nlyyr> Section 4.2.6.

⁴³ See UNHCR's Module Interviewing Applicants for Refugee Status (RLD 4), 1995 available at: <http://goo.gl/Yi4St>

the effect of other factors such as age, gender, social background and underlying medical or psychological factors on the applicant's ability to recall certain facts.⁴⁴

UNHCR emphasises the particular sensitivity that should be applied by decision-makers in assessing inconsistencies between the statements of family members that are material to the determination of the main applicant's claim. Although complementary interviews should be conducted to clarify aspects of evidence provided by family members, at the same time, the utmost respect should be given to separately maintaining the confidentiality of statements made by each of the family members. UNHCR finds that these particular sensitivities in regard to inconsistencies between family members' accounts are not reflected in current UKBA guidance.

UNHCR recognises the overriding principle of confidentiality and fairness in the collection of evidence and assessing credibility in family claims. Therefore, it will be vital to ensure applicants provide consent for the use of any relevant information that is to be gathered from other family members to support a material fact. In this audit UNHCR found that credibility assessment can be adversely impacted by a failure to gather relevant evidence from family members. In the majority of cases audited, UNHCR identified a failure by decision-makers to proactively identify evidence from other family members as relevant to the family's claim and so seek consent to consider that evidence or encourage the submission of a witness statement, even in cases where evidence was available and would have been directly relevant to establishing the family claim. Moreover, even when two separate family members had made separate asylum claims, and there were indications from the applicants that their relative had relevant information that would help establish the other claim, evidence was not proactively gathered (subject to confidentiality) and assessed.

In one example a woman who had formerly been a dependant on her husband's claim, brought a claim on the grounds of her fear of domestic violence by her husband and her Christian religion. Her adult son had made a claim in his own right. Despite the fact that evidence provided by the son in his claim was directly relevant to the credibility assessment of the applicant, that would support the mother's claim, no consideration was given to it in the applicant's claim. For example, in the son's statement of additional grounds he states "my father will kill my mother and us as his children." Again, in his witness statement he recounts his father's abuse of his mother and the serious danger she faces. In his substantive asylum interview he repeats the risk to his mother's life. Importantly, in her own evidence, the applicant had referred to her son's evidence as being relevant to her claim. Yet at no point did the decision-maker consider the son's file and no reference is made to his evidence in the assessment of whether she was a victim of domestic violence, which was found to be not credible. Her claim was refused. Further, the son had provided strong corroborative evidence of the mother's mental health condition, yet by not seeking the applicant's consent to consider his file or to encourage a witness statement from him, this opportunity to take into account mitigating factors was missed.

Of the sample of cases reviewed for this audit, there were no instances where a dependant (adult or child) was interviewed separately. The lack of proactive evidence-gathering from family members is considered to have negatively impacted the quality of the credibility assessment, where their evidence was relevant to the claim or where it would have been beneficial to corroborate evidence obtained from the main applicant.

UNHCR is aware that UKBA procedure provides for the issuance of, a 'One Stop Notice' to family members, which requires them to "make a formal statement about any reasons why [they] think [they] should be allowed to stay in the United Kingdom. This includes why [they] wish to stay here, and any grounds why [they] should not be removed or required to leave."⁴⁵ The written instructions, issued only in English, specify: "[i]f you later apply to stay here for a reason which you could have given us now, you may not be

⁴⁴ UKBA Asylum Policy Instruction 'Considering the Asylum Claim and Assessing Credibility,' Version 8.0 (30/07/2012), Section 4.3.1 available at: <http://goo.gl/Nu0aO>

⁴⁵ Home Office document number IS75 entitled 'ONE STOP WARNING under Section 120 of the Nationality, Immigration & Asylum Act 2002'

able to appeal if the application is refused.” Each family member is asked to put forward this Statement of Additional Grounds in English.⁴⁶

Adverse consequences may apply to any dependant who does not raise an asylum or human rights ground in response to a One Stop Notice. If they subsequently make a claim in their own right, the Home Office may issue a certificate to deny them an appeal (see section below on non-suspensive appeal cases and certification).

Of the sample of claims audited, UNHCR found evidence of only three instances where a family member had completed a Statement of Additional Grounds and / or had provided a written statement. However, as indicated elsewhere in this report, in other cases UNHCR observed evidence on the file (whether from the main applicant or a dependent) indicating that a family member’s evidence would be relevant to the claim or that they might have a fear of return in their own right. This evidence was not captured in a Statement of Additional Grounds.

The efficacy of the One Stop Notice procedure, as a mechanism through which family members can provide evidence, may be undermined by the fact that the document is only available in English and it only provides a facility for giving written evidence in English. This could be problematic in cases where applicants are illiterate or have lower levels of education. Furthermore, the need to put evidence in writing may prevent family members from disclosing their protection needs due to confidentiality concerns, particularly where a perceived threat is emanating from a family member (e.g. in cases of domestic violence).

In sum, the findings of the audit suggest that existing procedural safeguards do not adequately ensure that family members are provided an opportunity to submit evidence (either written or verbal), in order to ensure a fair and good quality credibility assessment.

3.3 ‘Swap over’ claims

‘Swap over’ claims are of particular relevance to this audit as they occur in the family case load only. According to UKBA guidance, a ‘swap over’ claim can be made where an applicant makes a claim in their own right having previously been a dependant on a family member’s asylum claim which has already been decided and where appeal rights are usually exhausted. The family members may become dependent on the ‘swap over’ claim, or not.⁴⁷

In the cases examined UNHCR found that adverse credibility findings were drawn due to the delay in making the claim in their own right without any real consideration of the reasons for that delay. UNHCR recognises the current law⁴⁸ provides that delays can negatively impact upon credibility unless ‘a reasonable explanation’ for the delay is given. However, it is unclear what specific consideration, if any, is to be given to the procedural obstacles that dependants may have experienced causing their delay in making a claim. Further, UNHCR notes the lack of clarity in the UKBA guidance on ‘swap over’ claims which provides no further elaboration as to what is meant by a ‘reasonable explanation’. Although the guidance could provide the opportunity for a protection sensitive interpretation, leaving the interpretation of ‘reasonable’ at the discretion of the decision-maker has been shown by this audit to lead to poor credibility assessments.⁴⁹

⁴⁶ Home Office document number IS76 entitled ‘STATEMENT OF ADDITIONAL GROUNDS under Section 120 of the Nationality, Immigration and Asylum Act 2002’

⁴⁷ UKBA Asylum Policy Instruction ‘Handling Swap Over Claims,’ Version 1.0 (19/02/2007), available at: <http://goo.gl/ZvXl8>

⁴⁸ See Immigration Rule 349 ‘Dependants’ which states that ‘if the spouse, civil partner, unmarried or same sex-partner, or minor child in question has a claim in his own right, that claim should be made at the earliest opportunity. Any failure to do so will be taken into account and may damage credibility if no reasonable explanation for it is given.’ Available at: <http://goo.gl/G0ySj>

⁴⁹ UKBA Asylum Instruction ‘Handling Swap Over Claims’ Version 1.0 (19/02/2007), available at: <http://goo.gl/nDAZW>

In one case UNHCR observed the case of a Pakistani woman whose ‘swap over’ claim was supported by several letters from her solicitor providing an explanation for her delay in making her individual claim, which was due to her experiences of domestic violence at the hands of her husband (the main applicant in the previous family claim) and her mental health. Yet, in the decision on her ‘swap over’ claim these explanations for her delay in claiming asylum were not assessed for reasonableness nor given any weight when assessing her credibility. This included the lack of application of the benefit of the doubt principle in regard to her claim to have been a victim of domestic violence. Her decision was subsequently overturned at appeal.

Credibility assessment was an issue in all ‘swap over’ cases audited. Irrespective of the current UKBA guidance⁵⁰ requesting explanations for delay there was evidence of decision-makers failing to make such requests and subsequently failing to apply the benefit of the doubt principle to the credibility assessment.

Another concerning practice was the reliance on the credibility assessment of the previous claim (i.e. where they were an adult dependant) and using the credibility findings in that case to dismiss credibility in the ‘swap over’ claim. This occurred even when new evidence was available or when the entire credibility findings were based on the evidence of the main applicant in the previous claim.

While the relevance of findings in a previous determination relating to the same applicant should constitute a starting point to the assessment of a new claim, decision-makers should also recognise that time has passed since the initial decision and should take into consideration new evidence available, including that provided by the applicant and of changes in the country situation, when assessing the ‘swap over’ claim.⁵¹

In one instance involving an Afghan family, the husband made a ‘swap over’ claim with his wife and three daughters as dependants. A previous asylum application had been made by his wife in 2009 with the children as dependants (prior to the husband’s arrival in the country). In the ‘swap over’ claim, the husband expressed his fear that his wife and children would be killed by his own family or his wife’s family. He feared his wife’s family for eloping with her and claimed they had shot him in the leg. He expressed fear of his own family due to a rental dispute which had led them to severely beat his wife. The rental dispute and how his wife had sustained her injuries were central to establishing risk on return. Yet both facts were dismissed solely on the basis of the Immigration Judge’s findings in the wife’s previous claim. The refusal letter states:

“You have claimed that your cousins owed you money for rental of your land which you did not intend to pay. It was held at your wife’s appeal determination that your wife was not a credible witness and she had not been assaulted by your cousins in a land dispute. Based on the determination of an Immigration Judge, it is not accepted that you were involved in a dispute over the rental of your land with your cousins.”

