

**FREEDOM
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Fleeing Persecution: Asylum Claims in the UK on Religious Freedom Grounds



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AAG
Asylum
Advocacy
Group

All Party Parliamentary
Group for International
Freedom of Religion or Belief


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This is a report of the All-Party Parliamentary Group for International Freedom of Religion or Belief and the Asylum Advocacy Group. It is not been produced by a Select Committee or any other Committee appointed by the House.

The All-Party Parliamentary Group for International Freedom of Religion or Belief exists to raise awareness and the profile of international freedom of religion or belief as a fundamental human right that is integral to much of the UK's foreign policy, among Parliamentarians, media, government institutions and the general public in the UK. The APPG also pursues effective implementation of policy recommendations regarding this right and seeks to increase the effectiveness of the UK's contribution to international institutions charged with enforcing it.

The Asylum Advocacy Group was formed in 2007 by HG Bishop Angaelos and incorporates the following interested parties to address the difficulties faced by some of those applying for asylum status in Britain on religious grounds: the Coptic Orthodox Church, Awareness Foundation, Baha'i Community of the UK, Christian Solidarity Worldwide, Educational Relief Trust, Humanitarian Aid Relief Trust, Open Doors, Premier Media Group, Release International, UK Copts Association, United Action for Egyptian Christians and United Copts of Great Britain. Given the turbulent and politically unstable years brought about by the uprisings in the Middle East since 2011, the AAG has expanded its remit to include the Middle East and North Africa region. The most recent AAG report – Addressing the Experience of Religious Minority Groups from the Middle East in the UK Asylum System (2013) - has been used to brief the Home Office, FCO, judiciary and has been used successfully to support applications of numerous affected parties.

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Evidence and commentary for the APPG and the AAG inquiry and this subsequent report was directly submitted by the following individuals and organisations: United Nations High Commissioner for Refugees (UNHCR), Immigration Law Practitioners' Association (ILPA), Article 18, Paul Nettleship (Member of the Asylum Advocacy Group and Solicitor Advocate at Sutovic & Hartigan), Waging Peace, Elam Ministries, The Jesuit Refugee Service, Attieh Fard (Solicitor at Sookias & Sookias and Committee Member of Article 18), United Copts of Great Britain, The Boaz Trust, Qassem Hayat Solicitors, The Revd. Andrew Dawson, The Revd. Mark Miller (Vicar of Stockton Parish Church).

The conclusions made in this report, if not directly referenced as stemming from a specific individual or organisation, are those solely of the APPG and AAG inquiry team. The APPG and the AAG inquiry team takes full responsibility for the conclusions made in this report.

The report has been made possible by the joint financial support of the AAG and the APPG (the latter through its Stakeholders, whose names can be found on the APPG's website at the following web link: <https://www.freedomdeclared.org/about/stakeholders>).

Table of Contents

Executive Summary	3
Recommendations	7
I. Introduction.....	9
II. Freedom of Religion or Belief and the Right to Seek Asylum.....	11
III. Resettlement	16
IV. The Asylum System in the UK	17
V. Asylum Applications on Grounds of Religious Persecution	21
VI. Experiences of Asylum-seekers in the UK	27
Conclusion	34
Contact Details	36

Executive Summary

*Can you name the twelve apostles? When is Pentecost?
How many books are in the Bible? Who betrayed Jesus to the Romans?*

These are some of the questions asked of asylum-seekers during their interview with the Home Office as part of their application to stay in the UK. Whilst they may seem reasonable, this report reveals that such questions, often referred to as “Bible trivia”, are a very poor way of assessing a conversion asylum claim and result in wrong decisions and expensive appeals.

This enquiry was set up to look at the quality of the assessment of religion-based asylum claims in the UK and the impact of the asylum procedure on the fairness and quality of decision-making.

Evidence was submitted to the All Party Parliamentary Group (APPG) for International Freedom of Religion or Belief and the Asylum Advocacy Group (AAG) by a wide range of stakeholders holding a broad spectrum of religious beliefs and no beliefs, as well as asylum-seekers; both those going through the judicial system and those who have been granted leave to stay in the UK.

Statements and claims from all parties were scrutinised alongside consideration of UK standards in light of international policy and law.

Assessing Asylum Cases on Grounds of Religious Persecution

While the law is clear that religious persecution constitutes grounds for asylum, assessment of religion-based asylum applications is complex and challenging due to the inherently internal and personal nature of religion and belief. This is compounded by the fact that persecution on the basis of religion or belief encompasses a wide range of human rights violations and relates to complex dynamics of communal identities, politics, conflicts and radical organisations.

The most recent Home Office guidance on assessing credibility and refugee status from January (and March) 2015,¹ does include more nuanced guidance regarding those seeking asylum on the basis of religious persecution.

Moreover, the Home Office has provided training for its staff in recent months. This training has, in part, been informed by the ‘CREDO’ training manual composed by the Hungarian Helsinki Committee, with input from the UNHCR,² which contains policy guidance around some of the complexities, including cultural and religious difference, when interviewing asylum-seekers. While use of the CREDO training manual is welcome, as evidence submitted to the inquiry highlights, the Home Office training does not fully reflect the content of the training manual. In the opinion of the inquiry team, this training manual does not, in any case, focus in sufficient detail on the full complexities of and knowledge required for working on religious persecution cases. This report highlights some of these complexities and the approach required for working on such cases.

Additionally, guidance pertaining to credibility is not always followed in practice. Further training is required to ensure that UK Visa and Immigration (UKVI) decision-making is consistent with UKVI guidance. UNHCR has informed the APPG and the AAG that is currently supporting the Home Office to develop training to help ensure that decision-makers correctly apply the relevant legal standards in relation to credibility assessments.

Disparity between Home Office Policy and Practice

This report demonstrates, however, that there is a disparity between Home Office policy guidelines and what is actually happening in practice.

Evidence submitted to the inquiry by the Immigration Law Practitioners’ Association (ILPA) states that while it is clear that a lack of understanding of religion and belief is a primary cause of the disparity between good policy guidelines and practices of decision-makers within the UK asylum system, such ignorance might have been formalised through unpublished ‘crib sheets’ given to decision-makers.

Further evidence submitted by a number of stakeholders revealed that Christian and Christian convert asylum-seekers are still being asked detailed factual “Bible trivia” questions; this is too simplistic a way to judge if an individual is, for example, a genuine convert. Furthermore, anecdotal evidence has shown that some people are learning as much as they can so they can be prepared for the Home Office interview.

Ms Attieh Fard, a solicitor focusing on asylum claims, attests that Home Office interviewing officers’ knowledge of religious meeting places and their practices is also sometimes based on a quick online survey of websites, which may have limited or incorrect information. In one case, the Home Office caseworker had not realised that an Anglican Church can also be an Evangelical one and found the applicant’s testimony inconsistent as it did not match the church’s public information shown on its website.

¹ Home Office, ‘Asylum Policy Instruction: Assessing Credibility and Refugee Status’, (6 January 2015), available at:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf>, (accessed: 16/05/16)

² Hungarian Helsinki Committee, ‘Credibility Assessment in Asylum Procedures: A Multidisciplinary Training Manual’, (2015), available at: <<http://helsinki.hu/wp-content/uploads/CREDO-training-manual-2nd-volume-online-final.pdf>>, (accessed: 16/05/16)

This report also notes there remain concerns with procedural aspects, including the impact of the former Detained Fast Track (DFT) system, the current Detained Asylum Casework (DAC) system, the adequacy of resources in the asylum system, the legal representation for asylum-seekers as well as religious literacy training of Home Office asylum process staff.

Information received by the APPG and the AAG has also indicated that the focus amongst those working on asylum procedures regarding complex asylum cases has been towards asylum claims based on sexual orientation or gender identity and not religious persecution.

In evidence submitted by the Ahmadiyya Muslim Association UK (AMA UK) in May 2016, one Ahmadi man seeking asylum on the grounds of his persecution in Pakistan, outlines that having reached the First Tier Tribunal level, he was restricted by the judge to answer questions in yes or no fashion, not allowing him the chance to give examples and details. This same witness also submits that the judge did not apply *HJ (Iran) and HT (Cameroon) v. Home Secretary* case law which provides that the individuals in this case could not be expected to conceal or reasonably tolerate being discreet about their sexual orientation in their own countries.

This report's findings signal a lack of understanding and misperceptions of religion and belief among decision-makers working within the UK asylum system.

A Lack of Statistics

It is a matter of concern that the Home Office does not disaggregate claims on different convention grounds and thus keep a record of the number of applicants seeking asylum on the grounds of religious persecution; this needs to change. So that the Home Office can determine the true scale of the issue, the APPG and the AAG call for such record-keeping to commence immediately.

Issues around Interpretation

Evidence also points to lack of sensitivity shown to the specific needs of applicants and concerns about a lack of professionalism on the part of some interpreters hired by the Home Office from private companies.

In an interview with the APPG in May 2016, Mr Hamid Delrouz, an Iranian Christian convert, stated that his asylum rejections by the Home Office were helped by the fact that, in court, his interpreter was not familiar with Biblical terms including 'Book of Psalms' and 'Jeremiah' which were translated incorrectly.

In further evidence submitted to the inquiry team in May 2016, AMA UK highlights the case of one Ahmadi man who, in his interview, felt that he had to start answering the interviewer's questions in his broken English and not use his Urdu-speaking interpreter, making the interpreter angry, because some of the concepts he was conveying in Urdu were not being translated properly or were being missed out. The Ahmadi applicant felt that this was affecting his asylum case and was concerned that either the interpreter did not have knowledge of Ahmadi's beliefs or did not personally agree with them. In this individual's First Tier Tribunal case, when he said to the judge that he wanted to explain his position properly when he felt the interpreter was failing to do so, he was told by the judge not to speak in English and only in Urdu through the interpreter.

Why Does All of this Matter?

We are witnessing the largest migration of people since the Second World War and with it the reality of increasing religious persecution and religiously-motivated violence towards those who hold different beliefs from their societies or no belief at all. The conflict that continues to rage in Syria and Iraq has had a devastating effect on these countries' infrastructure and their citizens as well as surrounding nations who have absorbed/taken in those fleeing the conflict. Many of those fleeing have, at some level, been targeted by non-state actor groups such as *Daesh* solely on the basis of their beliefs and thus their very identity.

Recognising such root causes of conflicts, which produce large numbers of asylum-seekers, is crucial. With similar patterns of violence towards individuals on the basis of their beliefs in countries all across the world, it should come as no surprise that we are seeing numerous cases of individuals seeking asylum in the UK due to persecution based on their religious beliefs. And the reality is that this trend will continue. The number of Individuals seeking asylum on the grounds of religious persecution is not going to diminish in the coming years and it is thus one that we must grapple with and equip ourselves to fully understand so as to ensure fair hearing of cases.

