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# Research briefing: Rape narratives and credibility assessment (of female claimants) at the AIT

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Although exact figures are elusive, a significant proportion of women seeking asylum in the UK will have experienced, or will claim to have experienced, rape in their country of origin (Ceneda 2003). For many women, this will form a key part of the narrative as to why they fled.

In addition, although it will not be a determining factor in all asylum applications, a woman's claim of rape may be relevant to a range of crucial considerations, including the seriousness of past harm suffered and thus the future risk and prospects for safe return 'home'.

Despite this, to date, both the ways in which such alleged experiences of rape are disclosed by asylum-seekers, and the ways in which such disclosures are then responded to and evaluated by UK decision-makers have received little attention.

This Nuffield Foundation funded study (Access to Justice Programme, Reference AJU/36585) sought to address these gaps in our knowledge and understanding.

In so doing, our approach was framed by two key and relatively recent developments: first, the doctrinal recognition in the asylum context (for example, in the EU Qualifications Directive) that rape is a serious harm which, if linked to one or more of the reasons set out in the Geneva Convention Relating to the Status of Refugees (race, religion, political opinion, or membership of a particular social group), will amount to persecution; and second, the formal insistence (manifest for example in new initiatives in England and Wales to deploy 'myth-busting' judicial directions in criminal trials), that victims' reactions to rape will be many and varied, and that factors such as delayed disclosure, 'unusual' demeanour or narrative inconsistency do not, in themselves, justify a conclusion that the claim or claimant lacks credibility.

Among the key questions that framed and guided this research project were:

- Once in the UK, at what point in the asylum process, and in what ways, do female claimants disclose having been raped in the country of origin?
- To what extent, and in what ways, is the disclosure of rape engaged with in the asylum interview, and – if applicable – refusal letter and appeal tribunal?
- In what ways is the credibility of the rape claim, and the claimant, bolstered / challenged during the initial and appeal stages of asylum decision-making?
- What emotional impact, if any, does evaluating narratives of rape have on asylum decision-makers, and what strategies are used to cope with this?

## Key findings

Key findings emerging from this research relate to three main themes:

1. The disclosure of rape claims, including timing of and barriers to disclosure, and the handling of rape disclosure at the Tribunal;
2. Evaluations of credibility, including problems of proof, 'markers' of incredibility, and gender-based scepticism; and
3. The emotional impact of asylum work, including the marginalisation of emotion, and strategies of emotional denial and detachment.

## Method

Mixed methods of data collection were used in this research. A small number of initial UKBA substantive asylum interviews were observed by each member of the team and two short periods of random sampling of initial decisions on women's cases, taken by UKBA Case Owners across three different regions, were undertaken.

Though providing important background insights that helped to frame the development and direction of the research, the small sample size and low response rates involved in each of these datasets means that their value is limited and they are not relied upon in order to support the key themes and findings outlined below.

Instead, the primary sources of data to be drawn upon come from (1) a series of semi-structured interviews conducted with

key stakeholders in the UK asylum system and (2) a series of observations of a sample of appeal tribunal hearings in which a female applicant sought judicial reconsideration of an initial refusal decision.

### Stakeholder interviews

A small number of interviews were conducted in 2007 as part of a pilot study, but most were conducted, with the help of a Research Assistant, between August 2009 and December 2010. Interviewees were largely based across 4 UK regions. Interviews lasted approximately 90 minutes and were tape-recorded. In total, 20 interviews were conducted with Immigration Judges (the majority operating at the First Tier Tribunal), 24 were conducted with UKBA Case Owners (COs) / Presenting Officers (POs), 25 with private legal practitioners, 21 with representatives of asylum NGOs, and 14 with interpreters who were experienced in translating for asylum claimants at UKBA interviews, tribunal hearings or solicitor appointments.

Role	No of participants
Immigration Judge	20
Legal Rep	25
NGO practitioner	21
UKBA personnel	24
Interpreter	14

### Appeal Tribunals Observations

Through a combination of referrals (via dedicated protocols agreed with legal practitioners, NGO support-providers and the Tribunals Service) as well as random sampling, the team observed a total of 48 appeal hearings involving female appellants, held in the First Tier Tribunal of the Immigration and Asylum Chamber. All of the referred cases (31) included a previous disclosure of rape, and 9 of the randomly observed hearings included a disclosure of an allegation of rape or the threat of rape.