The assessment of credibility had been entirely based upon the Court’s findings in the wife’s previous claim. There was also a failure to consider evidence submitted in between the original family claim and the ‘swap over’ claim. The ‘swap over’ claim was made in March 2011 approximately one year after the wife’s unsuccessful appeal. In the time between the wife’s appeal and the decision on the ‘swap over’ claim, her husband had submitted medical evidence which found the scar on his thigh consistent with his account and scars on his lower leg to be highly consistent, a witness statement from himself and his wife and additional supporting letters from the NHS treating hospital about his wife’s condition. Yet the decision-maker had not given any weight to this new evidence.

UNHCR noted one particularly concerning example of a Pakistani Christian who was formerly dependent on her physically abusive husband and was now making a claim in her own right. The country of origin information in regard to risk to Christians in Pakistan had been substantially updated between the initial claim by the husband and the applicant’s claim in her own right. The OGN and COIS request dating from

⁵⁰ UKBA Asylum Policy Instruction ‘Considering Asylum Claims and Assessing Credibility,’ Version 8.0 (31/07/2012) Section 4.3.4. available at: <http://goo.gl/fOw1z>

⁵¹ *Devaseelan v SSHD* [2002] UKIAT 000702

March 2011 made clear the increased risk to Christians in Pakistan since 2009 when the initial decision was made. However this updated country of origin information was not considered in the decision.

While Immigration Rule 349 provides for the right of a dependant to claim asylum in his or her own right and the right to an interview, this audit has highlighted operational gaps in implementation, even when there is an expression of fear by a dependant or by the main applicant on behalf of a dependant. Such findings therefore raise concerns that dependants do not have satisfactory access to the procedures at the early stages of the asylum process with any individual protection needs not being explored. Making a 'swap over' claim may be a dependant's first opportunity for a personal interview to explore their substantive asylum claim and any individual need for international protection. UNHCR finds that the current law and policy on 'swap over' claims fails to recognise the lack of opportunity for dependants to separately have their protection needs heard, which may have caused their delay. Linked to this is UNHCR's concern with how credibility is assessed in such claims. The lack of clarity on what explanations for delay may be considered reasonable in the guidance to decision-makers and reliance solely on previous negative credibility findings from the original family claim were particular issues identified. In all of the examples, UNHCR was concerned to note a lack of exploration by the decision-maker of reasons why an applicant had delayed making a protection claim. This is critical in light of current UKBA guidance that suggests credibility may *not* be damaged if the applicant has a reasonable explanation for the delay.⁵²

3.4 Application of refugee criteria to the established/material facts

With the remit of the present audit in mind, the findings below set out UNHCR's observations of how the Refugee Convention criteria are applied by decision-makers specifically in the context of family asylum claims.

Well-founded fear analysis

Once the material facts of the claim have been established, the decision-maker must go on to assess, based on those facts, whether there is a reasonable likelihood that the harm feared will occur if the applicant were returned to his country of origin or habitual residence.⁵³ This is a stage in the analysis that UNHCR has previously observed to be skipped over in UKBA decision-making.⁵⁴

In all asylum claims, and just as relevant where the applicant is claiming asylum with his or her family, it is vital to ensure that the assessment of the likelihood of harm takes into account the individual profile and experiences of the applicant as well as the experiences of similarly situated individuals in the country of origin, some of whom could be the applicant's own family members.⁵⁵

⁵² UKBA Asylum Policy Instruction 'Considering Asylum Claims and Assessing Credibility,' Version 8.0 (31/07/2012) Section 4.3.4. available at: <http://goo.gl/ulojQ>

⁵³ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the 1967 Protocol relating to the Status of Refugees, re-issued, Geneva December 2011, para 37-50.

⁵⁴ UNHCR (Quality Integration Project) 'First Report,' August 2010, Section 4.2.10.

⁵⁵ See Decision Checklist J 'Written Protection Decision Checklist Level II: Convention Refugee Analysis' in Building In Quality: A Manual on Building a High Quality Asylum System Further Developing Asylum Quality (FDQ) in the European Union; September 2011

The UK Immigration Rules stress the need for an individualised assessment of risk and this is re-emphasised in the UKBA Asylum Policy Instruction:⁵⁶

“The assessment by the Secretary of State of an asylum claim, eligibility for a grant of humanitarian protection or a human rights claim will be carried out on an individual, objective and impartial basis. This will include taking into account in particular: [...]

(iii) the individual position and personal circumstances of the person, including factors such as background, gender and age, so as to assess whether, on the basis of the person's personal circumstances, the acts to which the person has been or could be exposed would amount to persecution or serious harm.”

Profile of the applicant; including the existence and profile of dependants

The existence of family members and/or dependants form part of the profile of the applicant and should be factored into the assessment of risk on return.

It is important to distinguish between the need to include the consideration of family members and/or dependants into the assessment of risk to the applicant from instances of expressed fear of harm to a dependant. The latter is touched upon below in the section ‘Access to procedures: Assessing risk to dependants and family members claiming in own right.’ Here we focus specifically on instances whereby the existence and profile of a dependant family member may affect the likelihood of risk to the applicant him or herself.⁵⁷

The UK courts have acknowledged that the likelihood of risk to the main applicant in a family can be influenced by family-related characteristics. For example, a trafficked woman may be at risk of re-trafficking due to the presence of her illegitimate child⁵⁸ or the likelihood of an applicant's risk on return may be heightened by his being in a mixed marriage.⁵⁹ These useful examples of how family-related characteristics can affect the likelihood of risk are not reflected in the UKBA guidance.

In practice, the cases sampled indicated a mixed picture in terms of whether decision-makers seemed to appreciate the need to consider family-related characteristics when assessing the likelihood of harm. Unfortunately, some decisions directly conflicted with the case law highlighted above.

One decision-maker demonstrated good practice by including in her decision reasoning an appreciation that the likelihood of harm to a Moroccan female applicant was heightened by the existence of her child and the applicant's status as an unmarried single mother. However, another decision-maker failed to identify and acknowledge a female Albanian applicant's expressed fear that not only would she be disowned by her family but she would be at increased risk in wider society due to her having had a child outside of marriage. As a result of not recognising the fear expressed, the reasoning in the decision included no appreciation of the impact of having a child on the likelihood of risk to the applicant. Another decision-maker did not include in her assessment of the likelihood of harm to an Iraqi applicant the impact of his being in a mixed-faith marriage.

⁵⁶ Immigration Rule 339J as reflected in UKBA Asylum Policy Instruction ‘Considering Asylum Claims and Assessing Credibility,’ Version 8.0 (30/07/2012), Section 4.1.1 ‘Objectivity’. Of note, however, is that this is not emphasized in the specific section of the guidance on ‘well-founded fear’ (Sections 5.5. and 5.6).

⁵⁷ Inevitably, these aspects will sometimes overlap and family members can be at risk together at the same time. What is important is that the decision-maker be mindful of the intricacies of the analysis to ensure that all aspects of risk to all relevant members of the family are identified and assessed as and where appropriate.

⁵⁸ *AM and BM (Trafficked women) Albania* CG [2010] UKUT 80 (IAC) (18 February 2010); *HC & RC (Trafficked women) China* CG [2009] UKAIT 00027 (18 July 2009)

⁵⁹ *KX (Mixed marriages-Roma-Albanian-Januzi applied) Serbia and Montenegro (Kosovo)* CG [2006] UKAIT 00072 (20 September 2006).

Experiences of family members

It is also important to consider the experiences of family members when assessing the likelihood of risk to the main applicant, a factor also not explicitly reflected in UKBA guidance.⁶⁰ This was not always appreciated in the decisions audited.

In one example, an Iranian male with a dependent wife and daughter had fled Iran due to his work as a journalist. His wife, also a journalist, had fled to the UK five months prior to her husband. While her claim in its own right was being considered, she also remained dependent on her husband's claim. While both applicants received grants of refugee status, UNHCR observed that neither decision considered the profile and experience of the spouse to be relevant to the assessment of risk on return. This, despite the fact both husband and wife gave evidence at their substantive interviews that the profile and experience of their spouses contributed to their fear of persecution in Iran.

Use of family-specific COI

An appropriate assessment of the likelihood of risk that takes into account the impact of both the existence and experiences of family members on the likelihood of risk must of course include consideration of COI that touches specifically upon these aspects.⁶¹ Again, this is not made explicitly clear in UKBA guidance and UNHCR observed mixed practice in this regard.

While one decision-maker made good use of objective COI to explore the likelihood of risk to an Algerian single mother with baby, another decision-maker examining risk to a family of Egyptian Coptic Christians referred to out-of-date and selectively quoted COI that focused only on risk to the main applicant. This impacted detrimentally upon an appropriate and full assessment of future risk to the applicant and his family members.

Availability of State protection

UKBA guidance makes it clear that, when considering whether or not State protection is available to an individual, 'decision-makers should consider whether protection afforded by the authorities or organisations controlling all or a substantial part of the State 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' [emphasis added].⁶² It is clear that family characteristics are relevant to identity and can have an impact upon whether sufficient protection is available to the individual.

However, the need to consider the impact of the existence of family in the assessment of sufficiency of protection is not explicitly acknowledged in any UKBA guidance. Furthermore, UNHCR observed a small number of cases within the sample audited where the existence of family members or the fact of being part of a particular family was considered by auditors to be of relevance to the assessment of whether State protection would be available but was not addressed.⁶³

⁶⁰ See UNHCR Refugee Status Determination, Identifying who is a refugee, Self Study Module 2 section 2.2.2.2 "The objective element: "well-foundedness" available at: <http://www.unhcr.org/refworld/pdfid/43141f5d4.pdf>

⁶¹ See for example Section 4.2.6 'Refugee Status Determination' at 'How to respond' in the UNHCR Handbook for the Protection of Women and Girls, 1st ed., January 2008

⁶² UKBA Asylum Policy Instruction 'Considering Asylum Claims and Assessing Credibility,' Version 8.0 (30/07/2012), section 7.1 available at: <http://goo.gl/k4xRV>

⁶³ It is important to note that UNHCR observed a very significant number of concerns with the applicant of the concept of sufficiency of protection more generally in the course of this audit. However, for the purposes of this audit, the focus in this section is on how the existence of family members can impact upon the consideration of whether protection is sufficient and thus findings are reflective of this particular aspect.

