



Rights of Women Response to the UKBA Consultation on Immigration Appeals: Fair decisions; Faster Justice.

About Rights of Women

Rights of Women aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers¹.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Overview of Rights of Women's Position on the UKBA Consultation on Immigration Appeals: Fair decisions; Faster Justice.

Rights of Women endorses the response submitted by the Immigration Law Practitioners' Association (ILPA). The points raised below are intended to compliment ILPA's response.

Impartiality

Rights of Women, like other organisations who provide advice on immigration and asylum law, is deeply concerned about the lack of:

- impartiality in the consultation; and,
- balance within the working group whose proposals contributed to it (ILPA response paragraphs 2-8).

An example of the lack of objectivity that we are concerned about can be found in paragraph 8 of the consultation which states

“The volume of immigration cases is a reflection of the fact that people do not accept the decision of the Asylum and Immigration Tribunal as the final resolution of their case. Consequently, they seek to prolong their appeal by applying for reconsideration in a number of cases where there is no argument error of law and may later seek to judicially review a decision in relation to their

¹ For advice on family law, domestic violence and relationship breakdown telephone 020 7251 6577 (lines open Tuesday to Thursday 2-4pm and 7-9pm, Friday 12-2pm). For advice about sexual violence, immigration or asylum law telephone 020 7251 8887 (lines open Monday 11am -1pm and Tuesday 10am -12noon).

removal, often raising issues which have already been dealt with on appeal.”

This paragraph exemplifies all that is wrong with the consultation’s approach: it is founded on the assumption that appellants are placing an unfair burden on the appeals system by exercising their constitutional right to challenge a decision they believe is incorrect. It is axiomatic that it is not possible to conclude whether or not a particular appeal or judicial review application is meritorious without hearing that particular appeal or judicial review. Yet the consultation comes from the position that any challenge to the decision of the UKBA or AIT is by its very nature un-meritorious and therefore burdensome. Rights of Women believes that the partiality of the consultation comes from:

- the fact that it is issued by the UKBA, the respondent to the appeals being discussed, rather than by the Ministry of Justice; and
- the working group who was given the opportunity to feed into the consultation was made up of the UKBA (the respondent to the appeals), the Treasury Solicitor (the respondent’s solicitor) and the judiciary without any representation from those who represent appellants (paragraph v of the Forward to the consultation).

Rights of Women can see the merit of incorporating the AIT into an independent Tribunal system which had an independent body responsible for drafting the relevant procedure rules and an independent process for deciding which cases should be reported. However, that does not seem to be what is being proposed here. Instead, it appears that the consultation is in fact a further attempt to oust the jurisdiction of the higher courts to control the legality decisions made by the AIT.

The Solihull Pilot

Rights of Women believes that the process for determining who requires protection in the UK can be strengthened and that the best way of doing this is to ensure that more decisions taken at first instance are correct. Rights of Women therefore believes that the UKBA should consider implementing the Solihull Pilot nationally. The Solihull Pilot improved initial decision making through early and interactive advice and representation which ensured that the entire case had been put forward before the initial decision was made. Creating an environment where all the relevant evidence is identified, gathered and presented before an initial decision is made, improves the quality of decision making at first instance and decreases the need for decisions to be challenged later on appeal or for fresh claims to be made.

Procedure rules and gender guidance

Rights of Women believes that for any reform of the current appeal system to be fair, the rules for governing the procedure of the Tribunal must be drafted by the Procedure Rules Committee and not the Home Office, for the reasons advanced in paragraphs 45-49 of ILPA’s response to this consultation. Rights of Women would add that the new procedure rules should include ‘gender guidance’; guidance on the forms of harm that women experience and the barriers that many women asylum-applicants face in articulating their need for

protection. Rights of Women points to the now withdrawn IAA Gender Guidance as an example of the type of guidance required.

Conclusion

Rights of Women believes that it is valuable to end our observations with a case that illustrates the importance of role of the higher courts in monitoring the decisions of the AIT and of the adoption of gender guidance for Immigration Judges.

In the case of **AA (Uganda) [2008]**² the Court of Appeal (Lord Justices Buxton, Carnwath and Lloyd), reconsidering the decision of the AIT, held it would be unduly harsh for AA, a woman who had experienced physical and sexual violence to relocate in Uganda when she had no family or other support and would have no option than to enter into prostitution to support herself. Rights of Women believes that a tribunal that finds that returning a woman who been abused and raped to a situation where she would have no choice but to enter into prostitution, which is itself a form of violence against women³, is a Tribunal whose decisions must be subject to review of the higher courts. Rights of Women also believes that cases like this illustrate the need for clear guidance to Immigration Judges on gender issues and gender-based violence.

Rights of Women urges the UKBA to seriously consider the issues outlined above.

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² *AA (Uganda) v Secretary of State for the Home Department* [2008] EWCA Civ 579

³ The United Nations Declaration on the Elimination of Violence against Women (the Declaration), states: “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’ (Article 1). Article 2 of the Declaration further states that violence against women encompasses, but is not limited to:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.