Recommendations

In light of the findings of this report, members of the All-Party Parliamentary Group make the following recommendations to the Home Secretary:

1. Immediately start to disaggregate asylum claims on different convention grounds and, specifically, keep a record of the number of asylum claims made on the basis of religious persecution as well as the acceptance vs. rejection rate of such cases so as to assess the true scale of such claims and how sensitively such claims are being dealt with.
2. Provide focused training on freedom of religion or belief and assessments of religious freedom and persecution-based asylum applications to decision-makers.
3. Ensure that the policy guidelines and judicial decisions that relate to freedom of religion or belief cases are used by decision-makers.
4. Issue a specific statement to decision-makers clearly stating the good practice principles and legal frameworks that apply to religious persecution cases and examples of shortcomings by decision-makers stated in this report in light of them.
5. Ensure that the case workers and interpreters used by the Home Office and decision makers uphold the same standards of professional conduct expected from Home Office staff. All such individuals should be trained to have adequate knowledge of different forms of religious persecution and the right to freedom of religion or belief, the specific religious terminology of different religious groups as well as the cultural contexts of applicants, especially if the applicant identifies as a member of a religious group perceived as 'heretical' by others adhering to the same religion. This depth of knowledge is needed so that the religious and cultural contextual meaning of the asylum applicants' words can be understood and clearly conveyed. In particular, it must be ensured that the case worker/interpreter's own cultural context does not give rise to bias in their work.
6. Given the complexities of asylum cases involving religion, just as all LGBTI asylum case decisions are reviewed by a Technical Specialist before being issued to the applicant, ensure that cases involving religious persecution are also checked by an expert supervisor to ensure consistency and due process in all cases.
7. Work with faith communities and charities specialising in freedom of religion or belief to check credibility of applicants, and keep up-to-date information on global developments.
8. Ensure that the asylum procedures are sensitive to the applicants' experiences, backgrounds and well-being. Also ensure that applicants are not caused unnecessary distress and feel able to speak freely, especially in cases where the case worker/interpreter is a member of the religious community that has carried out the applicant's persecution. In such cases, applicants should be re-assigned to a different

interpreter (and/or case worker) with whom they feel comfortable in speaking freely.

9. In cases where individuals have been granted asylum on grounds of religious persecution, the UK Home Office should fast-track dependents' applications and visas for them to join the successful applicant. While it is of course welcome that dependents are permitted to settle outside the country in which they are persecuted, the current 3 – 6 month processing period of dependents' applications is a time during which the applicants may also be at real risk of persecution.
10. Take account of judicial findings and objective information on the safety of internal relocation of religious minorities in the countries from which they have fled. Developments in communications technology have enabled information about individuals targeted by violent 'extremist' groups to be shared with ease, even if they move across a country, making the possibility of internal relocation often an unviable option.

I. Introduction

The All Party Parliamentary Group (APPG) for International Freedom of Religion or Belief was founded by members of Parliament with a diverse background of political and religious views, on the conviction that human beings should be free to exercise their fundamental right of freedom of thought, conscience and religion.

In its first report, “Article 18: An Orphaned Right”, the APPG drew attention to the robust legal framework containing the right to freedom of religion or belief under international law, the reality of religious persecution around the world and the ways in which the UK government can effectively engage with this increasingly widespread human rights concern. The report highlighted the sad fact that Article 18 remains one of the least developed and engaged human rights in the world.

The Asylum Advocacy Group was formed in 2007 to address the difficulties faced by some of those applying for asylum status in Britain on religious grounds. Given the turbulent and politically unstable years brought about by the uprisings in the Middle East since 2011, the AAG has expanded its remit to include the Middle East and North Africa region. The most recent AAG report –Addressing the Experience of Religious Minority Groups from the Middle East in the UK Asylum System (2013) – highlights the persecution faced by religious minority groups in the Middle East, and has been used to brief the Home Office, FCO, judiciary and used to successfully support applications of numerous affected parties.

The APPG and the AAG have been encouraged by the progress made by the Foreign & Commonwealth Office (FCO) in its engagement on the issue. The Rt Hon. Baroness Anelay, Minister of State at the FCO, has stated that the UK “Government has pledged to ‘stand up for the freedom of people of all religions – and none – to practise their beliefs in peace and safety’. We are committed to defending this right, as set out in Article 18 of the Universal Declaration of Human Rights”.³ She has also reaffirmed that the principle of freedom of religion or belief runs through all three of the FCO’s main human rights work themes: ‘democratic values and the rule of law’, ‘strengthening the rules-based international order’ and ‘human rights for a stable world’. The Head of the FCO’s Stable World Team (Freedom of Religion/Post-Holocaust) in the Human Rights and Democracy Department, has worked hard to ensure that the important role that advancing freedom of religion or belief in countering extremism and thus building stable societies, directly relating to the FCO’s objective/theme ‘human rights for a stable world’, is reflected in FCO policy. The APPG and the AAG encourages the FCO to ensure that the understanding of the current individuals working on Freedom of Religion or Belief in the FCO is recognised and that extensive policy built around this understanding across government.

The FCO's engagement on the issue includes advocacy through multilateral organisations, such as the United Nations, European Union, OSCE, as well as direct engagement with countries of concern and, where there are incidents in particular countries, through the relevant British Embassy. The FCO also works with civil society organisations in the UK and in countries of concern to encourage and fund projects that seek to advance freedom of religion or belief, in

³ Gov.UK, ‘Speech: FCO Minister Opens Seminar on Freedom of Religion and Economic Prosperity’, available online from: <<https://www.gov.uk/government/speeches/fco-minister-opens-seminar-on-freedom-of-religion-and-economic-prosperity>>

particular through the Magna Carta Human Rights and Democracy Fund. In addition, the members of the APPG have been encouraged by the inclusion of religious persecution issues into the FCO's annual human rights reporting as well as the annual short course training provided for staff on religion and human rights issues to assist them in understanding and engaging with such topics.

While the APPG and the AAG remain committed to continuing their work to promote human rights globally, it is acutely aware that, at a time of intense religious persecution in the Middle East and parts of Africa, such persecution has caused some individuals to seek asylum in other countries.

According to the UNHCR, in 2014 at least 1.66 million people around the world submitted applications for asylum; the highest level ever recorded. During the whole of 2015, however, the UK received only 38,878 new applications of asylum, ranking it 7th in the European Union for asylum applications. In comparison, Germany was the largest recipient of new asylum claims in the first six months of 2015, with an estimated 159,000 asylum applications.⁴

Most recent UNHCR figures show that in mid-2015 there were 117,234 refugees, 37,829 pending asylum cases and 16 stateless persons in the UK.⁵ The perceived population of refugees in the UK is often sensationalised by the media, however out of an estimated 60 million, or more, refugees in the world as of mid-2015;⁶ the vast majority remain within the region of their countries, with 86% hosted by developing countries.⁷

It is not possible to determine the exact number of claims in the UK submitted on the basis of denial of freedom of religion or belief and religious persecution (hereinafter 'religion-based claims') since the Home Office does not disaggregate claims on different convention grounds. As such, in order to establish a better picture of religion-based claims, the APPG issued a call for written submissions from experts, non-governmental organisations and legal practitioners with knowledge and experience of such cases, across the UK. Thereafter, the APPG held two hearings at the House of Lords, hearing from a wide range of legal professionals, faith-community activists, as well as individuals who themselves have sought asylum in the UK on religious grounds.

This report first provides policy makers with an overview of the legal framework for the right to seek asylum and the legal criteria for the granting of refugee status on religious freedom grounds. This includes an overview of the UK asylum system and policy guidelines, which set out how decision-makers in the UK should be handling such claims. This report highlights areas of concern, shortcomings within Home Office practice relating to cases brought to the attention of the APPG and further offers tangible and achievable recommendations to the Home Office and other relevant authorities.

II. Freedom of Religion or Belief and the Right to Seek Asylum

⁴ UNHCR, *The Facts: Asylum in the UK*, available [Online] from:
<<http://www.unhcr.org.uk/about-us/the-uk-and-asylum.html>>

⁵ *ibid*

⁶ UNHCR: Mid-Year Trends 2015. Available [Online] from:
<http://www.unhcr.org/56701b969.html#_ga=1.1487731.391227845.1459343867>

⁷ UNHCR; "Wars Human Cost, Global Trends 2013", available online from:
<<http://www.unhcr.org/5399a14f9.html>>

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Article 18, Universal Declaration of Human Rights

Freedom of Religion or Belief was first enshrined in Article 18 of the Universal Declaration of Human Rights (UDHR). It acquired a normative character in international law with provisions in subsequent human rights documents, including the 1966 International Covenant on Civil and Political Rights (ICCPR) and regional human rights instruments, such as the European Convention on Human Rights in 1950. The UN Human Rights Committee (HRC) has published an interpretation of the provisions of the article, referred to as General Comment 22. The wording of 'religion or belief' covers all religious beliefs as well as atheistic and humanist beliefs and the right to hold no religion or belief. When understood in line with subsequent legal provisions and the General Comment, Freedom of Religion or Belief includes:

- *Freedom of thought, conscience and religion*
- *Freedom to change religion or belief, including freedom to not believe in any religion or beliefs*
- *Freedom to manifest religion or belief in teaching, practice, worship and observance, alone or in community with others and in public*
- *Freedom from coercion that impair one's freedom to have or adopt a religion or belief of choice.*
- *Freedom to instruct one's children according to one's religion or belief.*

The Universal Declaration of Human Rights, as a mere declaration of the UN General Assembly, is not binding on states in and of itself. Since 1948, however, most if not all of it has been recognised as reflecting customary international law, which is binding on all states apart from persistent objectors, something not applicable in the cases under consideration here. Evidence of the customary status of Article 18 can be found in the fact that it has been transposed, with some modification, into the International Covenant on Civil and Political Rights of 1966. While not the case under the UDHR, Article 18 of the ICCPR is in part an absolute right with respect to which derogation under Article 4 ICCPR is not possible: the concept of derogation is not directly applicable to the UDHR, but the customary understanding of freedom of religion, conscience, thought and belief may incorporate this restriction with the corresponding limitations on manifestation set out in Article 18.3 ICCPR, particularly in the light of the general considerations set out in Article 29.2 UDHR. No state, therefore, should impose limitations on belief or non-belief, and only restrictions set out in law that are reasonable and proportionate should be permitted on manifestation.

The Reality of Violations of Freedom of Religion or Belief in Today's World

Sadly, even though international law offers a robust basis for the protection of Freedom of Religion or Belief, denial of this right and religious persecution of individuals and communities is one of the most widespread forms of human rights abuses in the world today. Individuals suffer such abuses either directly from states or from wider society. The Pew Forum's study on religious restrictions in 198 countries and territories shows that overall restrictions on religious freedom (resulting from government policies or from hostile acts by private individuals, organizations and

social groups) are high or very high in 39% of countries surveyed. Since some of these countries such as China and India also have the world's largest populations, more than 5.5 billion people - roughly 77% of the world's population - live under such conditions.⁸

The day-to-day experience of persons living in these conditions includes a wide range of abuses from the denial of education, equality before the law, access to health, jobs, and housing, to direct physical abuse and intimidation from state security officials, imprisonment, and in some cases official execution. The Pew Forum's studies also highlight that persecution not only arises from government restrictions but also from social hostilities which may involve deeply-engrained societal views that will take a long time to break down. The Pew Research Centre's most recent extensive research shows that the share of countries with high or very high levels of social hostilities involving religion dropped from 33% in 2012 to 27% in 2013⁹ and includes a wide range of social abuse, including violent attacks, desecration of holy texts and lynching simply because one holds a minority religion, or choose to be atheists or convert to another religion.