For example, despite one decision-maker having accepted that an Iraqi male applicant experienced problems due to being directly related to his high-profile high-ranking military officer father-in-law (dependant wife's father), the impact of this relationship on the State's ability and/or willingness to protect the high-profile military officer's extended family from revengeful opposition groups was not appreciated nor considered in any way.

Persecution

An asylum-seeker will only be recognised as a refugee where the harm that he or she is reasonably likely to experience upon return is considered to constitute 'persecution'. As UKBA's own guidance stipulates, '[n]ot every claim advanced by the applicant will necessarily be persecutory in nature, even if it is accepted. An essential part of the decision-making process is to consider whether a subjective fear amounts to treatment that falls within the definition of persecution.'⁶⁴

In UNHCR's years of experience reviewing the quality of UKBA decisions, it has been observed that rarely do decision-makers make a proper assessment of whether the harm the applicant fears constitutes persecution, whether in family claims or in claims from single applicants. This aspect is often skipped over entirely in decisions.⁶⁵

Threat of harm to a family member as persecutory to the main applicant

In the context of family claims, the audit revealed a lack of appreciation that the fear of what might happen to a family member can be persecutory to the main applicant. The UNHCR Handbook makes clear that the analysis of whether harm constitutes 'persecution' should take into account psychological aspects: '[t]he subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.'⁶⁶ The UK courts have themselves acknowledged that it is possible to persecute a husband or a member of a family by what you do to other members of his immediate family.⁶⁷ Unfortunately, no piece of UKBA guidance or training makes it clear to decision-makers that fear of what might happen to a family member can, depending on the facts of the claim, be persecutory to the main applicant.

A 31-year-old Nigerian female claimed asylum with her two-year-old dependant daughter. Her fear on return was not only to herself but also to her daughter: that her father, a member of the Awopa cult, and other family members would subject her daughter to forced genital mutilation. In the decision, the basis of claim acknowledged that the applicant had explained at interview that she was currently taking anti-depression medication. However, there was no subsequent exploration of how, in the light of this information, this might impact upon her fears of what might happen to her daughter.

A Coptic Christian couple from Egypt, with the husband as the main applicant, expressed fear of harm for their children from the moment they were screened after claiming asylum at Heathrow. The main applicant explained that his daughters and wife had been harassed and attacked whilst walking on the streets in Cairo and that he feared, if returned, that his daughters would be kidnapped and raped by Muslim fanatics and his wife would be attacked and raped going to work. At various stages in his evidence, the applicant recounted the mental distress he had been experiencing and the fact that he had been

⁶⁴ UKBA Asylum Policy Instruction 'Considering Asylum Claims and Assessing Credibility,' Version 8.0 (30/07/2012), Section 5.8 available at: <http://goo.gl/2KGdO>

⁶⁵ UNHCR (Quality Integration Project) 'First Report' August 2010, Section 4.2.13.

⁶⁶ UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, Reissued Geneva, December 2011, paragraph 52.

⁶⁷ *FM (FGM) Sudan* CG [2007] UKAIT00060 (paragraph 161), and *Schiemann LJ in Katrinak v Secretary of State* [2001] EWCA Civ 832.



Iraq / These two Syrian sisters look unhappy as they sit in the living room of the house where their family is staying in Erbil. Their parents paid US\$100 per person to be smuggled safely out of Syria after their neighbourhood came under prolonged, heavy attack. For weeks, Helen wasn't able to sleep due to the shelling. "More than anything, what I want for my girls is that they are able to attend school in safety," their mother said. © UNHCR / B. Sokol / November 2012

diagnosed with depression by a doctor in Egypt two years ago and continued to take medication for this reason. At his interview, he explained he had not slept well in 3 days due to anxiety. During the interview, the applicant explained that his daughter was herself suffering incontinence due to the problems they had experienced.

In the decision (a refusal), while this evidence was acknowledged in the basis of claim, there was no analysis of how the husband's mental state and his fears of what his family members have been through or might go through if returned to Egypt might impact upon his own psychological well-being and whether or not his suffering may amount to persecution.

Convention grounds

UNHCR's Handbook points to the requirement on the part of the decision-maker to pro-actively examine the facts of the case and decide whether the fear of harm is for a Convention reason.⁶⁸ UKBA's own guidance explains and defines the five Convention reasons but does not explicitly point to this pro-active requirement for the decision-maker to identify that Convention reason.⁶⁹

⁶⁸ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, re-issued, Geneva December 2011: paragraph 67.

⁶⁹ UKBA Asylum Policy Instruction 'Considering Asylum Claims and Assessing Credibility,' Version 8.0 (30/07/2012), Section 6. The guidance does, however, acknowledge the 'shared duty to ascertain and evaluate the evidence' as per paragraph 196 of the UNHCR Handbook at Section 3.2 of the guidance.

Profile of applicant(s) with dependant(s) as a particular social group

It can be the case for applicants, and women in particular, that the risk of harm to them is heightened by the existence of a child dependant and lack of partner or father of that child. This, in turn, has implications for the identification of the Convention reason. UNHCR's audit found inconsistent practice between UKBA decision-makers in this respect. Positively, there were examples of good practice.

In the decision on the claim of a single Moroccan woman with a young daughter, the decision-maker quotes relevant UK case law and up-to-date country of origin information to conclude:

In light of the authorities as well as the objective information listed above, it is accepted that the particular social group 'divorced women who have had a child out of wedlock' have common immutable characteristics. It is considered that the group is set apart from or recognised as a distinct group by society in Morocco. It is accepted that this particular social group is at risk of treatment that would amount to persecution.

However, there were claims from applicants with similar profiles where the decision-maker failed to identify and analyse a potential Convention reason.

'Your claim for asylum is based upon your fear that if returned you would face mistreatment due to your membership of a particular social group, as a woman who will be forced to undergo Female Genital Mutilation (FGM), and due to a reason not covered by the Convention, namely that you have a child outside of marriage, which you claim is illegal.'

The decision-maker did not acknowledge or consider that the applicant had pointed to the additional risk factor of having had her daughter outside of marriage to someone of a different racial background. Whether this potentially constitutes a Convention reason was not considered.

'Family' as a particular social group

Another relevant Convention reason that can arise more often in family claims is that of 'family' as a particular social group (PSG).⁷⁰ The audit again revealed mixed practice in this area. Some decision-makers reflected good practice.

In a 'swap over' claim from an Afghani male whose wife had already made a separate claim, the decision-maker acknowledged that the harm the applicant feared on return was in part due to his belonging to his family unit.

However, in other claims with similar characteristics, 'family' as a possible PSG was not appreciated.

An Iraqi man claimed asylum with his wife and three children as dependants. He explained, over the course of two interviews, that he and his family feared return to Iraq due to their relationship to his wife's father, a local Iraqi military commander who had assisted the British army in the area. The applicant himself had acted as a bodyguard for his father-in-law. Radical Shia Muslim groups were now targeting all relatives of this commander. Some of his wife's family members had been recognised as refugees in Switzerland and others were simultaneously claiming asylum in the UK. At his interview the applicant explained, "I was considered one of the traitor families because we assisted the British army so we need to be eliminated."

⁷⁰ UN High Commissioner for Refugees, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, para 18, available at: <http://www.refworld.org/docid/44201a574.html>

The decision-maker went on to refuse the claim based on the Convention reason of ‘imputed political opinion’ with no identification of ‘family’ as a potential PSG or assessment of risk on this basis. The decision was overturned at appeal with the judge recognising that the applicant’s family could be targeted due to their relationship with the applicant’s father-in-law.

Convention reasons arising from fears expressed by family members

As indicated elsewhere in this report, UNHCR’s audit has found that fears expressed by family members, whether linked or separate to the fear of the main applicant, are sometimes identified but not always assessed. This can in turn mean that a relevant Convention reason is not identified.

A male Kenyan applicant expressed fear of harm from the Mungiki sect for having deserted them. Simultaneously, he expressed fear that his wife and daughter would be forced to undergo FGM as per Mungiki sect practice. In the decision, only the main applicant’s fear is assessed with the Convention reason nexus identified as fear arising from being a member of a particular social group (‘ex-member of the Mungiki’). There is no identification of any Convention reason on the part of his wife and child nor any assessment of risk to them.

Internal flight alternative

In line with the overall approach to the current audit UNHCR considered how the concept of internal flight alternative (‘IFA’) was conducted only in so far as it relates to family specific considerations. As UNHCR’s guidelines make clear, ‘a consideration of internal flight or relocation necessitates regard for the personal circumstances of the individual claimant and the conditions in the country for which the internal flight or relocation alternative is proposed.’ UNHCR considers that personal circumstances can include the presence of family members, an aspect clearly relevant to the decision-maker when assessing any family asylum claim.⁷¹

This requirement to consider the personal circumstances of the applicant is reflected both in the current UK guidance to decision-makers⁷² and the UK immigration rules.⁷³ Additional gender-specific guidance also emphasises that an individualised IFA assessment must take into account factors such as ‘supporting family or other ties (including childcare responsibilities and the effect of relocation upon children).’⁷⁴ Further, it makes clear that ‘in certain countries, financial, logistical, social, cultural and other factors may mean that women face particular difficulties. This may be particularly the case for divorced women, unmarried women, widows or single/lone parents, especially in countries where women are expected to have male protection.’⁷⁵

UNHCR found evidence of good practice. For example, one decision-maker reflected in her decision an awareness that the country of origin information demonstrated that the general societal treatment of single mothers and the children of single mothers would make relocation in their circumstance unreasonable. Beyond a consideration of an IFA for her alone as the main applicant, the decision-maker considered the reasonableness of the IFA for both members of the family, which in this instance included a child who had been born out of wedlock. For this reason, the decision-maker questioned whether the child could obtain the necessary ID, attend school and the wider impact of this stigma of having been born out of wedlock.

