



still human still here
The campaign to end destitution of refused asylum seekers

Submission to the Home Affairs Select Committee Inquiry into: Asylum

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 230,000 supporters in the United Kingdom. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Still Human Still Here is a coalition of 58 organisations that are campaigning to end the destitution of asylum seekers in the UK.

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EXECUTIVE SUMMARY

The assessment of the credibility of women, the mentally ill, victims of torture and specific nationalities within the decision making process and whether this is reflected in appeal outcomes

- In 2004 Amnesty International's report *Get It Right: How Home Office decision making fails refugees* found that one in five decisions to refuse asylum was overturned on appeal. For the last three years statistics show that more than 25 per cent of initial decisions to refuse asylum are being overturned on appeal.
- During 2012 Amnesty International and the Still Human Still Here coalition carried out research to examine why so many initial decisions are overturned on appeal including the cases of women, survivors of torture on specific nationalities.
- We have examined the refusal letters and appeal determinations of 50 cases from Syria, Sri Lanka, Iran and Zimbabwe, all of which have had high appeal overturn rates of the initial decision to refuse asylum in the last two years. In 2012, 52 per cent of appeals were allowed for Syrians, 41 per cent for Sri Lankans, 34 per cent for Iranians and 25 per cent for Zimbabweans.
- The research clearly shows that in more than 80 per cent of a random sample of cases, a flawed credibility assessment is the primary reason why the UK Border Agency's initial decision to refuse an asylum claim was found to be wrong by Immigration Judges.
- Our research found that case owners would typically identify an action that they considered implausible, a minor inconsistency or a lack of documentary evidence and then consider these issues in isolation, rather than looking at all the available information in the round.
- The evidence from the research indicates that a significant number of case owners are making serious and/or multiple errors in the assessment of credibility which are leading to poor quality decisions. The vast majority of these mistakes could be avoided if case owners properly followed UKBA's own Credibility Guidance.¹

Recommendations include:

- UKBA must monitor the performance of individual case owners and their managers and address high overturn rates on appeal and consistent failure to properly apply UKBA guidance through appropriate support and training. If poor quality decisions persist then case owners and/or their managers must be removed from these roles.

¹ On 26 March 2013, the Home Secretary announced that the Executive Agency status of the UK Border Agency will end and its functions will be brought back within the Home Office. The Government has split up the UK Border Agency and in its place will be an immigration and visa service and an immigration law enforcement organisation. We have referred to UKBA throughout the report as this was the title of the agency during the period in which the research was conducted.

- More flexibility should be built into the asylum process to allow relevant materials (including medical evidence, country information and the translations of documents) to be properly considered both prior to and after the substantive interview, particularly if the applicant is unrepresented. Case owners should have discretion to delay a decision or an interview in order to obtain relevant evidence.
- Decision makers should be required to give applicants an opportunity to explain apparent contradictions in their statements or inconsistencies with objective country of origin information.
- Cases with indefensible reasons for refusal should be withdrawn prior to the appeal.
- Section 8 should be repealed as it gives inappropriate weight to certain actions as damaging to an applicant's credibility. In the short term, current guidance should be amended to provide a wide variety of examples which would be regarded as providing a reasonable explanation for a delay in making an asylum application.
- Case owners should defend their own decisions at appeal. If Home Office Presenting Officers rather than case owners continue to represent UKBA at appeal, then an efficient feedback loop is needed so that case owners can properly learn from their mistakes.

1. Almost a decade ago, Amnesty International published its report *Get It Right: How Home Office decision making fails refugees*. This study found that one in five decisions to refuse asylum was overturned on appeal.
2. More than 25 per cent of decisions to refuse asylum being overturned on appeal in 2010, 2011 and 2012. In 2012, there were 2,192 cases where the initial asylum decisions were successfully appealed (27 per cent of all appeals).
3. Amnesty International and the Still Human Still Here coalition conducted research examining 50 cases focusing on asylum applications from Syria, Sri Lanka, Iran and Zimbabwe, all of which had high overturn rates on appeal of the initial decision to refuse asylum in the last two years. In 2012, 52 per cent of appeals were allowed for Syrians, 41 per cent for Sri Lankans, 34 per cent for Iranians and 25 per cent for Zimbabweans. This amounts to a combined total of 901 overturned initial decisions.
4. For the research all of the cases had to have received an initial refusal letter after February 2012 when new credibility guidance² was issued and we wanted to assess whether these revised instructions had an impact on the quality of the initial determinations.
5. In 42 cases analysed (84 per cent of the sample), the Immigration Judge indicated that the primary reason for an initial decision being overturned was that the UKBA case owner had wrongly made a negative assessment of the applicant's credibility. In all these cases, the case owners had not properly followed the UKBA's own policies on assessing credibility.
6. Case owners made a total of seven different mistakes when assessing credibility which were identified as primary reasons for the initial decision being overturned. However, four errors in applying the credibility assessment are responsible for 88 per cent of these flawed decisions. These mistakes relate to: the use of speculative arguments or unreasonable plausibility findings; not properly considering the available evidence; using a small number of inconsistencies to dismiss the application; and not making proper use of country of origin information.
7. The four errors in applying the credibility assessment which were identified above as being the primary reason for 88 per cent of the flawed decisions being overturned, also account for 59 per cent of the secondary reasons noted in the appeal determinations.
8. In addition to these four issues, case owners in this sample also appear to consistently make mistakes in relation to the application of Section 8³ and mitigating circumstances. Errors in