The reality of religious persecution in the world demonstrates that religion or belief is not simply a matter of personal beliefs about the world, universe and life, as we tend to think in Western Europe, but a highly sensitive social and political process which intrinsically links to individual and communal identities, national politics and increasing religious nationalism and extremism in the world. Religious convictions lie at the very core of an individual's being and often define their identity; it is for this reason that people will often put their faith even above their life.

In practice Freedom of Religion or Belief often overlaps with many other human rights, from the right to be free from torture to minority rights, women's rights and children's rights. The responsibilities and therefore the failures of states around the world is not simply about not persecuting an individual whose belief or religion might not be desirable, but enabling the freedom of that individual to live their beliefs freely without any risk of social hostility and attacks by radical groups. This is why relocating a person persecuted on religious grounds to another town in their country or advising an individual to simply keep their beliefs to themselves does not stop persecution and is a denial of their rights. It is inevitable, therefore, that some are either driven out of their countries by their own government and societies or flee for fear of their lives to seek asylum in other countries.

The Right to Seek Asylum

"Everyone has the right to seek and to enjoy in other countries asylum from persecution."

Article 14(1), Universal Declaration of Human Rights

The legal determination of 'refugee' status and conceptualisation of the meaning of 'persecution' in United Kingdom law is based on international legal obligations undertaken by the United Kingdom as incorporated within domestic laws and practices. These international legal obligations are reflected principally through the UN Convention Relating to the Status of Refugees 1951 (as amended by the 1967 Protocol Relating to Status of Refugees),¹⁰ the EU

⁸ Pew Research Centre, (26 February 2015) 'Latest Trends in Religious Restrictions and Hostilities', p.4. Available [Online] from: http://www.pewforum.org/files/2015/02/Restrictions2015_fullReport.pdf

⁹ Pew Research Centre, (26 February 2015) 'Latest Trends in Religious Restrictions and Hostilities', p.4.

¹⁰ 1951 Convention Relating to the Status of Refugees 189 U.N.T.S. 150, entered into force April 22, 1954. 1967

Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹¹ and existing European human rights standards. The EU Directive commonly referred to as the ‘Qualification Directive’ is transposed in the United Kingdom through the Refugee and Persons in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) and modifications to asylum provisions.¹² The European Convention on Human Rights¹³ provisions are incorporated domestically through the Human Rights Act (1998).¹⁴

The UN Convention Relating to the Status of Refugees 1951 (as amended by the 1967 Protocol Relating to Status of Refugees)

According to Article 1 A(2) of the 1951 Refugee Convention (as amended by the 1967 Protocol) a ‘refugee’ is a person who:

‘... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

As provided in the aforementioned definition, a claim for refugee status must be based upon the claimant’s ‘well-founded fear of persecution’ and on the basis of one of the grounds enumerated within Article 1A. The Refugee Convention does not provide a meaning or definition of ‘well-founded fear’ or ‘persecution’. However, the UNHCR has provided guidelines in the assessment of what constitutes ‘well-founded fear’ and ‘persecution’. Both ‘well-founded fear’ and ‘persecution’ have to be assessed on a factual and case-by-case basis. That said, while the decision-makers are required to address whether the claimant’s beliefs are reasonable and justified, ‘well-founded fear’ is nonetheless a subjective concept based on mental state of the claimant herself and himself. In attempting to provide guidance on ‘well-founded fear’, the UNHCR Handbook suggests that attention should also be paid to the credibility of the claimant’s fear and his or her ability to cope with the persecution suffered. Thus ‘an evaluation of the *subjective element* is inseparable from the assessment of the personality of the applicant, since psychological reactions of different individuals may not be the same in identical conditions.’¹⁵ This approach is necessary when dealing with such a subjective element of the right. The UNHCR suggests evaluating whether the fear of suffering persecution is reasonable, ‘exaggerated fear, however, may be well-founded if, in all the circumstances of the case, such a state of mind can be regarded as justified’.¹⁶ Whether, the claimant has already been the victim of persecution may also aid him or her in proving that his or her fear of persecution is ‘well- founded’; this, on the

Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967.

¹¹ Council Directive 2004/83/EC of 29 April (2004). OJEU L 304/12 (30.9.2004).

¹² See Annex 1.

¹³ ETS No. 005 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols.

¹⁴ Human Rights Act (1998) 1998 CHAPTER 42, **available at:** <<http://www.legislation.gov.uk/ukpga/1998/42/>>, (accessed 1 February 2016).

¹⁵ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, HCR/IP/4/Eng REV.I.para. 40. (emphasis provided).

¹⁶ Ibid., para. 41.

other hand, is not a requirement.¹⁷

Thus, evaluating whether a claimant's fear of persecution is justified is subject to a number of conditions, ranging from the physical and psychological health of the claimant to the situation in the country of origin. In light of the substantial evidence accumulated at the hearing and in light of the above guidelines, the APPG recommends a review of the *AK and SK country guidance case* and an amendment in the Home Office Country Information and Guidance Report on Christians and Christian Converts. See the key recommendations (above) for the full recommendations.

As noted above, the 1951 Convention does not define 'persecution', thus ensuring that, 'the elasticity of the definition of persecution depends upon the political will of member States implementing the Convention'.¹⁸ Persecution is frequently associated with torture and may also incorporate 'cruel, inhuman or degrading treatment or punishment'.¹⁹ The counters of cruel, inhuman and degrading treatment or punishment are malleable and yet to be firmly established. Again, the UNHCR suggests that 'due to variations in the psychological make-up of individuals and in the circumstance of each case, interpretations of what amounts to persecution are bound to vary'.²⁰

Particularly where discrimination is involved the UNHCR has suggested that persecution can be claimed on 'cumulative grounds'. Whereas an act of discrimination in itself may not be sufficient to claim refugee status, where this is combined with 'other adverse factors (e.g. a general atmosphere of insecurity in the country of origin)²¹ or 'where a person has been the victim of a number of discriminatory measures',²² this may be enough to establish persecution. The two days of hearing provide a plethora of evidence of persistent, sustained and targeted gross acts of overt discrimination towards constitutionally-recognised religious minority groups including Ahmadis, Christians and Hindus. This is reflected in the continuing threats to the lives and wellbeing of religious minorities, physical and violent attacks by non-state actors, attacks, burnings and forcible exclusion from their homes as well as persistent and real threat of the application of blasphemy laws (should minorities exercise their fundamental human rights of manifestation of their religion or belief as enshrined in Article 18 of the UDHR and Article 18 of the ICCPR).

While refugee status cannot be used as a means to avoid punishment for an offence in the country of origin, there are circumstances where the prosecution of criminal laws by the state or the punishment imposed can amount to 'persecution'. Such a case can be established where e.g. the criminal law offences target a particular religious or racial community. Furthermore, persecution can also be evidenced *inter alia* through the procedural application of vague and arbitrary criminal laws or through application of principles contrary to natural justice or in cases where punishment awarded is excessive.

A further question relates to persecution based on economic discrimination. State practice generally tends to bifurcate between 'economic migrants' and refugees. On the other hand, the line between economic discrimination and denial of fundamental rights is frequently blurred. Discrimination such as instances of deliberate denials of employment or deprivation of

¹⁷ Ibid., para. 45.

¹⁸ J Fitzpatrick, 'Revitalizing the 1951 Convention' 9 *Harvard Human Rights Journal* (1996) 229 at p. 240.

¹⁹ Goodwin-Gill and McAdam, *The Refugee in International Law* (Oxford University Press, 2007) at pp.90–91.

²⁰ UNHCR Handbook, *supra* n.39, para. 52.

²¹ Ibid., para.53.

²² Ibid., para.55; See also, *Urim Gashi, Astrit Nikshiqi v SSHD*, Appeal No: 13695 HX-75677-95, HX/75478/95 22/07/1996

opportunities to earn a living should be considered as sufficiently serious to be categorised as persecution.²³ Other instances of socio-economic rights could be categorised as ‘persecution’. Denial of the right to receive education has been recognised as a form of persecution for the purposes of the Convention.²⁴ Similarly deliberate and systematic denial of health care could also form the basis of a successful refugee claims. A common thread in the successful reliance on the violations of socio-economic rights is that denials of rights have been deliberate and discriminatory and have been based on one or more grounds as laid out in the 1951 Convention.

European Law (European Union Law and the European Convention on Human Rights)

The Refugee and Persons in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) provides as follows:

Act of persecution

5.— (1) *In deciding whether a person is a refugee an act of persecution must be: (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms(a); or (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).*

(2) *An act of persecution may, for example, take the form of:*

- (a) an act of physical or mental violence, including an act of sexual violence;*
- (b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;*
- (c) prosecution or punishment, which is disproportionate or discriminatory;*
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;*
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.*

(3) *An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.*

In relation to actors of protection, Regulation 4 provides as follows:

4.— (1) *In deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by: (a) the State; or (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.*

(2) *Protection shall be regarded as generally provided when the actors mentioned in paragraph (1)(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection.*

(3) *In deciding whether a person is a refugee or a person eligible for humanitarian protection*

²³ The UK courts have recognized that a person’s inability to secure employment for a convention reason, presents a ‘serious issue’ of an examination as to whether this amounts to persecution. *He v. Secretary of State for the Home Department* [2002] EWCA 1150, [2002] Imm AR 590 at paras 26, 38. Similar position has been advanced by Australian Courts see *Prahastono v. Minister for Immigration and Multicultural Affairs* (1997) 7 FCR 260 at 267.

²⁴ See *Ali v Canada (Minister of Citizenship and Immigration)* [1997] 1 FCD 26.

the Secretary of State may assess whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph (2).

Notably, in the context of assessing reasons for persecution, Article 10.1(b) of the European Council Qualification Directive (2004/83/EC) of 29 April 2004, declares that States shall ensure to take into account that:

*“the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief”.*²⁵

While the European Convention on Human Rights (1950),²⁶ most provisions of which have been incorporated into the UK law through the Human Rights Act (1998),²⁷ does not explicitly make reference to ‘refugees’, protection of ‘refugees’ or provide a meaning of ‘persecution’, the Convention does establish European human rights standards as applied within the United Kingdom. The treaty contains several highly significant principles underlying protection for refugees and asylum-seekers, and as noted in the 2006 regulation above, defines human rights from which derogation by any member state remains impermissible. Article 15 prevents derogations from the right to life (except in respects of deaths resulting from lawful acts of war) from the prohibition of torture, from the prohibition of slavery and retrospective application of criminal laws. Article 3—as a highly significant and relevant article of Convention—has been elaborated to incorporate the principle of *non-refoulement* and states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”. As the case of *Soering v UK* (1989) has additionally established, where there might be a case of “flagrant denial of fair trial” in the requesting country, including where the applicant has a well-founded fear of the death penalty sentence on the basis of their beliefs, the applicant is to be protected from such a fate.²⁸

III. Resettlement

There are two formal routes for a person to be a refugee in the United Kingdom. One is through the United Nations High Commission for Refugees (UNHCR) and its field offices across the world where individuals apply for asylum. Following assessment of their cases, UNHCR might recognise them as refugees and seek to relocate them to a country through resettlement quotas. The resettlement quota in the UK is operated through a scheme known as the ‘Gateway Protection Programme’.²⁹ Refugees who are resettled not only have to meet the refugee definition but also will have to meet resettlement criteria in order to be eligible.³⁰ The UK resettlement quota under the Gateway Programme currently totals 750 places. In some cases, ‘mandate refugees’, those recognised by the UNHCR as refugees, will also be interviewed in person by UK Home Office staff

²⁵ Art 10(b), ECQD (2004)

²⁶ ETS No. 005 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols.