⁷¹ See paragraphs 4, 24 and 25 in UN High Commissioner for Refugees, Guidelines on International Protection No. 4: ‘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, 23 July 2003, HCR/GIP/03/04, available at: <http://www.unhcr.org/refworld/docid/3f2791a44.html>

⁷² UKBA Asylum Policy Instruction ‘Internal Relocation,’ Version 2.0 (08/02/2007), p3.

⁷³ See Immigration Rules, paragraph 339O (ii) available at: <http://goo.gl/a4Uow>

⁷⁴ UKBA Asylum Policy Instruction ‘Gender Issues in the Asylum Claim,’ Version 2.0, (24/09/2010), Section 5.2. available at: <http://goo.gl/dBC2k>

⁷⁵ UKBA Asylum Policy Instruction ‘Gender Issues in the Asylum Claim,’ Version 2.0, (24/09/2010), Section 5.2. available at: <http://goo.gl/P4Oua>

However, UNHCR found that the particular family circumstances of the applicant were not always taken into account in the assessment of IFA. UNHCR found evidence of decision-makers failing to consider the reasonableness of relocation in light of the fact that the main applicant had accompanying dependants and taking into account the profile of those dependants. Family profiles that were not acknowledged in the IFA assessment included single women with children, a dependent spouse with poor health and a mixed-faith couple.

Furthermore, UNHCR found that although some decision-makers had considered the reasonableness of relocation in light of the existence of a dependant, there was a lack of following this analysis through, by considering the most up-to-date country information and how relocation would impact upon that dependant recognising their individual profile in light of this.

For example, one decision-maker referred to 2009 Country Information in regard to Vietnam about the implementation of residency registration requirements, arguing there was no obstacle to relocation for the applicant as a single mother even if unregistered. However, the decision-maker did not factor in additional and family-specific COI from the 2011 Operational Guidance Note ('OGN') acknowledging the impact of moving without permission on access to public education and health-care benefits, two very relevant issues in the applicant's case given that she had a young child and would be particularly in need of accessing these services. In sum, there was no consideration of whether it was *reasonable* to expect a single mother to relocate if the difficulties she might have in relocating included her ability to access education and/or health care for her daughter.

3.5 Evidence-gathering and the burden of proof in family claims

While the burden of proof in an asylum claim falls on the applicant, there remains a duty on the deciding authority to ascertain and evaluate the facts of the claim. This duty requires the decision-maker to do what is within his or her power to facilitate the applicant's ability to put forward evidence. Further, he or she must also pursue and review available objective country information relevant to the applicant's claim.⁷⁶ This is known as the 'shared duty' and is relevant not only to establishing the applicant's credibility regarding past and present claimed events but also to assessing the likelihood of harm on return (i.e. the forward-looking test for risk). UNHCR's audit has sought to observe and assess the extent to which UKBA's current procedures and practice ensure this 'shared duty' is being exercised in the context of family claims.

Asylum claims from families are clearly distinct from individual asylum applications in that there is more than one person who can potentially provide evidence to help substantiate the claim. Evidence-gathering from family members can be relevant to both the credibility assessment as well as the assessment of future risk. For example, it may be relevant to gather evidence relating to the reasonableness of internal flight from the applicant's spouse.

UKBA guidance to decision-making staff emphasises this shared duty and highlights some examples of 'evidence' that will be relevant in the context of a family claim: 'background information including background details of relevant relatives,' 'screening interview records,' 'statement of evidence forms,' 'letters from friends or family' and 'files relating to previous applications by the applicant or his/her relatives.'⁷⁷ Of

⁷⁶ Paragraph 196 of UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, re-issued, Geneva December 2011 – as reflected in UKBA Asylum Policy Instruction 'Considering Asylum Claims and Assessing Credibility' Version 8.0 (30/07/2012), Section 3.2 'Evidence submitted by applicants.'

⁷⁷ UKBA Asylum Process Guidance: 'Considering Asylum Claims and Assessing Credibility,' Version 8.0 (30/07/2012), Section 3.2 available at: <http://goo.gl/wIKIR>

note, there is no mention of COI specifically relevant to family members.⁷⁸ The same guidance explains ‘[i]t is for the interviewer to test available evidence and, if appropriate, invite submission of further evidence material to the claim that may reasonably be expected to be provided.’⁷⁹

While it appears there is provision in the family asylum process for decision-makers to discharge the burden upon them and gather and consider relevant evidence, including from family members, UNHCR’s findings suggest that not all decision-makers actively review and consider these types of evidence even where it is available. Further, current family asylum procedures do not include sufficient provision or time for substantive interviewing of dependants in a family asylum claim. While the guidance indicates an opening for decision-makers to request further evidence, UNHCR notes that there is no explicit suggestion that verbal evidence or statements from family members might be pro-actively pursued where relevant.

Design of the asylum process

It should be acknowledged that the ability of the decision-maker to discharge the duty upon him or herself to ascertain and evaluate the facts of an asylum claim is not only dependant on their own pro-activity and understanding of how to discharge this burden but is also influenced by the design of the asylum process within which they work, suggested timescales and requested targets. In other words, decision-makers can only assess the claim within the limits of the asylum process as designed and sanctioned by management. The findings below suggest that the family asylum process as currently designed does not aid the decision-maker in discharging the burden upon him or her to ascertain and evaluate the facts of family claims. The resulting lack of evidence can have concerning consequences.

Evidence from family members

During the audit, UNHCR found examples where family members were available to provide evidence and it was clear that their evidence would be relevant to the assessment of whether the harm feared on return was reasonably likely to occur, but that the evidence was not considered. In each of the examples, the status of the family member varied: some were dependant on the claim, some were nuclear family members who had made claims in their own right, while others were extended family members who had made separate asylum claims. On other occasions there was an immediate family member present in the UK who had not made an asylum claim but whose evidence would clearly be relevant and useful.

In one claim reviewed, a female Sri Lankan ethnic Tamil had travelled to the UK with her sons using the assistance of an agent. She claimed asylum upon arrival at the airport. Her claim was that she had been arrested, detained for two weeks, beaten and sexually assaulted by the Sri Lankan authorities who wanted to know more about her husband’s activities for the LTTE. At the time, her husband was in the UK on a student visa. Her father had helped release her from detention and arranged her travel with the agent. Despite the fact that her husband was UK-based, consent was not sought for him to be interviewed nor was the applicant encouraged to obtain a statement from him. The decision-maker did not accept the applicant’s account as credible and her application for asylum was refused. At appeal, the judge wrote in his determination, “the appellant’s husband’s evidence is quite critical in this appeal, because the appellant’s experiences are said to relate to his circumstances. He has made a detailed statement in support of this appeal.” Her husband also gave oral evidence at her appeal and the judge accepted her claim and overturned the decision.

⁷⁸ The previous version of this UKBA instruction (entitled ‘Considering the Asylum Claim’) was more explicit in the way it required decision-makers to consider, prior to interview, “all screening forms including those of dependants, any files relating to family members, letters from friends or family [and] sections of COI/OGNs relevant to family members.” [emphasis added]

⁷⁹ The ‘Processing Family Claims’ guidance makes no mention of evidence from family members, how and when it might be collected, nor how it might be factored into decision-making. Rather, it refers back to the general guidance applicable to all types of claims.

UNHCR also observed occasions where a nuclear or extended family member had claimed asylum in their own right based on similar if not identical grounds to the main applicant but their file and the evidence provided within it did not appear to have been reviewed.

A male Iraqi applicant applied for asylum with his wife and daughter dependant on his claim. Three members of his wife's family had applied in their own right three months prior, two of whom had their own dependants. All family members had applied based on their relationship to the same high-profile military general having put their family at risk from revolutionaries. All three of his extended family members had been interviewed prior to the particular applicant's interview but had not yet received decisions. Despite the acknowledgement in the basis of claim of the applicant's decision of his extended family having made asylum claims there was no evidence of proactivity on the part of the decision-maker to obtain consent to review the family members' files or interviews. Ultimately, the applicant and his extended family members all had their refusals overturned at appeal.

UNHCR observed some instances where the failure to gather evidence from a dependant family member clearly impacted detrimentally on the quality of the assessment of the claim.

UNHCR came across two Libyan asylum applications where the fear of persecution was based on the families being members of tribes known to be pro-Gaddafi and who, as a result, feared the revolutionaries. In both claims the main applicants explained that their fear was based in part on things that had happened to their spouses' family members. Despite this, neither spouse was interviewed nor a statement taken. Instead, the burden remained entirely on the main applicant to provide the evidence regarding things that had happened to their spouse's family. While one of the claims was nevertheless accepted the other continues to move through the appeal process, where the spouse has now been able to give evidence.

Family-specific country of origin information (COI)

UNHCR's audit also examined the extent to which decision-makers understood and acted upon the shared duty to pursue COI relevant to family members, whether to help establish the credibility of the claim or in order to assess the likelihood of future harm. Here, mixed practice was observed. Positively, there were examples of cases where the decision-maker had clearly researched and evaluated COI that was specifically related to the family aspects of the claim.