There were further indicators in other random cases observed of an experience of sexual violence, although this was not always specifically addressed at the hearing. In a quarter of all the observed cases (12), we secured the consent of the appellant and her legal representative to access the surrounding case files, including personal statements, the UKBA refusal letter and the tribunal determination. The majority of the observations was conducted between 2009 and 2010 in 4 large hearing centres, one of which specialises in cases within the Detained Fast Track Procedure.

Interview transcripts and notes from hearing observations and case files (where available) were coded by the researchers and analysed with the help of NVIVO, a computer-assisted qualitative data analysis programme.

## Key Finding 1: Disclosure of Rape Claims

### Perceived Incidence of Rape

Allowing for the possibility that women respondents may deal more frequently with cases involving rape than male colleagues, when asked to estimate the percentage of women's cases that would involve sexual violence, estimates varied widely between study respondents, even within the same region / hearing centre. For example, one judge put the rate of allegations within women's cases at 50% whilst another stated: "actual rape is not that common". These variations in themselves potentially raise issues about individual actors' awareness of, and engagement with, sexual violence and its pertinence to women's asylum claims.

### Timing of Disclosure

Despite literature documenting the reasons why victims of sexual violence may not immediately report it (Bogner, 2007; Good, 2007; Munro & Ellison, 2009), some judges and most UKBA personnel continued to expect female asylum claimants to disclose sexual violence at an early stage, and considered that the credibility of the claim, and of the claimant, could otherwise be brought into question.

This was the case despite many respondents drawing attention to shortcomings inherent within asylum determination processes. For example, the shortened timescales within the New Asylum Model led some legal representatives to speak of "dragging" disclosures out of women or of "pushing" them to discuss past histories of abuse, sometimes to the detriment of women's mental well-being.

Timescales aside, other respondents observed that the discursive spaces offered to women by asylum procedures potentially limit rather than facilitate early disclosure. The first official opportunity for disclosure, the screening interview, was deemed even by UKBA's own staff as a site where narratives of rape might be silenced by the "harsh" nature of often cursory questioning and the unsuitable physical environment of interview booths located in a busy waiting room. Despite this, in several of the hearings observed in this study, non-disclosure of rape during screening was raised by UKBA Presenting Officers to support assertions that subsequent disclosures of sexual violence were little more than "devices" introduced to "bolster the claim."

The second official discursive space offered to women seeking asylum is the longer, substantive interview, carried out in regional immigration offices by UKBA case owners. Although many UKBA case owners spoke of their efforts to 'gender-match' when arranging these interviews, and listed numerous practical tactics aimed at creating a 'comfortable' environment in which to interview women, there was little evidence of the conscious implementation of questioning techniques recognised in other contexts as conducive to safely obtaining disclosure from survivors of abuse (Bull, 2010; Powell & Bartolomew, 2003).

Many legal representatives and NGO workers discussed techniques of good practice, including allowing space and time for free narrative, building trust with an applicant over several

meetings, and containing disclosure within contextual questions around a person's biographical or health details whilst ensuring that the right questions are asked and not avoided. However these practices were rarely reflected upon in detail by the UKBA staff that we interviewed.

This contrast in approach was exemplified by different perceptions of the time required to effectively build trust with a woman in order to elicit details of past sexual violence. While NGOs and some legal representatives typically spoke in terms of weeks, months and years, many UKBA case owners felt that two to three hours should be sufficient for a full and detailed disclosure to be forthcoming.

The perceived dangers of failing to disclose during the substantive interview were expressed by one legal representative who stated "I always say to my clients if you don't mention at your asylum interview, then you can never mention it, and I don't want to know about it because anything added later is embellishment, always." Yet, although some Immigration Judges did refer to "embellishment" of claims or "11th hour disclosures", several stated that, in contrast to the approach that some respondents (including some judges) attributed to the UKBA, they did not automatically consider late disclosure to be incredible. Despite this, judges and other respondents confirmed that they would require an appellant or her representative to explicitly articulate 'good reasons' for a delay in order for it not to undermine credibility. The 'good reasons' in question are examined in more detail below.