²⁷ Human Rights Act (1998) 1998 CHAPTER 42 <<http://www.legislation.gov.uk/ukpga/1998/42/>>, (last accessed 1 February 2016).

²⁸ *Soering v UK*, (App. No. 14038/88), 7 July 1989, [ECtHR]

²⁹ See, the UKVI Guidance Gateway Protection Programme, available here: <https://www.gov.uk/government/publications/gateway-protection-programme-information-for-organisations/gateway-protection-programme>

³⁰ See, the UK Country Chapter to the UNHCR Resettlement Handbook: www.unhcr.org/40ee6fco4.pdf

to ensure they fit the criteria to come to the UK for asylum.³¹

Following the increasing turmoil in Syria and considerable pressure from charities, the UNHCR and Parliamentarians from across the House, on January 29 2014 the Government decided to establish a 'Syrian Vulnerable Person Resettlement (VPR) Programme'.³² This scheme was created to provide a route for resettlement in the UK to some of the most vulnerable Syrian refugees and was envisaged to operate in parallel with the UNHCR's own Syrian humanitarian admission programme.³³ The VPR initially prioritised victims of sexual violence, the elderly, victims of torture, and the disabled.³⁴ After further criticism, however, on 7 September 2015, the Prime Minister extended the VPR to resettle up to 20,000 refugees from the Syrian region until 2020.³⁵ The criteria for resettlement under the scheme was also expanded to give particular recognition to the needs of children. In April/May 2016, the UK Government announced plans to resettle 3,000 unaccompanied asylum-seeking children already registered before 20 March 2016 in France, Greece or Italy.³⁶ This figure adds to the 20,000 people direct from Syria who are due to be resettled in the UK before 2020, however, not time line has been given as to when the 3,000 will be allowed to settle in the UK.

IV. The Asylum System in the UK

The other option for asylum-seekers is to directly apply to UK authorities. Individuals who wish to be considered by the UK for permission to stay in the UK as a refugee can do so in two ways: they can either inform border control officials as they arrive in the UK at the airports or ports that they seek to claim asylum, or if they are already in the UK, they can go in person to designated Home Office facilities to seek asylum.

While dependents of successful asylum applicants, depending on age,³⁷ as well as fully-vetted 'vulnerable' Syrian nationals under the Syrian Vulnerable Persons Relocation Scheme can be granted asylum in the UK, there is no legal route for asylum-seekers to come to the UK to claim asylum independently. Consequently, asylum-seekers, without any alternative legal means of

³¹ For more information, see: UNHCR, 'UNHCR Resettlement Handbook: United Kingdom of Great Britain and Ireland by the Government of The United Kingdom', (Oct. 2014), available at: <<http://www.unhcr.org/40ee6fco4.html>>, (accessed: 31/05/16)

³² House of Commons Library (25 January 2016) *Syrian refugees and the UK*. Briefing Paper, Number 06805, p.3. Available [Online] from: <http://www.rcpsych.ac.uk/pdf/Syrian%20Refugees%20and%20The%20UK.pdf>

³³ Ibid, p.6

³⁴ Ibid, p.7

³⁵ Ibid, p.3

³⁶ For more information, see: Gov.uk, 'New Scheme Launched to Resettle Children at Risk', (21 April 2016), available at: <<https://www.gov.uk/government/news/new-scheme-launched-to-resettle-children-at-risk>>, (accessed: 31/05/16); Gov.uk, 'Unaccompanied Asylum-seeking Children to be Resettled from Europe', (4 May 2016), available at: <<https://www.gov.uk/government/news/unaccompanied-asylum-seeking-children-to-be-resettled-from-europe>>, (accessed: 31/05/16).

³⁷ Home Office, 'Family Reunion', Section 2.5, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257465/familyreunion.pdf>, (accessed: 31/05/16); Even when the Home Office grants a person leave to remain on the grounds of persecution, it takes at least 3-6 months for their dependents' applications to be processed and to be granted a visa to join the primary applicant as well. While it is of course welcome that the dependents are permitted to settle, it is a time of extreme concern for the primary applicant with their dependents remaining in danger during this time. Fast tracking such cases so that dependents may join the primary applicant, would reduce the risk of further harm towards the dependents.

entry (e.g. a tourist or student visa), are forced to enter the UK irregularly often facing life-threatening journeys having resorted to the use of smugglers or traffickers. By entering the UK 'illegally' e.g. on false documents or travel documents, those who do not claim asylum on arrival commit an immigration offence which can adversely affect the credibility in their asylum claim.³⁸

Following their declaration of intention to seek asylum in the UK, asylum-seekers will be invited to an initial screening interview, which for the majority of cases is held in Croydon, South London. At the initial screening interview, the applicant will be asked to provide their name, nationality and other personal details as well as details of their journey to the UK. They will also be asked to give basic details about their reasons for wishing to claim asylum in the UK. This interview is conducted by an immigration officer. Following the initial screening interview, applicants will be requested to attend a 'first reporting event' where they will meet the case owner who will deal with their case. Thereafter (within a couple of weeks) applicants should have their 'substantive interview'. This is the main opportunity for the asylum-seeker to provide testimony to the case worker about what has happened to them and what they fear if they were returned to their own country. Asylum-seekers may be required to report to the Home Office throughout the asylum process. Reporting can be conducted through telephone reporting systems as well as electronic tagging of asylum-seekers.

The screening stage has also been the point at which Home Office staff would decide whether the applicant should have their decision assessed in the Detained Fast Track (hereinafter 'DFT'). The DFT is currently suspended after the Court of Appeal upheld a ruling declaring a key part of the asylum system as unlawful.³⁹ This decision involved the Home Office assessing the suitability of the applicant *and* the claim for accelerated procedures in detention.⁴⁰ The DFT has been a controversial process, and one which was increasingly used by the Home Office to process asylum claims. If it was deemed that the applicant was suitable and that the case could be decided quickly, the asylum-seeker was placed in either Harmondsworth Immigration Removal Centre (for men) or Yarl's Wood Immigration Removal Centre (for women), while their application was fast-tracked with decisions made in accordance with UK timeframes. Where a decision is refused, the appeal was also fast-tracked and took place while the applicant remained in detention.⁴¹ In the legal challenge being appealed,⁴² the making of separate tribunal procedure rules for the DFT was held to be ultra vires the statute under which the rules are made, the Tribunals, Courts and Enforcement Act 2007, because the rules do not strike the correct balance between speed, efficiency, fairness and justice.

According to the policy, suitability for the DFT process had to be reviewed on an ongoing basis and at all times throughout the lifetime of the case.⁴³ Both the detention of asylum-seekers for purely administrative convenience and the quality of decision-making in the DFT faced

³⁸ See Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 8 'Claimant's Credibility', available at: <http://www.legislation.gov.uk/ukpga/2004/19/section/8>

³⁹ Casciani, D (29 July 2015) *Asylum appeal fast-track system unlawful, says Court of Appeal*. BBC. Available [Online] from: <<http://www.bbc.co.uk/news/uk-33704163>>, (accessed: 31/05/16); *The Lord Chancellor v Detention Action* [2015] EWCA (Civ) 840.

⁴⁰ See, DFT Processes Suitability Policy, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370322/Detained_Fast_Track_Processes_v6_0.pdf

⁴¹ For time scales that apply to the processing of appeals and see the Immigration Tribunal (Fast Track Procedure) Rules 2005: <http://www.legislation.gov.uk/uksi/2005/560/contents/made>

⁴² *R(Detention Action) v S**** [2015] EWCA***

⁴³ See policy on Detention Reviews, para. 2.5. available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257439/Detained_fast_track_flexi.pdf>, (accessed: 31/05/16)

considerable criticism from lawyers, refugee charities and UNHCR. In two separate audits UNHCR has considered the quality of decision-making and found concerning failures.⁴⁴ Linked cases, the ‘Helen Bamber’ cases⁴⁵ and the “trafficking and equality” cases,⁴⁶ were settled with the Home Office acknowledging that the DFT was producing an unacceptable risk of unfairness for “vulnerable” asylum-seekers. The cases in the challenges included cases of survivors of torture, survivors of human trafficking and those with claims based on their sexual identity.

Since the suspension of the DFT the Home Office has continued to detain asylum-seekers and to deal with their cases while they are in detention. Those whose cases had been processed in the DFT found to be unfair have been able to apply to have the decision in their appeal set aside and have the appeal reheard but have had only limited opportunities to address the deficiencies in the initial decision.

Despite the suspension of the DFT System, the ‘Detained Asylum Casework’ (DAC) has been implemented in the interim while the DFT undergoes review. This new system, however, still involves placing asylum-seekers in detention and processing their claims while they are detained. Furthermore, the timescales for the DAC are similar to the DFT – from the point at which an individual is appointed a lawyer to decision on asylum, in the DFT it was an indicative 8 working days; in DAC it is an indicative 11 working days, therefore it is still an accelerated detained asylum process just by a different name.

It was on the same day that the DFT was suspended that the DAC was implemented. Worryingly, it retains some of the same defects, hence is currently undergoing litigation in court to test its legality. The DAC uses the same ‘screening’ process as its predecessor which came under heavy criticism. The screening process did not work effectively to ensure that those who are potentially vulnerable or have complex claims requiring investigation (such as religious persecution claims or sexuality claims, etc.) are identified and not included in the DFT. As the DAC uses the same screening process, it inevitably also suffers from the same defect.

The DAC arguably retains elements of unfairness, which has the potential to impact religious persecution cases. Many claimants are routed into the DAC pre-screening; this means that they do not have the opportunity to set out information about their asylum claim to determine whether their case is straightforward and can be fairly determined in detention.

Due to the accelerated time frames of processing cases within the DAC it is difficult to ascertain whether the process is fair simply by looking at outcomes such as rates of refusal. If given proper time to prepare an asylum claim, it could be that what appeared to be an unfounded claim actually has merit. As religious persecution cases are complex by their very nature, they often require expert evidence and witness statements from others to corroborate an individual’s account.

⁴⁴ UNHCR Quality Integration Project, First Report to the Minister, August 2010, found that the DFT procedures provided insufficient time for quality and fair decision-making. The short time provided impacts the ability of decision-makers and applicants to prepare for the asylum interview and to take the time required to really consider and gather the necessary evidence to adequately assess the claim. In addition UNHCR notes the impact of detention on asylum-seeker. Detention can make it difficult for asylum-seekers to trust the Home Office and disclose traumatic events, which can then impact the assessment of credibility where they disclose facts late or are inconsistent. The full report is available at: <http://www.unhcr.org.uk/fileadmin/user_upload/docs/Quality_Integration_Project_First_Report_FINAL_PDF_VERSION.pdf>

⁴⁵ CO/2015/499; CO/2015/377; CO/2015/624; CO/2015/625.

⁴⁶ As above and CO/2015/678; CO/2015/747; CO/2015/814.

The individual's own account is seldom enough, therefore it is critical to allow for a fair opportunity and enough time to gather evidence to support one's claim. If a claimant is held in detention, acquiring the necessary evidence becomes difficult as they may be unable to access witnesses; detention also impacts on mental and physical health as well as the ability to disclose one's own claim fully.