For example, one decision-maker used COI in her decision which helped establish the likelihood of risk of persecution to unmarried mothers and their children. Another decision-maker demonstrated good and pro-active practice when she reviewed COI relevant to a family member prior to the interview and went on to put this COI to the applicant during the interview.

However, the audit identified a number of examples where the research and evaluation of COI specific to a family member or to the profile of the family as a group would have been necessary for the case worker to discharge his/her duty but this was not undertaken.

3.6 Decisions overturned at appeal

As noted in the summary of UNHCR's final audit sample, of the 27 family asylum claims that were refused outright at initial decision, six cases were 'certified' thereby denying the applicant an in-country right of appeal, and in a further case the refusal letter was subsequently withdrawn and the applicant granted asylum.

Of the remaining 20 refused cases, all applicants appealed the decision and over half were allowed by the court at the appeal stage (11) while a third of decisions appealed were dismissed (7). At the time of writing, two cases were yet to be heard. In only eight of these cases was the appeal determination available on file.

UNHCR has not been able to perform a full analysis of the reasons for overturned decisions but was able to collate the reasons for the decisions having been overturned by the court and (in the one instance) re-issued by UKBA. These include:

- ◆ the judge finding the applicant credible (six claims),
- ◆ the judge's recognition of reasonable likelihood of risk (four claims),
- ◆ a recognition of best interests of the child requiring a grant of leave (three claims),
- ◆ a recognition of a Convention reason where the decision-maker had found none (two claims),
- ◆ a lack of sufficient protection (two claims) and a lack of an internal flight alternative (two claims).

These reasons often interact with one another (for example, if the judge found the applicant credible, this gave rise to a reasonable likelihood of risk). In only three of the claims there was new evidence that arose between decision and appeal / re-issued decision. Types of new evidence presented included:

- ◆ medical evidence proving detention where the allegation of detention had not been accepted by the decision-maker,
- ◆ medical evidence proving British Citizenship and paternity of a non-applicant father of a minor dependant on claim, and
- ◆ medical evidence proving that a dependant child born post decision was female (giving rise to FGM risk).

4. The Impact of Procedures on Decision Quality

4.1 Screening

The screening stage of the asylum process is an important one in the asylum claim. As a tool of protection, the screening process demands that certain procedural safeguards are in place ensuring access to the asylum procedure.⁸⁰ Fundamental procedural safeguards include the requirement that all dependants have an individual and confidential⁸¹ registration interview and that dependants are made aware (in a language they understand) of the refugee criteria and the right to make an independent refugee claim where they have individual grounds to seek refugee protection.⁸²

In the context of family claims the screening process has particular importance for being the only point at which adults dependant on the claim are currently interviewed and the only point at which they are explicitly asked if they would like to make a claim in their own right. As UNHCR was not able to observe the screening interviews in the sample, the findings below are based on a paper audit of the screening interview forms available on the files of the case sample.

Of the forty six family claims audited, UNHCR noted that forty one families were screened at the Asylum Screening Unit (ASU), three at Heathrow Airport, one at Manchester Airport and two by a Local Immigration Team (one of which was subsequently also screened at the ASU). UNHCR understands that nationally, approximately 50 per cent of all asylum applications are currently screened at the ASU with the remaining balance being screened by Local Immigration Teams (LITs) or at ports. Thus the proportion of families screened at the ASU in this context of this audit was significantly higher than the general population of asylum-seekers.

⁸⁰ See UNHCR's Executive Committee Conclusion No. 91(LII) on refugee Registration, October 2001. The Conclusion reaffirms the importance of registration as a protection tool and sets certain basic guidelines for all registration processes. See also UNHCR Handbook for Registration, Procedures and Standards for Registration, Population Data Management and Documentation, in particular section 1.3 available at: <http://www.refworld.org/pdfid/3f967dc14.pdf>

⁸¹ See Procedural Standards for Refugee Status Determination under UNHCR's Mandate, Unit 3- Reception and Registration, section 3.2.6 Registration of Family Members/ Dependants, available at: <https://www.unhcr.org/4317223c9.html>

⁸² See UNHCR Procedural Standards for Refugee Status Determination under UNHCR's Mandate, Unit 3 – Reception and Registration, Section 3.2.6 Registration Interview of Family Members/ Dependants available at: <https://www.unhcr.org/4317223c9.html>. See also the Asylum Procedures Directive, Ch. II, Basic Principles and Guarantees, Article 6: Access to the Procedures which states '*member states shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf*' and in this regard Article 10: Guarantees for applicants for asylum (1.) '*... member states shall ensure that all applicants for asylum enjoy the following guarantees: (a) they shall be informed in a language they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure.*' On the principle of confidentiality at registration see also UNHCR's Executive Committee Conclusion on Registration of Refugees and Asylum-Seekers No 91 (LII) (b) (ii). 5 October 2001 which states: '*The registration process should abide by the fundamental principles of confidentiality*' available at: <http://www.unhcr.org/3bd3e1d44.html>



U.K. / English classes for refugees from Ethiopia who came to the UK in 2006 under the Gateway Protection Programme. The majority of the refugees are Oromo. The GPP is the UK refugee resettlement programme implemented by the UNHCR and the UK Government Home Office. In autumn 2006 eighty refugees from Ethiopia, the majority of whom were Oromo and had been living in Kakuma camp in northern Kenya, were resettled in Brighton on the south coast of England. © UNHCR / H. Davies / 2007

All but one of the main applicants in the sample underwent a screening interview.⁸³ UKBA's current asylum process requires that only adult dependants undergo a screening interview, while children are not interviewed. Of the nineteen family claims which included adult dependants, it was observed that four dependant adults were not screened.⁸⁴

UKBA's Gender Asylum Instruction states that "[w]here a woman is being registered as a dependant in an asylum application, she is informed in private at her screening interview of her right to make her own independent application for asylum."⁸⁵ UNHCR welcomes UKBA's intention to ensure that the current refurbishing of the ASU will ensure a physical space that better permits this confidentiality.⁸⁶ Confidentiality is particularly relevant for family members who have experienced gender-related persecution or sexual violence.⁸⁷

⁸³ The claim was a 'swap over' claim. UKBA Asylum Policy Instruction 'Handling Swap Over Claims' explains under 'Asylum Claims Made By Previous Dependants at an Asylum Screening Unit' that '[w]here a claim for asylum is made by a person previously dependant on another claim at one of the designated Asylum Screening Units they are not required to undergo the normal screening procedures. This is because they have already undergone screening as a dependant on the previous claim. However, if it is found that the applicant has not been screened, ASU should arrange for screening to take place.'

⁸⁴ In one of these cases, the female spouse had already claimed asylum and the claim was a 'swap over' claim which precludes a re-screening according to UKBA policy as above. In the other three, the dependant adult had joined the claim as a dependant after the screening stage of the main applicant's application.

⁸⁵ UKBA Policy Instruction 'Gender Issues in the Asylum Claim,' Version 2.0 (24/09/2010), page 18.

⁸⁶ Article 13 of European Union Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status'. See also UNHCR 'Improving Asylum Procedures; Comparative Analysis and Recommendations for Law and Practice' (March 2010), p28, available at: <http://goo.gl/ofco8>

⁸⁷ UNHCR's Procedural Standards for Refugee Status Determination under UNHCR's Mandate available at: <http://goo.gl/tf27F>

Evidence in some of the screening forms reviewed showed screening officers omitting the question which expands upon the meaning of ‘claim in your own right’ when screening adult dependants. In eight out of the nineteen family claims where an adult was dependant on the claim (and where a copy of the dependant screening form was available for verification), the answer to the question “*Are you certain that you, yourself, do not have a well-founded fear of persecution and do not face a real risk of serious harm if you are removed from, or required to leave the United Kingdom*” was left blank.⁸⁸ This finding suggests it is possible that not all adult dependants are being asked if they have an independent fear of return. Where the question is omitted, UKBA runs the risk of not identifying international protection needs. UNHCR further notes how whether, without any further explanation, the question as phrased on the form ensures that dependants understand what is being asked of them.

Below, UNHCR points to examples of claims within the audit sample where there were strong indications that a dependant family member had independent fears that required consideration and that potentially gave rise to claims in their own right but that these were not examined. In some of the claims evidence of independent fears arose at the screening stage. In sum, it is clear that the screening stage as part of the wider family asylum process could be strengthened to ensure that family’s expressions of fear potentially giving rise to independent claims to asylum are being pro-actively identified.

4.2 Access to procedures: assessing risk to dependants and family members claiming in own right

UNHCR carefully monitored whether and how the UK asylum system facilitates the identification and assessment of risk on return specific to family members in addition to that of the main applicant. UNHCR also examined how the asylum process as currently designed facilitates the ability of family members to submit a claim in their own right where relevant. Finally, UNHCR monitored the role of screening officers and decision-making staff in identifying such circumstances as well as patterns of expressions of risk by the applicants themselves as they proceeded through the asylum process.

The findings indicate a range of practice. While some of this is positive, overall there is a lack of clarity both on the part of decision-makers as well as in the design of the family asylum process regarding how expressions of fear of harm in respect of family members should be handled. The asylum procedure for families does not allow for the full expression of fear of harm on behalf of all family members nor an assessment of the likelihood of those feared harms being realised. The findings also indicate a lack of procedural safeguards and staff sensitisation to ensure that, where relevant, family members are able to put forward claims in their own right and have their protection needs fully and properly considered.

Family members’ expressions of fear

In three quarters of the family claims reviewed UNHCR observed that at some point during the course of the family asylum claim either the main applicant or an adult dependant expressed a fear that a family member dependant would face harm upon return.