### 'Good Reasons?' Potential Barriers to Disclosure

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Four principal 'good reasons' were identified as possibly justifying late disclosure:

- 'Culture' and the associated shame felt by women from certain backgrounds (particularly Muslim cultures, such as Iran and Pakistan) were factors frequently used by all respondents to explain why asylum-seeking women might feel uncomfortable disclosing rape. In doing so, however, respondents from all sectors frequently failed to engage with the fact that women born in the UK may also delay disclosure. They also often failed to recognise that they too had a culture, which might influence the way in which they deal with rape claims, or have a silencing effect on applicants. In this way, culture sometimes served to distance decision-makers from asylum-seeking women, positioning the women as 'others' whose cultures - often stereotyped as 'less-enlightened' - prevented them from speaking out about rape.
- Trauma was frequently cited to explain delay, both in the context of the timing of an applicant's disclosure and her 'psychological ability to articulate her case'. Yet there remained a strong sense - particularly from UKBA personnel - that the barriers associated with trauma would be taken seriously only where expert reports confirmed the existence and effects of this on the mental health of the applicant. This is of potential concern in a context in which access to specialist services requires time, resources and the benefit of good quality legal support, which may not always be available to applicants.

- Differences in vocabulary and narration were perceived, by

some, as potentially limiting the ability to 'hear' disclosures. Whilst UKBA personnel were largely confident that disclosures of rape were made to them in relevant cases, and typically in a fairly direct manner that required little, if any, soliciting, other actors displayed a more nuanced appreciation of the potential for "cultural non-communication", even where interpreters were providing literal translation. Similarly, there was support for the view that the listener must examine not only unfamiliar modes of expression for opaque references to sexual violence, but be aware of the possibility that silences or gaps in narratives may hint at past experiences of sexual abuse and so require further, appropriate investigation, in order that a full account can emerge.

- Women's lack of understanding of the asylum application process and of the potential relevance to their claim of an experience of sexual violence was also identified. While UKBA personnel were more confident that applicants, particularly those who had legal representation, knew the importance of disclosing fully during their substantive interview, other respondents were concerned that the brief explanation of this provided by the UKBA might not suffice to put women at ease when being interviewed by an authority figure in what some respondents described as a 'hostile' environment.

### Handling of Rape Narratives in the Tribunal

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In cases where no rape disclosure had previously been made, but judges had an 'inkling' that it may have occurred, a diversity of views were expressed regarding the appropriate judicial response. Whilst some judges indicated that they would question the appellant directly on this matter, the majority considered this sort of 'probing' to be beyond the bounds of their role, notwithstanding what was recognised by many to be the fluid position of the tribunal on the axes of inquisitorialism and adversarialism. Most judges indicated that they would rely on either legal representatives or UKBA personnel to draw out possible allegations of sexual violence, albeit acknowledging that, if this was not done effectively, then the rape allegation "may never be heard".

In cases where a disclosure of rape had been made by the appellant in advance of the tribunal hearing, two concurrent but contrasting approaches to the handling of rape narratives were identified within the present study. On the one hand, a number of interview respondents recounted situations in which appellants were subjected to rigorous cross-examination on this specific incident or incidents by the UKBA. During observations, the research team saw evidence of this, for example in some cases where questioning was pursued without interruption or challenge by the judge, irrespective of the visible distress of the appellant.

At the same time, however, a counter-tendency was also clearly identified whereby the claim of rape would be marginalised or ignored, often notwithstanding its apparent centrality to the narrative of flight provided by the applicant. One judge commented, "there's a general tendency all round to draw back from mentioning the rape, really."

The reasons given for this reluctance by various respondents varied from an appropriate and genuine concern for appellants' levels of distress, to a deliberate and cynical attempt to remove the emotion

from the appellant's account in order to focus judicial attention on peripheral factual details upon which a more effective challenge to credibility could be lodged. In addition, as will be discussed below, a number of respondents intimated that professional actors may either be too embarrassed or uncomfortable questioning on the detail of the rape, or avoid dwelling upon it as a strategy for coping with the emotional challenges of hearing such accounts.

While the researchers would never suggest that asylum claimants be repeatedly and gratuitously questioned on their alleged experiences of rape, there is a risk that this avoidance of questioning could deny applicants the chance to express the impact of their past experiences and thus prevent them having their claim heard at its fullest, as justice demands.

Professionals' unwillingness to engage with narratives of rape may confirm women's own concerns, cited by NGO respondents in the present study, that interlocutors will be disgusted by their disclosures and judge them negatively for "having told such horrible things." Moreover, as explained below, this lack of engagement can adversely impact upon assessments of applicants' claims in a context in which high levels of detail were repeatedly emphasised by respondents as being a key marker of credibility (Rousseau et al, 2002).