Depending on the outcome of the litigation the DAC is undergoing, this is an area that may warrant continued inspection.

Applicants not detained will have their asylum claim assessed in the community, with regular reporting. Often they will require "asylum support" and will live in housing provided under contract to the Home Office for the duration of the asylum process.

For decisions made inside or outside detention the refugee criteria are the same. Alongside the applicant's oral or other documentary evidence, case workers are required to consider objective evidence from the country of origin. Country of Origin information can include other information including information on the political and human rights situation in the country as well as precedent case law decisions from UK courts about the country conditions.⁴⁷ However, a primary aspect of asylum decision-making is credibility assessment – in other words, whether the case worker finds the person's account to be believable. Credibility can be damaged in a number of ways. This includes where an applicant gives inaccurate or inconsistent information; delayed making their claim with no good reason or explanation; used false documents to enter the UK (which would include using a smuggler) or failed to claim asylum in another EU country that they entered on their way to the UK (known as 'safe third country').⁴⁸ The UK may also seek to return those applicants who passed through a 'safe third country' but did not claim asylum.⁴⁹

If an asylum claim is dismissed at the first instance, the majority will have a right to appeal to the First-tier Tribunal (Immigration and Asylum Chamber). During the period of appeal they will be allowed to remain in the UK. However, for some asylum applicants there is no automatic right of appeal while inside the UK. These are cases that are 'certified' by the decision-maker on the basis their claim is considered to be 'clearly unfounded'.⁵⁰ An independent Immigration Judge will hear first instance appeals in the First-tier Tribunal.

Asylum-seekers may not be removed from the UK while claiming international protection, as to do so would violate the UK's obligations under international law, in particular, the principle of *non-refoulement*. Following the exhaustion of all appeal rights, if it is not considered the applicant

⁴⁷ See UK Country information and guidance reports which are used by UK officials to make decisions in asylum and human rights applications, available here: <https://www.gov.uk/government/collections/country-information-and-guidance>

⁴⁸ The European Court of Human Rights has ruled it a violation of Article 3 to return an asylum-seeker to Greece, Bulgaria and Italy due to pertaining inhumane reception conditions. Therefore the UK is forbidden from returning applicant's under the Dublin Regulation to these countries.

⁴⁹ The full text of the Dublin 2 Regulation can be found here: http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_migration/l33153_en.htm

⁵⁰ Section 94 of the Nationality, Immigration and Asylum Act 2002, provides the power to certify where a claim is deemed to be 'clearly unfounded'. To be clearly unfounded a case owner will need to be satisfied that the claim cannot, on any legitimate view, succeed. See Home Office Policy Note, 'Non Suspensive Appeals (NSA) Certification under Section 94 of the NIA Act 2002', available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257463/certificationundersction94.pdf

meets the legal criteria for recognition as a refugee or for complementary protection, they will be expected to return the country of origin voluntarily or otherwise face forced removal.

Refugees and those with a grant of humanitarian protection will be given leave to remain in the UK for 5 years. They will be entitled to apply for family reunification if they have faced separation from family members as a result of having to leave their country, and will be able to work, study and access welfare. On application, they will be given a travel document which will enable them to travel anywhere in the world aside from the country from which they sought asylum. After 5 years both refugees and those with humanitarian protection will be eligible to apply for settlement in the UK.⁵¹ If granted settlement in the UK they can then proceed to citizenship.

V. Asylum Applications on Grounds of Religious Persecution

Due to the well-recognised complexities of assessing religion-based claims, a raft of guidance is available to assist decision-makers including legal and policy guidance as well as country specific information.

For example, UNHCR has issued Guidelines on International Protection: Religion Based Refugee Claims that are given considerable weight by UK Courts.⁵² The UKVI (UK Visas and Immigration), the department of the Home Office which manages and processes asylum decision-making in the UK has issued several Asylum Policy Instructions (API) to decision-makers on how they should assess asylum decisions and conduct asylum interviews.⁵³ While, unlike gender, sexual orientation and other thematic issues, there is no specific API for religious based claims; there is reference to such claims in both the API on Considering the Protection (asylum) Claim and Assessing Credibility and Conducting the Asylum Interview Process.⁵⁴ Country-specific information is available to decision-makers through the UK Country of Origin Information Service, which produces numerous reports, as well as the US State Department and the US Commission on International Religious Freedom reports and other government and NGO sources.

In line with these legal and policy guidance documents, two important issues need to be highlighted as they form the core of assessing an asylum claim, including those based on freedom of religion or belief. These are the credibility assessment and the refugee convention criteria.

Credibility Assessment

⁵¹ Those refugees who have a criminal record or have been imprisoned during their 5 years may not be eligible.

⁵² See, UNHCR Guidelines on International Protection: Religion-based Refugee Claims under Article 1A (2) of the 1951 Convention and / or the 1967 Protocol relating to the Status of Refugees, available at: <http://www.unhcr.org/40d8427a4.html>

⁵³ See, Asylum decision-making guidance (Asylum Instructions): Guidance on how UK Visas and Immigration makes decisions about asylum. Available at: <https://www.gov.uk/government/collections/asylum-decision-making-guidance-asylum-instructions>

⁵⁴ Available at: <https://www.gov.uk/government/publications/considering-asylum-claims-and-assessing-credibility-instruction> and <https://www.gov.uk/government/publications/conducting-the-asylum-interview-process>

The term 'credibility assessment' refers to the process of gathering relevant information from the applicant, examining it in the light of all the information available to the decision-maker, and determining whether the statements of the applicant relating to material elements of the claim can be accepted, for the purpose of the determination of qualification for refugee and/or supplementary protection status.⁵⁵

Credibility assessment is the core aspect of asylum decision-making.⁵⁶ While no reference is made in the Refugee Convention and the EU asylum laws provide little guidance⁵⁷, the UK's current policy on how to assess credibility incorporates many of the principles from the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, the UNHCR Note on Burden and Standard of Proof, and the findings of UNHCR-led research into credibility assessment in EU asylum systems.⁵⁸

The most recent Home Office guidance on assessing credibility and refugee status from January (and March) 2015,⁵⁹ also includes more nuanced guidance regarding those seeking asylum on the basis of religious persecution. Moreover, the Home Office has provided training for its staff in recent months, informed, in part, by the May 2015 'CREDO' training manual composed by the Hungarian Helsinki Committee, with input from the UNHCR,⁶⁰ which contains policy guidance around some of the complexities, including cultural and religious difference when interviewing asylum-seekers.⁶¹ As such, the current policy framework governing the process is working in the right direction and includes many of the international standards that do exist on how adjudicators conduct a fair and effective credibility assessment.

While use of the CREDO training manual, for example, is welcome, as evidence submitted to the inquiry highlights, the Home Office training does not fully reflect the content of the training manual. In the opinion of the inquiry team, this training manual does not, in any case, focus in sufficient detail on the full complexities of and knowledge required for working on religious persecution cases. In practice, therefore, there remain gaps which compromise applicants seeking asylum on grounds of religious persecution being given fair and effective credibility

⁵⁵ UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems*, May 2013, pg. 27, available at: <http://www.refworld.org/pdfid/519b1fb54.pdf>

⁵⁶ *Ibid*, pg. 13.

⁵⁷ Some limited reference is made in Article 4 of the Qualification Directive and 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, 13 December 2005, OJ L 326/13 (hereinafter *Asylum Procedures Directive* and *APD*).

⁵⁸ See UKVI *Asylum Policy Instruction, Considering Asylum Claims and Assessing Credibility*, 6 Jan 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257426/considering-protection-.pdf. Incorporating principles from UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, December 2011, UNHCR's Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, UNHCR-led research entitled *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report*, May 2013, available at: <http://www.refworld.org/docid/519b1fb54.html> (accessed: 31/05/16).

⁵⁹ Home Office, '*Asylum Policy Instruction: Assessing Credibility and Refugee Status*', (6 January 2015), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CRE_DIBILITY_AND_REFUGEE_STATUS_V9_o.pdf, (accessed: 16/05/16)

⁶⁰ Hungarian Helsinki Committee, '*Credibility Assessment in Asylum Procedures: A Multidisciplinary Training Manual*', (2015), available at: <http://helsinki.hu/wp-content/uploads/CREDO-training-manual-2nd-volume-online-final.pdf>, (accessed: 16/05/16)

⁶¹ Source: UNHCR, via email

assessments.

Guidance pertaining to credibility is, additionally, not always followed in practice. Further training is required to ensure that UKVI decision-making is consistent with UKVI guidance. UNHCR has informed the APPG and the AAG that is currently supporting the Home Office to develop training to help ensure that decision-makers correctly apply the relevant legal standards in relation to credibility assessments.

The asylum interview is the main opportunity for the applicant to provide evidence as well as an opportunity for the decision-maker to be able to properly investigate the claim. The Asylum Policy Instruction on Conducting the Asylum Interview requires decision-makers to provide a positive and secure environment in which asylum-seekers feel able to disclose sensitive information and ensure applicants are treated with respect, dignity and fairness regardless of age, disability, ethnicity, nationality, race, gender, sexual orientation, religion or belief.⁶² At the interview, as UNHCR notes ‘the relevant facts of the individual case will have to be furnished in the first place by the applicant himself’ - on whom the burden of proof rests - ‘thereafter it is up to the decision-maker to assess the validity of any evidence and the credibility of the applicant’s statements’.⁶³ The applicant’s evidence can be judged against objective evidence where available, for example country of origin information. UK guidance recognises the challenges faced by asylum-seekers in gathering documentary evidence to substantiate their claim.⁶⁴ Consequently there is a shared duty between the UK authorities and the applicant to ascertain and establish all the evidence that would substantiate a claim.⁶⁵ This, for example, may include the interviewer inviting the applicant to submit evidence considered necessary to support the claim.

An asylum-seeker is not required to prove each material fact with documentary evidence in order for the claim to be deemed credible. Rather, it is ‘internally’ credible if they are able to provide independent evidence and corroborate evidence about past and present events that is supported by available objective information.⁶⁶ Where applicants are inconsistent in their evidence, mitigating circumstances should be taken into account, such as the impact of trauma on memory. The applicant’s ‘internal credibility’ is thereafter analysed against objective country information. If objective evidence clearly contradicts applicant’s statements, this is likely to result in a negative credibility finding.⁶⁷ Where there is no such objective information, the decision-

⁶² See UKVI Asylum Policy Instruction, Asylum Interviews, 31 March 2014, paragraph 1.3: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf

⁶³ See, UNHCR Handbook para 195. See also the European Court of Human Rights Case *R.C. v. Sweden Application No. 41827/07* where the Court holds that ‘the State has a duty to ascertain all relevant facts, particularly in circumstances where there is a strong indication that an applicant’s injuries may have been caused by torture’. The Court states ‘that the onus rests with the State to dispel doubts about the right of his being subjected again to treatment contrary to Article 3 in the event that his expulsion proceeds’, para 53 : [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97625#{\"itemid\":\[\"001-97625\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97625#{\)

⁶⁴ See UKVI Asylum Policy Instruction, Assessing Credibility and Refugee Status, 6 January 2015, para 4.1: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_o.pdf

⁶⁵ UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, para. 196, available at: <http://www.refworld.org/docid/4f33c8d92.html>

⁶⁶ See UKVI Asylum Policy Instruction, Assessing Credibility and Refugee Status, 6 January 2015, para 5.2, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_o.pdf

⁶⁷ Ibid Para. 5.4.

maker can apply the benefit of the doubt, where an applicant is deemed to be generally credible.⁶⁸

In light of the subjective nature of a credibility assessment, various safeguards are incorporated into current UK guidance to try to ensure claims are assessed objectively and not on the decision-makers own experiences and beliefs that would undermine the balance and fairness of an assessment. This requires decision-makers to apply a structured approach to credibility assessment, with the requirement that findings be made only on material facts and not peripheral or minor details; clear reasons provided for why facts have been accepted or rejected and the applicant be given the opportunity to explain any inconsistencies or incoherency with the evidence.