There was mixed practice however, in the way in which UKBA staff handled such expressions of fear both in terms of their substantive assessment of the claim as well as in how this did or did not give rise to a claim then being designated in the family member’s own name.

⁸⁸ See UKBA Screening (Dependants) form, ASL.3211c, page 1

Some UKBA staff were clearly sensitive to an applicant's expression of a fear of harm on behalf of the family member. In some claims where the matter arose, the interviewer questioned the applicant further about the family member and the harm feared at the main applicant's interview (note, however, concerns raised elsewhere in this report at the lack of provision for other family members to be substantively interviewed). Later, the decision-maker would then assess the risk to the family member in the decision using relevant COI and case law. This practice was more common, for example, in claims from single mothers who expressed fear that FGM would be performed on their young daughters. It appeared that, in cases involving FGM, decision-makers were aware of the need to assess the risk to the child when the parent expressed this risk on behalf of their child.

However, it was noted from a review of the asylum procedure guidance available to decision-makers during the time period of the audit that there was an overall lack of clarity as to how these circumstances should be procedurally managed.⁸⁹ The Operational Guidance Note (OGN) for The Gambia clarified that, in a circumstance where an applicant makes an asylum and / or human rights claim on the basis 'that FGM will be forced upon their children if they were returned to (The Gambia), [...] [a]ccompanying parents of such applicants will be eligible for a grant of discretionary leave unless they are able to establish their own protection needs.' However, this guidance did not go so far as to clarify that the child should thereby be designated as the main applicant. Indeed, decision-makers' practice indicated they were unsure about the procedural implications of recognising risk to a family member.

In a Gambian woman's claim, for example, the decision-maker accepted there was risk of FGM to her three-year-old daughter, but maintained the claim in the mother's name and granted the mother Humanitarian Protection (based on a finding that there was no Convention reason) while the daughter was granted leave in line with the mother (this, despite the fact that the entirety of the mother's claim was based upon her fear of harm to her daughter).

However, in a different claim involving a female Iraqi Kurd and her children, the interviewer considered the medical issues of one of her daughters and ultimately granted the daughter Humanitarian Protection while the mother and other daughters received Discretionary Leave in line with the daughter having been granted protection.

For each example of an instance where risk to a family member was assessed, UNHCR found an equal number of instances where expressions of fear of harm to family members went ignored or, if acknowledged, were not fully and properly assessed.

A female Pakistani applicant explained that her teenage children had experienced instances of past persecution and that she was fearful that her daughters would be kidnapped by Muslim extremists on return to Pakistan due to the family being Christian. In the decision, apart from a brief acknowledgement in the basis of claim "you claim your lives are in danger for being a Christian" [sic], the remainder of the letter focuses purely and solely on risk to the mother.

A male Egyptian Coptic Christian and his wife both made clear early in their screening interviews that, prior to flight, the wife and daughters had been attacked on the street. They feared that, if returned to Egypt, not only would the husband be targeted but his wife and daughters would be kidnapped and raped by Muslim extremists. In the decision, the expressed fear of rape to the wife and daughters was acknowledged in the basis of claim but the fear of kidnapping was not recorded. Further, neither of these feared harms were then assessed for their likelihood. Instead, the decision-maker argued that there was sufficient protection and an internal flight alternative for the main applicant.

⁸⁹ During the period of UNHCR's audit, the Asylum Process Guidance entitled "Dependants" was under revision. UKBA informed UNHCR it was not active and up-to-date and that decision-makers were not expected to follow it.

Family members claiming asylum in their own right

The above findings point to the importance of the decision-maker identifying expressions of fear, assessing that fear and designating the individual to whom the risk applies as a main applicant.

At the same time, it is important for the deciding authority to ensure that all dependants understand the grounds for qualification for refugee and subsidiary protection status and that they have the opportunity to raise any protection needs they may have in their own right.

Positively, in the UK context, Immigration Rule 349 makes clear that a dependant on an asylum claim may also claim asylum in his or her own right and that the dependant may be interviewed, whether as a dependant on another applicant's claim or when making a claim in his or her own right. However, at the time of conducting the audit, the Asylum Process Guidance entitled 'dependants' (where details of this procedure might normally be set out) was 'under review' and not available to decision-makers.

It is UNHCR's position that if, at any stage of the asylum procedure, any information provided by either the main applicant or a dependant, or gathered independently by the determining authority, indicates that a dependant may have independent reasons for international protection, this should be further examined in a separate and confidential personal interview with the dependant with due regard to age and maturity. In addition, care should be taken to consider cultural implications which may affect individuals, and particularly women, who have grounds to apply for international protection but are reluctant to make an independent application or may be discouraged from doing so. For this reason, the staff of any asylum determining authority should be sensitised and skilled in gender and culturally-sensitive communication.

Equally, decision-makers should be aware that a family member can qualify for refugee status independently if it is established that they have a well-founded fear of persecution linked to a Convention reason in their own right. For example, a family member can receive protection even if their fear of persecution results from their being related to someone who was found to be excludable. A family member who has their own claim properly assessed and identified can also go on receiving protection even when another family member (their spouse, for example) has no right to remain in the country of asylum based on ceased circumstances under Article 1C(5). Where it is not recognised that a family member has their own independent claim to asylum there can be serious protection implications for both the individual and their family members.

The audit identified shortcomings in the consideration of expressions of fear by or on behalf of family members and the identification of triggers for independent claims by decision-makers. This is most likely attributed to a lack of relevant guidance and training.

There are indications that UKBA staff in both the screening and decision-making units are not able to identify and pro-actively respond when there are indications of a potential independent claim from a family member.

When asked at screening if she was certain she did not have her own 'well-founded fear' of persecution, the wife of a Bangladeshi applicant responded explaining that it was "a family problem" and that she wanted to speak to her solicitor before answering the question. Whilst the applicant was asked at interview if the risk of harm he feared was to his wife and daughter as well (to which he said yes). Despite this response the interviewer did not re-visit the matter of whether his wife might be interviewed or whether she might have a claim in her own right.

UNHCR was encouraged by an example of what was considered a more appropriate exploration of a Libyan family's claim at the screening stage. The husband of a Libyan couple with a male child applied as the main applicant. During his screening interview, however, he explained he could not return to Libya because he is not safe and that he worried for his wife. When screening his wife, despite her response of 'no' to the question of whether she was certain that she herself did not have a well-founded fear of persecution, the screening officer asked a number of follow-up questions which clarified further (to the limited extent appropriate at the screening stage) whether or not the wife had her own individual fears. While it was considered appropriate,

given the husband's evidence, to further question his wife on this matter at screening, disappointingly, this was not followed-up or explored any further at the husband's substantive interview, despite his continued expression of fear that his wife would be tortured on return to Libya.

In none of the interviews in the family claims reviewed did UNHCR observe the interviewer take the opportunity to explain the possibility of a dependant claiming in their own right even where this was considered relevant. In none of the claims reviewed where there were indications of risk to family members or of independent reasons for protection was the dependant substantively interviewed. In the two claims amongst the sample audited where an immediate family member was claiming asylum in their own right, the file and CID notes appeared to suggest that the family members themselves had chosen to claim separately. The audit findings suggested that, unless the family members themselves recognised the relevance of a dependant claiming in their own right and pursuing this opportunity, UKBA staff were inclined to maintain the claim as that of the main applicant and only sometimes assess risk to family members as part of that claim.

4.3 Non-suspensive appeals (NSA) cases and certification

Section 94 of the Nationality, Immigration and Asylum Act 2002 provides a certification process which denies an applicant the right for an in country appeal on certain asylum and/or human rights claims. According to current UKBA policy, asylum and human rights cases can only be certified if the case is 'clearly unfounded' *and* has met 'strict criteria' which are set out in the legislation.⁹⁰

Strict criteria limits the use of certification to those cases where either the applicant resides in one of the 'designated States'⁹¹ or the applicant resides outside the designated States but whose claim is considered 'clearly unfounded'.⁹² According to UKBA's guidance to assess whether or not a claim is clearly unfounded, 'a decision-maker needs to be satisfied that the claim cannot, *on any legitimate view* succeed'⁹³ [emphasis added].

Recognising the serious impact certification has on an individual's rights in the process, the guidance makes clear that only 'NSA trained decision-makers can consider certifying cases under Section 94,' and those decisions must then be checked by a 'second pair of eyes' or 'determining officer'.⁹⁴

UNHCR audited six cases where the main applicant's claim was refused, certified 'clearly unfounded', and the right to an in-country appeal of the decision denied. In the family context, this significantly increases the risk of dependant family members being removed from the UK without having their protection needs identified and assessed. UNHCR was particularly concerned to find that the UKBA guidance on certification does not allow for any additional procedural guarantees when certifying a family claim. Of note, there is no requirement in UKBA policy or practice that dependants receive private substantive interviews and/or further counseling and advice explaining the consequences of certification for their rights, prior to the removal of their in-country right of appeal. Certification in the context of family claims compounds the

⁹⁰ Section 94 Nationality, Immigration and Asylum Act 2002; UKBA Asylum Policy Instruction, Non Suspensive Appeals (NSA), 'Certification under Section 94 of the NIA Act 2002' Version 1.6 available at: <http://goo.gl/5ACHb>

⁹¹ Section, 94 (4)

⁹² Section, 94 (2)

⁹³ UKBA Asylum Policy Instruction, Non Suspensive Appeals (NSA), 'Certification under Section 94 of the NIA Act 2002,' Version 1.6 (24/05/13) Section 2.1 available at: <http://goo.gl/Bhlz>

⁹⁴ UKBA Asylum Policy Instruction, Non Suspensive Appeals (NSA), 'Certification under Section 94 of the NIA Act 2002,' Version 1.6 (24/05/13) Section 2.3 available at: <http://goo.gl/RF9jk>; The Court of Appeal has also made clear the stringency of the criteria that needs to be applied before certifying a case. The Court has made clear that 'only where the interviewing officer is satisfied that nobody could believe the applicant's story will it be appropriate to certify the claim as clearly unfounded on the ground of lack of credibility alone' (see *ZL and VL v SSHD & LCD* [2003] EWCA Civ 25, para 60).

impact of procedural and policy shortcomings already identified in this audit, which restrict dependant family members from accessing asylum procedures.