## Key Finding 2: Evaluations Of Credibility

Whilst a lack of credibility is by no means the only basis upon which a claim for asylum may be unsuccessful, it is widely acknowledged as posing an initial hurdle in all applications (Thomas, 2011; Good 2007). In other contexts, notably criminal justice, credibility has also been noted to be the crux of every rape claim. In asylum claims that involve rape, therefore, credibility may well be doubly important – and potentially also doubly problematic.

This strand of our project focused on the strategies and practices used to establish or undermine credibility rather than on the veracity of claims per se.

Whilst recognising the difficulties for asylum decision-makers of judging the veracity of accounts of historical abuse, for which there is typically little if any documentary evidence (Kagan, 2003), the question of how, if at all, an effective formula for distinguishing true claims from false could be developed was beyond the scope of this study. Thus, without assuming that all disclosures of rape are 'true', the research aimed to explore the ways in which the credibility of an allegation of rape is assessed in the asylum process, and what impact, if any, the process of assessment, and the conclusion as to credibility, has on the asylum claim as a whole.

## Problems of Proof and Process

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Despite the existence of a low proof threshold for establishing a successful claim to refugeehood, asylum applicants must still convince decision-makers that their claim is credible. Though UNHCR and domestic UK guidance exists on how to assess credibility, this is often (inevitably) crafted at a level of generality which leaves considerable discretion regarding what counts as either coherent or plausible in individual cases.

While some respondents, particularly judges, expressed confidence in their ability to accurately evaluate the credibility of claims – with one maintaining that "the truth shines through" – many other respondents in the present study pointed to what they saw as individualised, arbitrary findings on credibility, describing the application and appeal process as a "lottery", dependent upon the personal characteristics and dispositions of those involved (see also Ramji-Nogales et al, 2009). For example, some participants acknowledged that applicants who were educated and articulate may be better placed to disclose sexual violence, and thereby give a coherent statement that would form the basis of a credible account; at the same time, however, education was also seen to be a factor that pointed to lack of risk on return, particularly with respect to an applicant's prospect of relocating and recreating a life for herself in her country of origin.

As noted above, the general environment of the asylum interview was described by many respondents as "hostile". Legal representatives and NGO interviewees in particular often tied this to the perceived existence of a 'culture of disbelief' in relation to asylum claims. In support of this, UKBA Presenting Officers interviewed in this study often asserted that most claims are "fabricated".

However, it should be noted that we also found some evidence of possible differences in occupational culture within the UKBA, depending on job role. Thus, as one CO put it, POs "don't generally like it when we accept things, if we accept that something, you know, part of the account, is true. They generally like you to just damage the whole of the account, which is not what we do really."

Supporting the concerns of previous research (Ceneda and Palmer, 2006), there was limited awareness evidenced in the present study, even amongst UKBA Case Owners, of the existence and content of UKBA guidelines designed to facilitate improved decision-making in women's cases. This finding chimes with the acknowledgement in a recent UKBA Gender Audit Report (2011) that the development of official guidelines does not in itself ensure decision-makers' understanding of the relevance and impact of gender on asylum claims.

The Audit emphasises the need for greater awareness of and sensitivity to gender issues, and is in line with the findings of the present study in suggesting that asylum interviewers do not always conduct sufficiently detailed investigations in order to fully test the credibility of each material aspect of the claim (including those related to allegations of rape).

## Markers of (In)Credibility

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In line with previous research, much of which arises in the criminal justice context (Ellison and Munro, 2009), this study confirms that amongst the factors that can negatively affect assessments of credibility – whether in relation to a rape claim or generally – are delay, inconsistencies, demeanour and a lack of objective evidence.

Delay: Despite research detailing reasons for late disclosure of rape, as noted above, our research indicates that some asylum

decision-makers continue to see this as suspicious and as most likely having been deployed by claimants merely as embellishment, or as a “device” to boost credibility. As one legal rep put it: “if it comes out later ‘you have materially tried to enhance your claim’ is a standard stock paragraph from the Home Office.”

**Inconsistencies:** These can arise in an asylum claim for a variety of reasons, including the applicant's lack of engagement with or understanding of the questions or process, cross-cultural misunderstandings, translation problems, or the well-documented adverse effects of trauma on recollection and coherent narration (Freedom From Torture, 2011). Nonetheless, the notion that only consistent accounts are credible was routinely supported in this study.