To properly investigate the claim, it is vital that the decision-maker asks the right questions. In religious cases this is a delicate exercise due to the internal nature of religious belief and the fact that religious knowledge may not be proof of any personally held religious conviction. ILPA has, in its submission to this enquiry, made reference to the new asylum interview API as it relates to religious conversion cases as progress, although rather narrow in scope. The policy recognises that knowledge tests ‘are liable to establish nothing more than the ability to absorb factual information’ and be ‘based on the interviewing officer’s subjective perception of what a convert should know, rather than focused on the personal beliefs and behaviour of the claimant’ and directs interviewers to use open-ended questions to facilitate exploration of the claimant’s personal experiences and their journey to their new faith. However, the policy does not prohibit religious testing but rather limits it for the more educated applicant and requires that when ‘testing’ religious conversion cases, questions must be carefully prepared and decision-makers should not expect an unrealistic level of specialist knowledge.⁶⁹

Other considerations which interviewers must consider according to the guidance include, the principles set out by the UK Supreme Court in HJ (Iran) and HT (Cameroon) and RT (Zimbabwe); the impact of traumatic events and allowing submission of supporting evidence if this would significantly inform the decision, for example, a letter from the claimant’s minister of religion in the UK in cases of religious conversion.⁷⁰ Additionally, interviewers must be aware that while the individual may be a member of the larger religious group, their distinct beliefs may be viewed cause them to be perceived as a heretic and thus place them at real risk of persecution. Interviewers should be trained to recognise and understand the nuances of what the different perceptions of ‘orthodoxy’ and ‘heresy’ in the different cultural contexts are. Ahmadis, for example, self-identify as Muslims but are widely and openly persecuted by the dominant Sunni Muslim groups in Pakistan.

Given that most applicants would need interpreters to communicate with decision-makers, according to UK policy, interviewers are required to check with interpreters before the start of the interview that the interpreter has an understanding of the religious terminology and that

⁶⁸ Ibid

⁶⁹ See UKVI Asylum Policy Instruction, Asylum Interviews, March 2014, para 5.5:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf

⁷⁰ See UKVI Asylum Policy Instruction, Asylum Interviews, March 2014, para 5.5, available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf. See also Section 5, Asylum Policy Instruction, Assessing Credibility and Refugee Status, v.9
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_o.pdf

questions prepared can be interpreted/translated accurately.⁷¹ Moreover, decision-makers must be aware that apparent inconsistencies may be as a result of the same name or word being interpreted in a different way rather than an inconsistency in the applicant's evidence.⁷²

The Convention Criteria

The assessment of credibility enables a decision-maker to test the 'well-foundedness' of the applicant's fear of persecution. However, the decision-maker will also need to consider whether the harm feared reaches the threshold of persecution. Persecution has been defined by the UK courts to be the risk of serious harm combined with an inability or unwillingness of the state to protect the individual from that harm.⁷³ Persecution can take various forms. It can include forced conversion, prohibition of membership of a religious community, of worship in community with others in public or private, of religious instruction or serious measures of discrimination imposed on individuals because they practice religion, belong to or are identified with a particular religious community, or have changed their faith.⁷⁴ As mentioned above, Article 10.1(b) of the EC Qualification Directive of 2004 provides a non-exhaustive description of religion as a ground for persecution:

1. *Member States shall take the following elements into account when assessing the reasons for persecution:*

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

Discrimination on the grounds of religion may too reach the threshold of serious harm. As UNHCR notes discrimination that is persecutory may include (though not exhaustive): serious restrictions on the right to earn a livelihood or to access services such as education and health services or where economic measures are imposed which 'destroy the economic existence' of a particular religious group.⁷⁵ Persecution for reasons of religion can take various forms including serious measures of discrimination imposed on persons because of their religious practice or

⁷¹ See UKVI Asylum Policy Instruction, Asylum Interviews, March 2014, para 5.5:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf

⁷² See UKVI Asylum Policy Instruction, Assessing Credibility and Refugee Status, 6 January 2015, para 5.6.2
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_o.pdf

⁷³ See for example, *RT (Zimbabwe) and others v Secretary of State for the Home Department*, [2012] UKSC 38, UK Supreme Court, 25 July 2012, <http://www.refworld.org/docid/5oofdac2.html>. See also, Regulation 5(1) (a) and (b) and 5(2) of the Qualification Regulations, as cited in UKVI API Considering the Asylum Claim and Assessing Credibility, Para 5.8.

⁷⁴ UNHCR Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the status of refugees, para. 12:
<http://www.unhcr.org/40d8427a4.html>

⁷⁵ See UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the status of Refugees, December 2011, para 54 and 63: <<http://www.unhcr.org/3d58e13b4.html>> and UNHCR Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the status of refugees, para17, available at: <http://www.unhcr.org/40d8427a4.html>

belonging. In assessing whether discriminatory treatment or other treatment reaches the threshold of serious harm, both the harm inflicted upon and subjective perceptions of the individual must be considered. In particular, no-one should be required to hide their religious belief in order to avoid persecution.⁷⁶ As UNHCR has said in its evidence to the APPG and the AAG:

“Due consideration must be given to the nature of the right infringed as well as the personal circumstances of the applicant. It is important to highlight that one’s religious belief, identity or way of life can be seen as so fundamental to human identity that one should not be compelled to change this in order to avoid persecution. To deny an applicant refugee status on the basis that they could be expected to modify religious behaviour to avoid persecution is impermissible.”

Moreover, the freedom of thought, opinion and expression also protects those who don’t believe and as set out in UK guidance, extends protection to those who do not hold or express religious belief. As UK guidance states ‘Refugee law does not require a person to express false support for an oppressive regime or require an agnostic to pretend to be a religious believer to avoid persecution. Individuals cannot be expected to modify their beliefs, deny their religious faith (or lack of one) or feign belief in the ‘approved’ faith to avoid persecution.’⁷⁷

Where the threshold of persecution is met a decision-maker will be required to establish whether or not there is a sufficiency of protection against the specific harm feared.⁷⁸ According to UK guidance and case law, there will be no deemed sufficient protection where the state or an organisation controlling the state is the actor of persecution. As the guidance puts it ‘No country can offer 100% protection and certain levels of ill treatment may still occur even if a government acts to prevent it. However seriously discriminatory or other offensive acts committed by the local populace may constitute persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable to offer effective protection.’⁷⁹ Thus, for persecution at the hands of non-state actors (e.g. the community or a family), the state must be able to offer sufficient protection against that harm.

Finally the applicant must be able to demonstrate that the harm feared is on account of one of the five refugee convention grounds.⁸⁰ These are: race, religion, nationality, membership in a particular group and political opinion. It should be easy to establish this aspect of the refugee definition for religious based claims. However, while religion is a clear ground for asylum under the Refugee Convention, there is no definition of religion under international law or refugee law.

⁷⁶ See the ‘HJ HT’ principle adopted by the UK Supreme Court in *RT (Zimbabwe)v SSHD (2012)* <<http://www.bailii.org/uk/cases/UKSC/2012/38.html>> which sets out that the 1951 Convention affords no less protection to the right to express political opinions openly than it does to live openly as a homosexual.

⁷⁷ See UKVI Asylum Policy Instruction, Assessing Credibility and Refugee Status, 6 January 2015, para 7.3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_o.pdf

⁷⁸ The question of who can be deemed able and willing to provide protection is set out in Regulation 4 (2) of the Qualification Directive which provides that ‘Protection shall be regarded as generally provided when the actors mentioned [above] take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and [the claimant] has access to such protection’.

⁷⁹ See UKVI Asylum Policy Instruction, Assessing Credibility and Refugee Status, 6 January 2015, para 8.1, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_o.pdf

⁸⁰ *Ibid*, para 6.9.

“Religion” may involve one or more of the following elements: religion as belief (including non-belief); religion as identity; religion as a way of life.⁸¹ The grounds for seeking asylum are not exclusive as refugee status can be based on more than one of the convention grounds. Religion might, for example, manifest itself in politics, as is the case with the persecution of Muslims in CAR by Christians because of the election of the first Muslim President. Of note, those carrying out persecution may also impute a convention ground upon an individual.⁸²

VI. Experiences of Asylum-seekers in the UK

As can be seen in the section above, the assessment of religious persecution cases is complex and demanding. Nonetheless, as Mr. Paul Nettleship, who has a long record of representing religious based asylum-seekers, noted in his evidence presented to the APPG “there is already sufficient and perfectly sound guidance formulated by the Home Office, and by notably the UNHCR, currently in force, for good decision making in this area. But decision making continues to be very poor.” It is this disparity between good legal and policy formulations and practice, which was highlighted regularly in both oral presentations at the hearings and written submissions to the APPG and the AAG. The following are key areas of concern emerging from evidence presented to the APPG and the AAG.

Credibility Assessment

Home Office and UNHCR guidelines warn against assessing credibility of the applicant’s religious beliefs or conversion through questions that focus on religious knowledge. However, in all submissions to the APPG and the AAG, there is a clear pattern of decision-makers using knowledge testing at interview, with an absence of cases where decision-makers had pursued a line of questioning to establish the personal narrative of the applicant, including their feelings and experience of their religious faith. Despite calls by other organisations, including the Evangelical Alliance in its 2007 ‘All Together for Asylum Justice’ briefing on the issue of religious persecution asylum cases,⁸³ the concerns raised in such reports remain.

In a written submission to the APPG in May 2016, Ms Attieh Fard, a solicitor focusing on asylum claims, highlights that Home Office questions asked to Christian converts from Islamic background continue to detailed factual questions about the Old Testament and the New Testament such as the story of Adam and Eve, the names of Apostles, the story of the feeding of the five thousand, the meaning of Lent, the Holy Communion and whether Easter is celebrated every year on the same date. Given that conversion to Christianity from other religions is often a very complicated and burdensome process, frequently leading to an ostracisation from their family and local community, expecting a convert to have the same level of knowledge as an individual even born into a Christian family is illogical. Converts knowledge about the Bible is

⁸¹ See art 6 (1) (b) of the Qualification Regulations which states that the concept of religion shall include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from formal worship in public or private, either alone or in community with others, other religious acts of expression of view, or forms of personal or communal conduct based on or mandated by any religious belief, available at: <http://www.refworld.org/pdfid/47a7081co.pdf>

⁸² Ibid, art 6 (2).