In one case of particular concern to UNHCR a Pakistani family claimed asylum on the basis that the applicant feared he and his family would be killed. He had witnessed a group beat his two cousins to death in the street during the day where the police had watched and failed to intervene. Shortly after, the applicant testified against those he witnessed killing his cousins and began to receive death threats. The case had gained considerable attention, including the attention of Amnesty International who had released a press statement both at the time of the killing and one year on. Amnesty International and a member of the UK House of Lords had also drafted a letter to the Pakistani Government to raise concerns about the case.⁹⁵ Despite the large amount of documentary evidence which the applicant also produced to support his case, the case was certified under Section 94 and the case was refused on grounds that there was sufficiency of protection in Pakistan.

UNHCR was deeply concerned that a case such as this was certified. Recognising the evidence and setting this against the high threshold of ‘clearly unfounded’⁹⁶ set out in UKBA policy made it difficult to see how the decision-maker and the second pair of eyes could find this case, ‘*on any legitimate view, would not succeed*’⁹⁷ [emphasis added].

From a family perspective, recognising the remit of the audit, UNHCR was particularly concerned to note the lack of consideration in the certified decision of individual risks and considerations to family members. UNHCR noted the impact certification could have on the rights of the applicants who are dependants in the above example, in a process where UNHCR found there to be wholly inadequate procedural safeguards in place. The wife in the claim was asked at the Screening Interview whether she wished to claim in her own right, to which she replied “no”. However, UNHCR noted there was no follow up question asked to her nor were any of the dependants sufficiently counselled about the consequences of not making a claim in their own right. At the substantive asylum stage none of the dependants were interviewed or counselled on the impact of certification on their rights as dependants. This was the case, despite the main applicant’s expression of fear for his family both at the screening interview and at his substantive asylum interview.

In the certified cases identified, UNHCR also noted a lack of consideration by decision-makers of the risk faced by dependants on return. There was no evidence of efforts being made by decision-makers to seek any further evidence from family members prior to certifying the case. At no point in the substantive asylum claim of the Pakistani main applicant cited above did the interviewer re-visit the issue of whether his wife or children might have a claim in their own right, nor did the decision maker consider gender or child specific COI in the refusal decision. Of additional concern in the above case was the fact the applicant and his family had a valid student visa until July 2014, and certification curtailed their leave. Again, no counsel or advice was given to the wife, as to how certification would impact her current leave to remain. These shortcomings, while significant in and of themselves were further exacerbated by the fact the applicant and his family were not legally represented.

⁹⁵ Documents on file with UNHCR.

⁹⁶ UKBA Asylum Instruction, Non Suspensive Appeals (NSA), ‘Certification under Section 94 of the NIA Act 2002,’ Version 1.6 (24/05/2013) available at: <http://goo.gl/15jES>; Section 94 of the Nationality, Immigration and Asylum Act 2002.

⁹⁷ Ibid, para 2.1. The Court of Appeal has also made clear the stringency of the criteria that needs to be applied before certifying a case. The Court has made clear that “only where the interviewing officer is satisfied that nobody could believe the applicant’s story will it be appropriate to certify the claim as clearly unfounded on the ground of lack of credibility alone” (see *ZL and VL v SSHD & LCD* [2003] EWCA Civ 25, para 60)

4.4 Pregnant women in the asylum process

As this report is focused on families, it was no surprise to find within our sample six cases where the main applicant was pregnant with her first or second child. In all six cases the woman was at the late stages of pregnancy. While not a primary focus of this report, UNHCR noted some observations during the course of the audit on how pregnant women experience the asylum process.

UNHCR is aware that at the present time in the UK there is increased focus on the experiences of pregnant women who are in the asylum process. Since the cases in this audit were decided, UKBA has introduced a new policy to provide a 4 weeks ‘maternity leave’ on either side of the date of delivery.⁹⁸ This policy sits against a backdrop of health concerns around the maternal health outcomes of asylum-seeking women, who have been found to be more likely to have experienced sexual and gender based violence, trauma and poverty, all of which increase their vulnerabilities in pregnancy.⁹⁹ In light of this, the National Institute for Health and Clinical Excellence (NICE) Guidance has drawn attention to the need for special efforts and service provision for disadvantaged and vulnerable groups in its NICE Guidelines on Pregnancy and Complex social factors.¹⁰⁰

Pregnancy is relevant to the quality of the asylum process and decision-making as the presence of a child may be part of the consideration of risk on return (i.e. being a single mother or fear of harm against the child as considered in the section on the profile of dependants and the assessment of risk on return). Pregnancy is also relevant to how well the mother can engage with the asylum process, as this is dependent on her emotional and physical needs, including her emotional support, her physical environment and the continuation of her health and maternity care. Whether or not she is dispersed at the late stages of pregnancy will be relevant to her well-being and may detrimentally impact her experience in the asylum procedure.¹⁰¹ Lack of any of these key needs being met may impact upon her ability to engage in the asylum process which should work to ensure it does not exacerbate the existing vulnerabilities of pregnant asylum seeking women.

From the screening interview, UNHCR noted that half of the pregnant women claimed asylum when at least 8 months pregnant. Questions as to whether women were pregnant were routine at screening, as per UKBA’s current policy which requires as part of the screening process that the applicant be asked about medical conditions, including whether she is pregnant.¹⁰² However, UNHCR did not find evidence of any follow-up questions being asked in regard to their current maternal care needs. One woman from Somalia, who was eight months pregnant at the time of her screening interview, was asked whether she was pregnant at the screening interview and also whether she had seen a doctor in the UK. She replied she was eight months pregnant and had not seen a doctor in the UK. While there were details on the file of a call from Migrant Helpline to request travel assistance for the claimant (at that stage over eight months pregnant) to get to her asylum interview, UNHCR noted a lack of evidence of follow up in this regard, such as referral to support charities or healthcare providers at her place of accommodation, to notify of her heavy pregnancy.

UNHCR welcomes the current work of the Home Office in regard to vulnerability in the asylum process, in particular at screening. Pregnant women in the asylum process require special support, and as such, this is one area for ongoing consideration in regard to addressing vulnerability.

⁹⁸ UKBA Asylum Policy Instruction ‘Healthcare Needs and Pregnancy Dispersal Guidance,’ Version 1.0 (02/08/2012) available at: <http://goo.gl/6D5xK>

⁹⁹ G. Lewis (ed.), 2007, *Saving mothers’ lives: reviewing maternal deaths to make motherhood safer – 2003–2005*, Seventh Confidential Enquiry into Maternal and Child Health, London, CEMACH, available at: <http://goo.gl/ucDFq>

¹⁰⁰ NICE Guidelines on Pregnancy and Complex Social Factors, Clinical Guidelines, 2010 available at: <http://goo.gl/rCkRU>

¹⁰¹ Refugee Council and Maternity Action, “When Maternity Doesn’t Matter, Dispersing Pregnant Women Seeking Asylum” which highlights in particular the impact of dispersal and low levels of asylum support on the emotional and physical well-being of pregnant asylum seeking women. Available at: <http://goo.gl/X5Hme>

¹⁰² According to UKBA’s Healthcare Needs and Pregnancy Dispersal Guidance, as part of the screening process the applicant should be asked about any medical conditions (pre-existing and/or recent), medical intervention or drug treatment and women will also be asked if they are pregnant, page 5.

Timescales for handling pregnant women's asylum claims varied in the cases reviewed. In one good practice example, the applicant, who was eight months pregnant at the time of claiming asylum, (A1457158) was put on 'maternity leave' with the substantive interview delayed at the screening stage until the baby was six weeks old. However, in another case of an Albanian woman (D1176860) the interview took place on the 23rd of March and the baby was born on the 16th of April, indicating just how tight the timescales can be. Interviewing so late in pregnancy may impact upon the woman's ability to fully engage in the interview process and may also cause her unnecessary stress and anxiety. UNHCR however recognises this case was conducted prior to the change in policy which is a positive step in going some way to address concerns around interviewing late in pregnancy or so soon after birth. While welcoming the policy change in providing a 4 week 'maternity leave' as a positive step, UNHCR recognises the views of others engaged in this issue highlighting ongoing areas of concern for pregnant women.¹⁰³

4.5 Timescales and flexibility of process

While the Refugee Convention does not give an indication on the timescales required for asylum procedures¹⁰⁴ it is generally recognised that fair and efficient procedures are an essential element in the full and inclusive application of the Convention.¹⁰⁵ In asylum procedures, the challenge is often balancing efficiency to ensure it does not infringe upon the fairness of procedures. Thus in allocating timescales, the overriding principle of fairness must not be compromised and key procedural safeguards or the quality of the examination of the claim must not be put at risk to enable decision-makers to meet time limits or targets.¹⁰⁶ Timescales should ensure decision-makers have sufficient time to examine all relevant elements of protection needs to ensure a correct decision is reached.