Many UKBA personnel and judges (and some legal representatives) indicated their distrust of stories that contained inconsistencies. Several respondents, including some UKBA personnel, went so far as to suggest that it was the role of the UKBA to seek out inconsistencies within an asylum narrative, which could then be used as a basis to refuse claimants, or “catch them out”, while remaining “blinkered” to the plausible.

**Demeanour:** It was apparent in the present research that a tearful or emotional demeanour could be a factor that undermined some accounts while bolstering others - as one legal representative put it, “you don't know how an officer or a judge is going to read it.” Though often formally acknowledging what they had been told in training and guidance, that demeanour does not correlate in any reliable way with (in)credibility, and particularly so in the context of cross-cultural communication and experiences of trauma and dissociation (Rousseau et al, 2002), many legal representatives, UKBA personnel, NGO workers and judges nonetheless made comments indicating that they were more likely to believe applicants who were visibly upset when narrating their experiences, especially where their narrative involved a disclosure of rape.

Meanwhile, other respondents indicated that decision-makers can become hardened to displays of emotion. The precarious nature of distress as a credibility marker was such that, where the emotional display coincided with an inability to answer specific questions, or a case was considered to be generally ‘weak’, a suspicion that tears had been invoked for strategic gain would impinge upon the perception of credibility.

**Objective Evidence:** In most asylum claims, there are difficulties with providing objective evidence to support an applicant's account (Thomas, 2011; Good, 2007; Kagan, 2003; Coffey, 2003). This may be particularly problematic in relation to rape claims that relate to historical incidents where, for example, there is no medical evidence or witness testimony. Nonetheless, many participants in this study indicated that an absence of objective supporting evidence would be “disadvantageous”.

Some decision-makers expected allegations of a recent rape to be evidenced by the claimant having undergone medical tests for pregnancy or STIs, and a failure to do so was seen to indicate a lack of credibility. It was suggested that claims could, and should, be supported by Country of Origin Information experts and / or medical / psychological reports.

However, COI reports are ‘broad brush’ (Thomas, 2011: 147) and have been critiqued as insufficiently sensitive to gender issues (Collier, 2007). In addition, not all applicants want to engage in medical or psychological treatment since, as one legal representative observed, “talking cures are a very western thing”. Where applicants do consent to medical assessment and / or treatment, funding and time pressures may make it (increasingly) difficult for legal representatives (assuming the applicant is represented) to get expert reports — a reality described by one judicial respondents as “totally inappropriate” given the importance of such reports to a proper consideration of the claim.

Recent research by The Medical Foundation (2011) found that good practice standards in relation to the treatment of medico-legal reports are not consistently followed by UKBA or at the Tribunal. What is more, many of our respondents suggested that, in cases where reports are made available, the UKBA can be reluctant to attach appropriate weight to external (non-UKBA) experts, particularly where they are counsellors or support workers who are not medically trained, or can be portrayed as ‘partisan’.

### Gender-Based Scepticism

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Research in the criminal justice context highlights scepticism in relation to women's sexual violence claims, and the existence of dubious expectations regarding the appropriate behaviour of a ‘genuine’ victim (Ellison and Munro 2009). Similar attitudes were displayed by some of our respondents in the asylum context, with one legal representative suggesting that the general culture of disbelief was “stronger” with respect to rape claims. One judge asserted that rape claims were “easy to make”.

This contrasted with some participants' responses to men's claims of sexual violence: male rape was often seen to be so horrific, shameful and difficult to disclose that it was less likely to be fabricated. More weight was placed on men's accounts also because they were less frequent: “with women, you hear it a lot, you know, and the chances are it might have happened to them, but with men it takes a lot more, you know” (UKBA Case Owner).

This suggests a conflation of the fact that men are comparatively less likely to report rape with beliefs about the likelihood of veracity. It also appears to support findings discussed below, which indicate that, when presented with repeated stories of the trauma and sexual violence suffered by women, some decision-makers become case-hardened in ways that limit their capacity for belief as well as empathy.

### Key Finding 3: The Emotional Impact of Asylum Work

Legal doctrine typically marginalises the significance of emotion in decision-making (Nussbaum, 1996; Bandes, 1999 & 2006; Maroney, 2006). Previous research has explored the implications of this in the criminal justice context, exposing the extent to which, in reality, emotion influences decision-making and impacts upon the well-being of key actors (Jaffe et al, 2003; Levin & Greisberg, 2003).