² See the Asylum Process Guidance, *Considering the protection (asylum) claim and assessing credibility* at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/consideringanddecidingtheclaim/guidance/considering-protection-.pdf?view=Binary>

³ Section 8 of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 Act requires decision makers to "take into account as damaging to the applicant's credibility any behaviour they think is designed or likely to conceal information, mislead, or obstruct or delay a decision. However, the legislation makes clear that case owners should take into account any reasonable explanation given by the asylum seeker for the delay in making the application.

applying these two aspects of the credibility assessment were identified as being the primary reason for 10 per cent of flawed decision being overturned, and also account for 29 per cent of the secondary reasons noted in the appeal determinations.

9. The research found that case owners would typically identify an action that they considered implausible, a minor inconsistency or a lack of documentary evidence and then consider these issues in isolation, rather than looking at all the available information in the round. Decision makers also focussed on one part of the case that they thought inconsistent or implausible and then used this as the basis for undermining other aspects of the individual's account.
10. During the analysis of the cases, a "domino effect" was observed by which case owners made flawed credibility assessments based on one aspect of the claim and then used this to undermine other aspects of the claim.
11. The following example is a clear illustration of the domino effect in action taken from a Sri Lankan refusal letter:

"As it has not been accepted that you were a member of the LTTE, it is not accepted that you were arrested...."

"As it has not been accepted you were arrested, it is not accepted that you were detained or received the treatment you claim to..."

"Given that it has not been accepted that you were arrested or detained, it is not accepted you were released..."

"Given that it has not been accepted that you were arrested and released it is not accepted your father was arrested and questioned..."

12. While one error in evaluating credibility would not necessarily mean that a decision is unsustainable, the evidence from the research indicates that a significant number of case owners are making serious and/or multiple errors in the assessment of credibility which are leading to poor quality decisions. The vast majority of these mistakes could be avoided if case owners properly followed UKBA's own Credibility Guidance.
13. The following is an example from a Syrian case:

Refusal letter:

"You answered that 'Turkey, Saudi Arabia and Qatar' opposed a resolution by Arab and European nations in the United Nations Security Council for Syria's President to resign. Given that you claim to have been protesting in February 2012, it is not considered credible that you fail to answer basic questions regarding international politics correctly. It is not accepted that you have undertaken any role in political activities".

Immigration Judge:

"If as claimed he has never had any education and has lived in a rural area without the benefit of electricity, it is just plausible that his information about his home country, as regards matters and events not within his immediate area, would be limited."

14. The research found that evidence submitted before the initial decision needs to be more carefully reviewed and considered. In 70 per cent of the 50 cases in this sample, some form of documentary evidence (other than personal identification) was provided prior to the initial decision. In seven of the Syrian cases, this evidence included: photographs of attendance at

demonstrations, news articles, a witness statement, a lease contract, proof of address, a death certificate, embassy visit documents, a military letter and supporting letters