In family claims, all members of the family unit should have the necessary time to exercise their rights and fulfill their obligations in an effective manner, for example ensuring they have time to engage with the asylum authorities, build rapport and gather evidence relevant for their claim.¹⁰⁷ UNHCR recognises that additional time may be required in assessing the protection needs of a family unit, not least because of the need to assess risk for all family members and satisfy additional evidential requirements. UNHCR notes that in this audit not a single dependent family member had a separate personal substantive interview. Moreover, current UKBA policy does not provide distinct timescales for decision-makers handling family cases from those handling non-family claims. In all cases, the standard thirty day target applies, subject to discretion (see below). Based on UNHCR's engagement with decision-makers in other aspects of its work, UNHCR recognises the pressures upon decision-makers to meet targets. As such, current timescales for decision-making may be a barrier to the collection of evidence from other family members due to the additional time that would be required.

¹⁰³ Refugee Council and Maternity Action, 'When Maternity Doesn't Matter, Dispersing Pregnant Women Seeking Asylum' which has recommended that women asylum seekers should benefit from a 'protected period' of 6 weeks due to the current policy on dispersal. Available at: <http://goo.gl/ReXYi>

¹⁰⁴ See also the Asylum Procedures Directive, para 11, available at: <http://goo.gl/MBMAI> which states "The organization of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national need prioritize or accelerate the processing of any application, taking into account the standards in this Directive."

¹⁰⁵ Asylum Procedures Directive, para 3, available at: <http://goo.gl/nKFot> See also UNHCR, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, 31 May 2001, para 4–5. The importance of access to fair and efficient procedures has also been reaffirmed by the Executive Committee in its Conclusions No. 29 (XXXIV) – 1983; No.55 (XL) – 1989; No. 65 (XLII) – 1991; No. 68 (XLIII) – 1992; No. 71 (XLIV) – 1993; No. 74

¹⁰⁶ UNHCR Improving Asylum Procedures, Comparative Analysis and Recommendations for Law and Practice, March 2010, available at: <http://www.unhcr.org/4ba9d99d9.html>, p53

¹⁰⁷ *ibid*

UNHCR's position that, with due regard to age and maturity, each family member should be heard substantively in the process means that additional time may be required, in order to conduct the additional interviews in family claims. In other words, due to the increase in interviews that may be required, applying the same timescales to families as is applied to single applicants may not be operationally possible or appropriate. Decision-making in family claims should not be unnecessarily delayed, however, and in some cases may need to be prioritised.¹⁰⁸ UNHCR emphasises that it is important that the procedure allows for sufficient flexibility to ensure time is appropriate on a case by case basis.

In regard to current timescales, UNHCR notes a positive provision whereby UKBA policy provides for a general discretion to decision-makers, which allows a minimum of five further days for submission of evidence by the applicant after the interview. This timeframe is the same for single applicants.¹⁰⁹

UNHCR found evidence of decision-makers positively exercising discretion in order to ensure parents had adequate time to put forward evidence on behalf of their children. In an ELAP case of a family consisting of a mother and her three children, timeframes were extended to ensure vital medical evidence was obtained on behalf of the children. This was good practice. The delays in waiting for the medical evidence meant there were ten months from the date the family was screened until the positive decision was served.¹¹⁰ The family included three children aged five, nine and fifteen, all of whom were suffering from kidney disease, which was currently or would develop to be life-threatening, without provision of weekly dialysis which was accepted to be unavailable in Iraq. Evidence from both the file and from UNHCR's observation of the interview showed continual efforts made by the decision-maker to get the legal representative to provide medical evidence about the children's health condition. The decision-maker had spoken to the legal representative the day before and had made clear the types of documentation that would be useful. During the interview, the legal representative was verbally reminded of the need for medical evidence to be sent in to substantiate the applicant's strong medical claim. The reason for the ten month time-frame was due to proactivity on the part of the decision-maker, using her discretion and flexibility to adjust the timescales to allow for the applicant to obtain medical evidence on behalf of her children. This evidence was a key aspect of the family's claim and it was on this basis they were granted leave to remain on medical grounds. This is an example of where the decision-maker delayed the decision-making for very valid reasons and where efficiency would have been inappropriate.

¹⁰⁸ For example, in cases where a child is the main applicant, it is likely to be in the best interests of the child to have their claim determined without unnecessary delay due to the anxiety the process can cause children. See UN High Commissioner for Refugees, Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A) (2) and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://goo.gl/wmWwAl>

¹⁰⁹ UKBA Asylum Policy Instruction 'Considering the Asylum Claim and Assessing Credibility,' Version 8.0 (30/07/2012), Section 4.9 states: "By the end of the interview, interviewers should be satisfied, subject to any further research or information, that they have the information they need from the applicant for a sound decision to be made on the asylum and human rights aspects of the application. If they decide to ask for further evidence, this should be recorded and the applicant should be given a **minimum** of five working days in which to do so." Available at: <http://goo.gl/M0AHU>

¹¹⁰ The case was heard under the Early Legal Advice Pilot which ran in Solihull from 2010 until 2013 and aimed to "front-load" legal advice to the front end of the asylum process. A copy of the Home Office's Evaluation of the Pilot can be accessed here: <http://goo.gl/25eVg>

5. Recommendations

UNHCR is of the view that the shortcomings in the family asylum procedure identified above could be addressed through the strengthening of training and guidance to Home Office staff involved in decision-making and changes to the current asylum procedure. UNHCR would welcome the opportunity to work with the Home Office to address these issues.

Access to procedure and identification of claims

In order to achieve the meaningful participation of family members in asylum procedures and to strengthen the ability of decision-makers to identify protection needs, the Home Office should:

- ◆ **Provide information** (written and verbal counselling) to family members in an age, gender and child-sensitive manner throughout the asylum process to ensure that all family members understand their right to make an independent asylum claim, the refugee criteria, and the distinction in process and outcome between being a dependant and a main applicant.
- ◆ **Strengthen the asylum screening process** for family members by ensuring that, with due regard to age and maturity, each individual family member is afforded the opportunity (via an appropriately structured interview) to communicate experiences of previous or current harm and to express fears of future harm if returned to the country of origin.
- ◆ **Provide training and guidance** to staff involved in decision-making for families to heighten sensitivity and strengthen the ability to recognise protection issues which may arise in the family context, the capacity to proactively identify cases in which family members have claims separate from that presented by the main applicant, and the ability to proactively gather and assess information provided by family members in adjudicating refugee claims.
- ◆ **Separately and confidentially interview** all family members, with due regard to age and maturity, during substantive asylum processing (i.e. after screening) in order to ensure that they understand the refugee criteria and to provide them with an opportunity to discuss any independent protection needs they may have.
- ◆ **Implement procedural safeguards** to ensure that the level of the child's participation in the asylum process is appropriate to the child's age and maturity, and in accordance with what is in the best interests of the child.

Burden of proof: shared duty

Guidance and training should be provided to ensure that decision-makers understand their shared duty in the asylum process and their obligation to ascertain and evaluate the relevant facts of an asylum claim in the family context. This includes the obligation on the part of the decision-maker to gather, review and consider relevant evidence, including statements from family members, files relating to previous applications by the applicant or relatives, and country of origin information specifically relevant to family members, while respecting confidentiality.

Credibility

To address the concerns raised regarding the assessment of credibility in family claims, UNHCR recommends that the Home Office:

- ◆ **Provides training and guidance** on the assessment of credibility in the family context, including when and how to use evidence provided by family members.
- ◆ **Provides training and guidance** on the assessment of credibility in the ‘swap over’ context. In particular, the Home Office should clarify what can be considered a ‘reasonable explanation’ in assessing how delays in making ‘swap over’ claims can impact on credibility, how credibility findings reached in previous claims should be considered, how to assess new evidence provided and how to apply the benefit of the doubt principle.

Application of the Refugee Convention criteria

Guidance and training in respect of family claims should be strengthened to ensure decision-makers’ understanding of how family-related characteristics should be considered in applying the Refugee Convention criteria. For example:

- ◆ The existence and experiences of family members can affect the likelihood of harm to the main applicant or the reasonableness of an internal flight alternative.
- ◆ Fear of what may happen to a family member can be persecutory to the main applicant.
- ◆ A Convention reason can be family-specific and is often in the form of a particular social group such as ‘family’ or ‘woman with a child outside of marriage’.

Refugee Status and derivative status

To address concerns relating to the forms of leave provided to refugees recognised by the UK authorities, and in particular the inconsistent forms of leave granted to adults and children in the same family when the latter are considered main applicants, the Home Office should:

- ◆ **Revise policy** to entitle adult parents or primary caregivers to full derivative status where they are dependent on the refugee claim of a child.
- ◆ **Provide training and guidance** to ensure that decision-makers understand and implement appropriate procedure and policy in respect of principal versus derivative status based on an appropriate recognition of the protection needs in a family claim.

Non-suspensive appeal

In acknowledgement of the complexity of family claims and in light of the findings in this report concerning the limited access to asylum procedures family members have, UNHCR is concerned that the process by which claims certified ‘clearly unfounded’ are denied in-country appeal rights raises the risk of family members not being heard before their claims are finalised.

UNHCR recommends that the Home Office **revise policy** to ensure that all family claims are guaranteed in-country appeals.

Information management and statistics

The Home Office should **improve its information management systems** to ensure easy collation of information and provision of disaggregated statistics in respect of both family and 'swap over' claims. These statistics should be made publicly available.

Gender issues

In addressing the above family-related issues, an **awareness of possible gender dimensions** is of critical importance. This is particularly the case when addressing issues pertaining to access to procedures and ensuring that those who may be marginalised due to gender values are given a full opportunity to present their protection needs to Home Office staff.