⁸³ Evangelical Alliance, *All Together for Asylum Justice: Asylum-seekers’ Conversion to Christianity*, (2007), available at <<http://www.eauk.org/current-affairs/publications/upload/alltogether-for-asylum-justice.pdf>>, (accessed: 16/05/16)

often in accordance with the teachings of their Church which can be limited to the Gospels or particular parts of the Bible. Taking into account the local church Pastor's evidence, who knows the convert's history and story of conversion well, is important in such cases.

Home Office interviewing officers' knowledge of churches and liturgies is also sometimes based on a quick survey of church websites, which may have limited or incorrect information. In one case, Ms Fard outlines that the Home Office caseworker had not realised that an Anglican Church can also be an Evangelical one and thus found the applicant's testimony inconsistent as it did not match the church's public information on its website.

In an interview with the APPG in May 2016, Mr Hamid Delrouz, an Iranian convert to Christianity, stated that his asylum claim had been rejected twice by the Home Office on the basis of his being 'unable to demonstrate, as a matter of truth that he is a Christian'. Mr Delrouz outlined that during his interviews with caseworkers, he was asked to name all ten of the Commandments – something that he was unable to do at the time.

In their written submission, ELAM Ministries stated, "during a Home Office interview in 2014, one Christian asylum-seeker was asked, among other questions, 'How many chapters are there in the book of John?' Another was asked, 'What is Ash Wednesday?'" In another submission to the inquiry team, the example of a Muslim woman from an Asian background who converted to Christianity while in the UK was given. This evidence notes, "...her application for asylum was rejected because her conversion was not considered to be genuine. This decision was based on two factors: she could not recite the Lord's Prayer and she did not know how many books there are in the New Testament."

Paul Nettleship drew attention to the case of 'C', a Catholic applicant from India, whose appeal was turned down by an immigration judge. In refusing the appeal, the judge remarked how he "found 'particularly striking' C's ignorance of the Friday abstinence rules in Catholicism in relation to refraining from meat consumption [which] meant that C, in light of his ignorance of such, was clearly not a Christian as this practice was 'general knowledge.'" A Catholic priest provided a written statement in support of C's application, stating that "ignorance of this obligation and practice is widespread among Catholics from the Indian sub-continent and I am frequently surprised to be offered meat dishes on Fridays by otherwise deeply committed and pious Catholics." The case demonstrates how the immigration judge had reached his conclusion on the credibility of the applicant's Catholicism, based solely upon his own subjective understanding of Catholicism.

Problems emerging from subjective views of the decision-makers show themselves regularly. In their written submission, ILPA points to a case involving a Sudanese political activist who had become a member of the Sudanese Communist Party. ILPA note that the Immigration Tribunal rejected his claim on the basis that his views did not accord with Marxist doctrine -which was generally hostile to religion, whereas the appellant still regarded himself as a Muslim. As ILPA note the tribunal "based its judgment on the view of one of the panel rather than any objective evidence."

The causes behind such failures are manifold. In their submission to the APPG and the AAG, the Jesuit Refugee Service stated that:

"Often this is demonstrated by inappropriate doctrinal or scriptural based questions as if sincerity of belief or being a believer or belonging to a particular church depends upon such 'factual' knowledge. Assertions are made by immigration judges and Home

Office caseworkers and representatives about how inability to provide the factual answers desired, or to the degree desired, demonstrates that the applicant is either insincere in her faith or not a member of that tradition. No evidence is ever provided by judges, caseworkers or representatives to show such assertions they make are valid. Instead it is assumed that all members of that tradition could correctly answer such questions. In any case knowledge does not in and of itself demonstrate Christian commitment and belonging; rather this is most ably demonstrated by the way in which a person lives his or her life and how she or he relates to others. This does not mean to say that a person ought to be enthusiastic about his or her faith or a role model in behaviour. In fact sincerity may not even be pertinent. Persons can be persecuted for religion solely because they are identified as belonging to a particular faith or tradition.”

While it is clear that a lack of understanding of religion and belief is clearly a primary cause of the disparity between good policy guidelines and practices of decision-makers, evidence from ILPA suggests that such ignorance might have been formalised through unpublished ‘crib sheets’ given to decision-makers. ILPA noted:

“We are concerned that, all too frequently, first-instance decision making appears to be premised upon staff who are using unpublished ‘crib’ sheets and/or who have adopted a fixed view of the precepts of particular religions. This problem has also infected tribunal decision-making in some instances. The problem can work both ways: persons seeking asylum have both been rejected on grounds that they do not adhere to a particular religion if answers are apparently inconsistent with the crib sheet, or in some cases disbelieved where they give answers that are entirely consistent on the basis that they have merely been told what to say.”

In support, ILPA provided the example of a Chinese Christian who demonstrated lack of knowledge on Biblical questions but at her appeal hearing demonstrated excellent knowledge of the Catholic catechism. A Chinese priest “who gave evidence at her appeal spoke of the lack of knowledge among his native flock of New Testament Bible stories, the gospels etc. He set into context the client’s difficulty in answering such questions in interview following which her claim had been refused.”

Interpreters

Interpreters arranged by the Home Office via private companies provide interpretation/translation for asylum interviews. Though not employed by the Home Office, the Home Office expect and assumes an efficient level of language skill and professionalism from interpreters sent. Home Office policy governs this expectation.

According to UK policy, interviewers are required to ‘check with interpreters before the start of the interview that the interpreter has an understanding of the religious terminology and that questions prepared can be interpreted accurately.’⁸⁴ However, during the hearings, the APPG and the AAG have heard first hand testimonies of interpreters failing both on their language competency and professional conduct, thereby having a detrimental impact on the process.

⁸⁴ See UKVI Asylum Policy Instruction Asylum InterviewS, 31 March 2014, para 8, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298853/Asylum_interview_policy_guidance_v_5.pdf

In an interview with the APPG in May 2016, Mr Hamid Delrouz, an Iranian Christian convert, stated that his asylum rejections by the Home Office were helped by the fact that, in court, his interpreter was not familiar with the Biblical terms including 'Book of Psalms' and 'Jeremiah' which were translated incorrectly. Such mistranslation, he attests, helped inform the Home Office's rejections that were given on the basis of his being 'unable to demonstrate, as truth, that he is a Christian'.

In further evidence submitted to the inquiry team in May 2016, the Ahmadiyya Muslim Association UK highlights the case of one Ahmadi man who, in his interview, felt that he had to start answering the interviewer's questions in his broken English and not use his Urdu-speaking interpreter, making the interpreter angry, because some of the concepts he was conveying in Urdu were not being translated properly or were being missed out. The Ahmadi applicant felt that this was affecting his asylum case and was concerned that either the interpreter did not have knowledge of Ahmadis' beliefs or did not personally agree with them. In this individual's First Tier Tribunal case, when he said to the judge that he wanted to explain his position properly when he felt the interpreter was failing to do so, he was told by the judge not to speak in English and only in Urdu through the interpreter.

Ms Attieh Fard, a solicitor focusing on asylum claims, gave the example of Mohammad (a pseudonym) in evidence to the APPG and the AAG:

“Mohammad was an active house church leader in Iran. His case was refused because the Home Office did not believe he was a Christian. He lost his first appeal because of mis-translation of Christian terminology at the hearing. During the tribunal hearing, the judge asked him to state the name of the last book of the Bible. Mohammad responded Mokashefe, which is the Farsi word for Revelation; the Muslim interpreter repeated the same word to the Judge. The judge in his decision stated that the last book of the Bible was not Mokashefe but rather the book of Revelation. Mohammad also did not have any lawyer and therefore could not answer all the judge's questions promptly as he was under a lot of pressure. He won his case at the Upper Tribunal though after instructing a lawyer, having a witness and having a different interpreter.”

In the case of Mohammad, while the interpreter was clearly fluent in Farsi and English, Christian terminology is not commonly understood and consequently this interpretation error was used to undermine the applicant's credibility and possibly led to the rejection of his claim. In their joint written submission to the APPG and the AAG, *Waging Peace* and *Article 18* organisations also highlighted the problems with interpreters with other languages, notably Arabic. In their submission they state “this happens very often in Coptic Christian cases or where Muslim Arabic interpreters are critical of an individual's decision to leave Islam” and that the Sudanese asylum applicant Ms B said that “this was an issue for her, as her interpreters did not know what the term FGM (female genital mutilation) meant and had trouble translating terms from the Baha'i Faith. She was also afraid that her interpreter might be Sudanese, which made her scared that her story would be made public and her life would be threatened.”

In fact, the fear over the professional conduct of interpreters and their ability to communicate clearly between the decision-maker and applicant as well as an intimidating dynamic of being interpreted/translated through a person from the religious community that has caused persecution to the asylum applicant has been frequently raised to the APPG by stakeholders as an ongoing concern. This is particularly so in religious conversion cases. Dr Ibrahim Habib of *United Copts of Great Britain* stated in his oral presentation before the members of the APPG and the AAG:

“A Muslim interpreter and at times a Muslim caseworker make things very difficult for applicants. Telling stories of persecution in Egypt and conversion from Islam to Christianity makes the process very emotionally difficult for the people if the person they are talking to is a Muslim. Some fear their applications might not have a fair chance or they feel pressured to control what they say. There must be more sensitivity to their needs.”

Grounds for Refusal

In evidence submitted to the APPG and the AAG, there are concerning examples of asylum applications being denied on grounds that clearly contradict law and the UK’s own policy guidelines and Country of Origin Information.

This is most acutely seen in cases where 'insufficient information' or evidence is cited as grounds for refusal. In their submissions, *Waging Peace* and *Article 18* note that “the Home Office regularly claim not to have information on particular groups”, which directly effects credibility assessment. For instance, the submissions by both organizations give example of the case of Ms A from Sudan, who had claimed asylum in the UK on the basis of her atheism. She was told “that as there was no evidence about atheism in Sudan, it could be concluded that there are no atheists in the country and that therefore she could not possible have been persecuted for this reason.”

Another ground for refusal identified in the submissions was on the basis the applicant could keep their faith to themselves and not engage in public expressions. As *Waging Peace* and *Article 18* note in their evidence:

“There is a presumption, evident in conversations and during questioning with the Home Office and other authorities, that your faith or beliefs are something you choose, and can be kept private. Ms A was asked why she could not have just kept her atheist beliefs to herself, and asked repeatedly what made her speak out. Ms A says this line of questioning made her feel she was being blamed, rather than the regime that had persecuted her.”

Such views not only demonstrate a lack of understanding of religion, religious identity and religious persecution, but also contradict human rights and refugee law, as recently stated by the UK Supreme Court,⁸⁵ with the tenant of refugee law to protect fundamental freedoms and the right to live out those freedoms.

Another frequent reason for refusal that came before APPG and the AAG in the evidence is the internal relocation argument, combined with an absence of subsequent analysis of the ability of the state to protect against the harm feared in the proposed area of relocation. Concerns were voiced in evidence to the APPG and the AAG given that widespread social hostilities towards religious minorities in certain countries by non-state actors and the corresponding weak or unwilling law enforcement, the presence of radical and militant networks and the deep social taboos regarding apostasy in relocation areas. Dr Ibrahim of *United Copts of Great Britain* stated that “Over the years, some applications have been turned down with the argument that if a Copt was persecuted in one part of Egypt, they could be safe if they moved to another part of the country. This relocation argument is not valid, because the widespread media, nationwide radical

⁸⁵ See *HJ (Iran) v Secretary of State for the Home Department (Rev 1)* [2010] UKSC 31 (07 July 2010) available at: <http://www.bailii.org/uk/cases/UKSC/2010/31.html>

organizations and nationwide community relations, relocation does not protect an individual who has already faced life threatening condition”.