- 15.** In eight of the Sri Lankan cases, documentary evidence was submitted to corroborate the claim of torture or to show the after effects of torture prior to the initial decision. This came in the form of photographs, NHS assessment cards, doctors' letters and appointment cards. In six Sri Lankan cases, applicants submitted photographs of their scars to substantiate their claims of torture prior to the initial decision, but these photographs were not accepted in a single case.
- 16.** In several cases, the decision maker did not adequately assess or research the evidence provided to them by the applicant. For example, in one of the Syrian cases, the case owner made a mistake regarding the date the applicant returned to the UK which was then used to undermine the claim.
- 17.** While the research did not have access to a record of the interview, the available evidence from the appeals indicates that applicants were frequently not given an opportunity to explain actions that were considered implausible or inconsistent and that material facts were not probed sufficiently at the initial interview.
- 18.** Many issues brought up at the appeal or in witness statement responding to points made in a refusal letter could have been obtained at the interview through better use of follow-up questions or by putting issues which the case owner considered to be inconsistent or contradictory to the applicant at that time.
- 19.** In addition, a more flexible approach to the timeframes for making decision is also likely to have a positive impact on the quality of those decisions. If a substantive interview and/or initial decision was briefly delayed in order to acquire further information or check evidence that had already been submitted, this would help case owners to get the decision right first time.
- 20.** Credibility assessments are inherently difficult because they require the case owner to break with the instinctive practice of assessing someone's behaviour in relation to whether it fits their own expectations of would be a "normal" or "common sense" response to a certain situation.
- 21.** The reality is that "common sense" actions differ across countries and situations. Furthermore, people do not always behave rationally or consistently in situations of danger or under extreme pressure. In addition, there is evidence that "memory for traumatic events is often inconsistent and ill-recalled" meaning that a true account is not always detailed and internally consistent.
- 22.** The research shows that some case owners are having difficulty in relation to these issues, resulting in poor decisions based on the inappropriate use of speculation, mitigating circumstances or Section 8. This needs to be dealt with through better management and training support.
- 23.** Avoidable mistakes in the initial asylum determination procedure is inefficient, costly and causes the applicant concerned considerable anxiety. This study suggests that a significant number of successful appeals could be avoided if the issue of poor quality credibility assessments by some case owners is effectively addressed.
- 24.** Amnesty International and Still Human Still have made a number of recommendations to improve the quality of the decision making process and urge the Government to implement them as a matter of priority:

- The Home Office must monitor the performance of individual case owners and their managers and address high overturn rates on appeal and consistent failure to properly apply policy guidance through appropriate support and training. If poor quality decisions persist then case owners and/or their managers must be removed from these roles.
- More flexibility should be built into the asylum process to allow relevant materials (including medical evidence, country information and the translations of documents) to be properly considered both prior to and after the substantive interview, particularly if the applicant is unrepresented. Case owners should have discretion to delay a decision or an interview in order to obtain relevant evidence.
- Decision makers should be required to give applicants an opportunity to explain apparent contradictions in their statements or inconsistencies with objective country of origin information.
- The Home Office should encourage greater communication between the case owner, the applicant and their legal representative prior to interview, the initial decision and any appeal to try and resolve matters in dispute or to seek clarification around issues of concern (e.g. perceived inconsistencies or implausible behaviour). This could be facilitated by:
 - Ensuring that case owners, applicants and legal representatives have access to full contact details of the other parties, including email addresses and direct phone numbers;
 - Case owners contacting legal representatives or the applicants, using the invitation to interview letter, to indicate what information they would like before or at the asylum interview;
 - Case owners contacting legal representatives or the applicants after the interview to raise any further issues arising from the interview so that these can be addressed prior to making the initial decision.
- Policy alerts on fast changing country situations should be issued and case owners should always check whether a new OGN, Country of Origin Information Service report or country guidance case has been issued prior to the appeal.
- Cases with indefensible reasons for refusal should be withdrawn prior to the appeal.
- Case owners should defend their own decisions at appeal. If Home Office Presenting Officers rather than case owners continue to represent at appeal, then an efficient feedback loop is needed so that case owners can properly learn from their mistakes.
- Section 8 should be repealed as it gives inappropriate weight to certain actions as damaging to an applicant's credibility. In the short term, current guidance should be amended to provide a wide variety of examples which would be regarded as providing a reasonable explanation for a delay in making an asylum application.
- Joint training programmes, which include UNHCR and other stakeholders, should be established for case owners to address the problems identified in this research and in particular to deliver:
 - Improved interviewing technique, including making better use of follow-up questions and how to probe material facts;
 - A better understanding of how cultural or personal issues will inhibit or shape an individual's actions in certain circumstances; why people may delay making an asylum application; and

how trauma affects memory and recall, (e.g. through interactive learning and role playing exercises);

- Specialist training for senior case workers, the Quality Audit Team and those providing training so that they are better placed to identify and support staff who are having difficulties with credibility assessments.
- Access to free expert legal advice and representation should be guaranteed to all asylum seekers prior to their initial interview and throughout the asylum process so that resources are focused on good quality, defensible decisions early in the decision making process.