In recent years, there has been interest in the extent to which emotion might play a similar role in asylum, causing – amongst other things – ‘vicarious trauma’ or ‘burn-out’ that can adversely affect the quality of decision-making (Gosden, 2006; Surawski et al, 2008; Westaby, 2010).

Our research engages these concerns by exploring the ways in which actors in the asylum system manage the emotional demands of their work. It highlights the extent to which certain strategies relied upon – though arguably performing an important function in preserving the psychological well-being of the actor – risk reducing the prospects for justice.

### The Emotional Work of Asylum Decision-Making

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Irrespective of whether the listener ultimately believes an applicant's narrative, routinely hearing tales of violence and inhumanity can take its emotional toll. Whilst acknowledging its more positive aspects, legal representatives, UKBA employees, interpreters and NGO workers in the present study frequently described their work as “really very distressing”, “upsetting”, “exhausting”, “soul destroying” and “incredibly difficult emotionally”. Though Immigration Judges were less likely to go into detail, many acknowledged that the job can be emotionally difficult, draining and challenging, particularly for the less experienced. In response, a number of strategies were evidenced, the most prominent being detachment and denial.

### Strategies of Detachment

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Many participants, particularly those with a legal background, felt that an ‘objective’, ‘matter of fact’ approach had to be taken, which precluded emotionality. It was emphasised that “the only way to be a good lawyer is to cut yourself off from the emotion”. But our research suggests that this often translated, not into a controlled balance between detachment and sympathy, but into a marked reluctance to engage with the asylum-seeker's narrative (of rape) altogether.

Out of a concern to be ‘sensitive’ and ‘factual’, questioning around the alleged incident was often avoided in the UKBA interview or tribunal appeal, even where it appeared to be important to the applicant's narrative or persecution claim, or where there seemed to be further information, potentially of relevance, that was yet to be uncovered. This frustrated many legal representatives who felt it prevented engagement with the human dimensions of the claim and made it easier to focus on the consistency of surrounding facts to undermine credibility (Rousseau et al, 2002). Respondents reported that this approach left many female asylum-seekers feeling as if they had never had the opportunity to properly narrate what had happened to them, and ignored the reality that a more ‘sensitive’, not to mention just, approach would have been to engage in careful questioning to elicit information without re-traumatising.

In addition, the way in which this ‘detached’ approach was described by participants often betrayed a problematic tendency towards disengagement and disbelief. One legal representative explained that, “when you start in this, you hear all these stories

and you get quite sort of caught up in it all and everything, but I've been doing it too long to get emotional about them any more...I just treat it all as just a story; I don't think about the reality of it.” Similarly, a UKBA Case Owner noted that “it is literally standing back, reading it as you would read a book...in your head, you have to go in thinking ‘I don't believe this story’ because if you went in there believing that story, you couldn't really do your job.” Such professionals do not only become more detached from the stories they hear, the stories themselves become routine and mundane, and the applicants involved become interchangeable.

There is also a risk of ‘case hardening’ whereby it becomes increasingly difficult to approach each case afresh and to avoid creating hierarchies of suffering which demand ever higher levels of abuse to incite sympathy. While many respondents were alert to this risk, several nonetheless fell into this tendency. As one UKBA Presenting Officer explained, “to start with, it was quite traumatic... and then, after a while, I suppose once you've read a lot of these cases and you tend to sort of get past the stage where they might, they're probably not telling the truth anyway...I don't know if you become hardened to it, well perhaps you do a little bit; you learn ways of dealing with it.”

### Strategies of Denial

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For many participants, the responsibility that came with their work increased its emotional toll. Some dealt with this by embracing as fully as they could the importance of their task and becoming ever more conscientious. As one judge put it, “I can't say that I lose any sleep about it now, but I am too thorough... That's the only way I can live with myself.” Many others, however, managed this by shifting the responsibility to other actors or institutional factors. UKBA personnel frequently sought consolation in the fact they were not the final decision-makers. As one Case Owner put it, “you just have to think about the wider aims of the organisation and also know that we're making the first decision...and that the applicant has other rights of appeal, so you've got to shift the responsibility on to someone else otherwise you would just get very depressed.”