Mr Dave Smith, founder of the *Boaz Trust*, which offers “accommodation and support for refused asylum-seekers who would otherwise be destitute”, cited the case of a Hindu Nepali couple who converted to Christianity and claimed asylum due to fear of a militant group. Their application was refused based on negative credibility assessment (particularly that they first arrived to UK as students and only after several months sought asylum), and that they would be safe if they were to relocate to Kathmandu. However, Mr Smith noted that the brother of the applicant was tracked down in Kathmandu by the group, severely beaten for refusing to tell the whereabouts of the asylum-seeker, kidnapped and later found dead. Mr Smith reports that the applicants were deported back to Nepal, but immediately after arriving, fled to India out of fear for their lives and are now living in a small village there.

Procedural challenges and the impact on fairness and quality of decision-making

Rev. Andrew Dawson, who has experience in working among Iranian Christian asylum-seekers, noted in his submission that “people escaping from their own country may not know in advance the basis on which they can make an asylum claim, nor what evidence they can attempt to bring them.” Therefore, decision-makers must be careful to ensure that the necessary amount of time and clear guidance have been given to applicants to support their claims.

Solicitors Qassem Hayat, who specialise on applications from Ahmaddiya asylum-seekers from Pakistan, noted that a key aspect of establishing such asylum-seekers’ credibility can be the provision of an official document from the Ahmadi Community in the UK. These official statements have been accepted as valid evidence in an Upper Tribunal decision “*MN and others*” which has since been included in the Home Information and Office Country Guidance on religious freedom in Pakistan.⁸⁶ Mr Hayat, however, noted the Country Guidance on Ahmadi in Pakistan is not applied by all decision-making and immigration judges. One Ahmadi organisation, The Human Rights Committee, stated in their written submission to the APPG and the AAG that they were “concerned that the country guidance of *MN and Others* is not being followed. In fact, it is evident from Home Office refusals that there is a complete lack of regard to it.”

A second issue raised by Paul Nettleship was that of legal representation. He noted that in general, asylum cases where the applicant is legally represented have a 33 to 50% success rate, in contrast to a 3 to 5 % success rate for applicants without legal representation. Mr Nettleship explained that changes in legal aid funding meant that some legal practices have had to shut down and the numbers of practitioners representing legal aid cases has dropped significantly due to unsustainably low rates of pay. Many asylum cases are now privately funded by legal representatives - many of whom have no expertise in Freedom or Religion or Belief or asylum issues and many who are not regulated to give immigration advice.

Engaging with the Applicants

The entire experience of seeking asylum, arriving in a foreign country, not speaking the language,

⁸⁶ See *MN and others (Ahmadis - country conditions - risk) Pakistan Pakistan v. SSHD*, CG [2012] UKUT 00389(IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 13 November 2012, available at: <<http://www.refworld.org/docid/50a3ccd72.html>>

being questioned on intimate and traumatic experiences and going through a process that will dictate one's future unsurprisingly can have a tremendous emotional and psychological impact on the applicants. Different educational levels, cultural differences in the way human beings narrate personal stories, and emotional challenges in speaking clearly to formal officials with such a power over one's life all impact how applicants will engage with those who come into contact with them. Dr Habib mentioned in his testimony before the APPG and the AAG that applicants might not be able to tell their stories coherently, or in the way that appears intelligible to a British educated decision-maker. Religions and country of origins of interpreters or Home Office staff that applicants come across in their cases cause severe psychological pressure on applicants even when the staff involved demonstrate utmost professional conduct.

The vast majority of applicants do not have any knowledge of the process or know on what grounds and how their applications are assessed thus what they should be telling the decision-makers. Most asylum-seekers will have had to flee their countries, making it impossible to gather relevant documents that would be supporting evidence in their case. As noted by Rev Andrew Dawson, “people escaping from their own country may not know in advance the basis on which they can make an asylum claim, nor what evidence they can attempt to bring with them.”

An Iranian asylum-seeker who is going through the appeal process following the refusal of his application on basis of his atheistic beliefs, stated in a written submission to the APPG and the AAG:

“The system is inhumanely designed to deal with the asylum-seekers, it disregards their mental health and leads to destitution and alienation. Those who seek protection may have lost their family and friends, they may have been tortured or may have escaped torture, persecution and prosecution. Instead of helping to heal their trauma the system cuts open their wound and dips it into a flame before rubbing salts into it.” With its intolerably long process, the system on the one hand, denies the individuals their basic human rights; it gives them no right to work, forces them to live on £5 per day and restricts their movements, and on the other hand, it demoralises, depresses and damages their already fragile mental health when it intentionally leads to destitution.”

Such truly human experiences of asylum-seekers in the UK raises serious questions as to whether the current system is able to provide an adequate duty of care and assess cases consistently without its current lack of knowledge regarding religious persecution and the unique cultural contexts of applicants. There are also questions regarding whether there is a culture of categorical disbelief against all asylum-seekers, lack of sensitivity to human needs and undeclared quota systems or aims to deport individuals even when it is clear that they are at risk and that the UK government is legally obliged to offer them protection.

Conclusion

This report has noted that to seek asylum is a human right and religion is a protected refugee ground. It noted that freedom of religion or belief as defined by the Universal Declaration of Human Rights and clarified and enshrined in subsequent binding treaties is an absolute right, and that its denial is a basis for asylum. Therefore the UK is legally obliged to offer protection to those who seek refuge in the UK who can establish they would experience persecution or serious harm on the grounds of religion or belief.

While the law is clear, in practice religion-based asylum applications present complex and challenging cases to assess. This is caused not only by the complex nature of religion or belief, but also the fact that persecution on the basis of religion or belief encompasses a wide range of human rights violations and relates to complex dynamics of communal identities, politics, conflicts and radical organisations.

As the evidence submitted and presented to the APPG and the AAG has shown, both the Home Office and UNHCR have adequate policy guidelines that can help decision-makers and immigration judges to make fair and accurate decisions. The APPG and the AAG have also been encouraged by reports that the UK's Country of Origin information, used in the process of assessing applications has now adequate sections on religious persecution incidents.

However, it is clear that there is a gap between the Home Office's policies and practice. While the continued suspension of the DFT system has been welcomed by civil society organisations, there remain notable concerns with the current 'Detained Asylum Casework' (DAC) System which has replaced the DFT system. The DAC System still involves placing asylum-seekers in detention and processing their claims while they are detained. Worryingly, it does so without a number of the safeguards included in the DFT system. Therefore, this is an area that may warrant further investigation, dependent on the outcome of the process of litigation the DAC process is undergoing to test its legality. Furthermore the lack of quality legal representation available is also a concerning issue.

The report's findings signal a lack of understanding and misperceptions of religion and belief among decision-makers. This results in problematic investigation of the claim (including questions put to applicants), poor credibility assessment and weak analysis of well-founded fears of persecution and risks of such persecution upon return (including internal relocation analysis). Evidence also points to lack of sensitivity shown to specific needs of applicants and some serious concerns regarding sufficient knowledge and sensitivity towards applicants on the part of interpreters, all of whom are self-employed, that have been hired by the Home Office.

Some of these problems are symptomatic across the asylum system and particular shortcomings are manifested in certain claims, for example gender-based claims, survivors of torture and children's claims. For these groups of asylum-seekers civil society groups have played an important role raising awareness and advocating for shifts in the policy and procedure to ensure a fairer decision and more humane system that fits the requirements of the particular vulnerabilities of those groups. In some cases, their efforts have led to precedent court cases with the UK's highest courts overturning existing rationale for refusing asylum and leading to shifts in the asylum decision-making for all the cases to follow.

For example, the processing of asylum applications for persecution against LGBTI persons have shown close parallel to Freedom of Religion or Belief cases. Similarities have included faulty and intrusive questions asked by case workers and wrong decisions given on rationale that if the person was to keep their sexual orientation to themselves they could live freely in another part of their country of origin. A landmark court case has set a precedent on overturning asylum denials on such a rationale, arguing that one's sexual orientation and identity intrinsically results in the right to live freely and the freedom to enjoy that fundamental right. Following that landmark

judgment, civil society groups have worked with the Home Office to provide a dedicated training module to decision-makers on LGBTI cases and how to assess claims made on the basis of sexual orientation correctly and sensitively. There is now a 'second pair of eyes' test in place for LGBTI claims, meaning that all LGBTI decisions are reviewed by a Technical Specialist - who usually supervises decision-makers - before being issued to the applicant.⁸⁷ A similar procedure would be highly beneficial for religious persecution cases.

Another precedent for accommodating sensitivity on religious backgrounds of decision-makers and interpreters involved with the asylum case can be seen in the gender sensitivity provided by the Home Office. The Asylum Policy Instruction, Asylum Interviews state:

“Claimants are asked at the screening interview if they would like a male or female interviewer and they may also make such a request subsequently. A request by the claimant for a gender specific interviewer should normally be met and if it cannot be met on the scheduled day, the interview should normally be re-arranged. This applies to the interpreter also, as far as practically possible. The caseworker must be aware of gender related issues, since this may affect how the claimant responds during interview.”⁸⁸

The concerns behind such provisions are real. This was highlighted by Refugee Women's Strategy Group, which stated in their submission that “70% of asylum seeking women reporting experiences of physical and/or sexual violence in their lifetime”, and thus if they are not speaking to a female decision-maker and interpreter, “many women feel unable to disclose their experiences of sexual violence, which obviously has an impact on the quality of decisions.” We commend Home Office guidance on the matter, and continue to ask for its upholding in practice. Such sensitivity must also be shown to religion-based claims.

It is important that a special focus is given to Freedom of Religion or Belief and religion-based asylum claims to address the problems mentioned above. The APPG has been notified of various attempts over the years by stakeholders who have raised concerns of how these claims are assessed and handled. The Rt Reverend Jonathan Clark, Bishop of Croydon submitted a statement to the APPG and the AAG on behalf the Churches' Refugee Network stating that the group had several face-to-face consultations in 2005-2007 with senior UKBA officials and that they have presented suggestions and offer of providing training. A similar initiative has been taken by the Asylum Advocacy Group lead by HG Bishop Angaelos of the Coptic Orthodox Church, which has pursued multiple meetings with Home Office officials.

Stakeholders report that while some steps have been taken and some concerns engaged with, there is a genuine view that the Home Office could do more to ensure that the asylum process for religion-based asylum claims is fair and humane. This will not only ensure that individuals who face serious risks are given such vital and potentially life-saving protection but also that the sub-standard performance of first instance asylum decision-making does not result in burdening limited resources of the UK Government through a prolonged appeal process. The inquiry team will be requesting a meeting with relevant Ministers to raise the recommendations made in this report.

Contact Details

**All-Party Parliamentary Group for International
Freedom of Religion or Belief**

⁸⁷ UKVI, 'LGBTI Action Plan 2015-2016', Page 8, paragraph 5

⁸⁸ See UKVI Asylum Policy Instruction, Asylum Interviews, M: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/54011/w_policy_guidance_v_5.pdf>, (accessed: 31/05/16)

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