At the same time, though, a number of First Tier Tribunal judges were similarly anxious to emphasise that their decisions were not beyond review. As one put it, “you sign it off [the decision] and that is that. If you've got it wrong, the Court of Appeal or somebody will tell you”. What is more, the emotional role which this ‘buck-passing’ played was often acknowledged – one judge, for example, described the existence of further appeal as offering a “nice comfort blanket” that cushioned against his feeling full responsibility for the decision.

For others, a similarly reassuring way of managing the responsibility associated with decision-making was to personify the law in order to designate it as having its own intention, irrespective of the respondent's own necessary function in its operation. In one hearing observed by the research team, for example, an unrepresented appellant, who claimed to have experienced rape and domestic abuse, agitated the presiding judge by saying, in response to the invitation to provide a statement that “if the decision is that I be deported to Pakistan, it is your right to kill me here.”

Although the appellant broke down in tears after this comment, she was offered no opportunity to compose herself, nor to provide a further statement. Instead, the judge responded sharply – “It is not my duty to send you here or there. That is for the Home Office. My duty is to decide if you qualify to stay here in light of the law of this country. I have to work in the law. That is my job and all I can do.” Not only does this provide an example of the judiciary re-locating responsibility back with the UKBA as the key administrative body, it also illustrates a distancing from the consequences of one’s decision by seeking refuge in the formality of legal principle.

While these strategies may assist decision-makers in coping with the emotional consequences of their actions, they provide an artificial barrier that can too easily slip into a lack of engagement with, and ownership over, the decisions they take.

### Ways Forward For Better Coping?

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In order to reduce the risks associated with these strategies of detachment and denial, actors within the asylum system need to be furnished with more opportunities to openly acknowledge the emotional impact of their work, and be provided with more strategies for managing this in less maladaptive ways.

Our study indicates that, at the moment, actors are generally left to negotiate these demands on their own, often exclusively through internal and informal strategies. UKBA employees, unlike many of the other participants in this study (who tend to work in relative isolation) did also indicate that they would ‘off-load’ to peers from time to time. But this brings its own difficulties, not least in terms of over-burdening colleagues.

Though this study suggests the need for more structured systems to assist actors in dealing with the emotional demands of asylum work, it indicates that the implementation of these systems will not be straightforward. Participants often suggested that they would be unlikely to avail themselves of such support, even if it were offered, implying that to do so would – and should – be seen as a failure to do one’s job effectively. As such, it seems that alongside the creation of these systems, efforts need to be targeted at changing the ‘emotional culture’ of organisations and challenging the formalist notion, harboured by lawyers and judges in particular, that deploying rationality and objectivity always insulates them from emotional impact.

### Methodological Note And Concluding Remarks

The study focuses on women asylum applicant’s claims of sexual violence; men’s asylum claims involving sexual violence raise distinct concerns worthy of independent study. The women themselves were not interviewed due to ethical concerns about the risk of re-traumatisation.

Since the project focuses on those cases refused at first instance and appealed to the Tribunal, our findings relate to the processes, structures and practices of negative decision-making; as such our ability to shed light on the pathways to UKBA positive decision-

making and acceptance of applications at first instance is limited. Participants in the study self-selected and we do not claim that their views are necessarily representative of those of all asylum stakeholders. Nonetheless, our findings are in line with those of other criminal justice and asylum researchers, in raising concerns about the prospect of a just process and outcome for women asylum seekers whose applications include a claim of rape.

The study has produced rich data that highlights the need for decision-makers to pay more attention to issues of sexual violence that may be explicit or implicit in women’s asylum applications, as well as a need for institutional cultural shifts that would allow decision-makers to more fully engage with the emotional responsibility to the applicant, and to themselves, that asylum work entails.

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### References

- Bandes, S. (2006) 'Repression and Denial in Criminal Lawyering' 9 Buffalo Criminal Law Review 339
- Bandes, S. (1999) 'Introduction' in Bandes, S. (ed) *The Passions of Law*, New York: New York University Press
- Bögner, D., Herlihy, J. & Brewin, C. (2007) 'The Impact of Sexual Violence on Disclosure during Home Office Interviews' 191 (7) British Journal of Psychiatry 175
- Bull, R. (2010) 'The Investigative Interviewing of Children and Other Vulnerable Witnesses: Psychological Research and Working/Professional Practice' 15 (1) *Legal and Criminological Psychology* 5-23
- Ceneda, S. and Palmer, C. (2006) *Lip Service or Implementation? Home Office Gender Guidance and Women Asylum Seekers*, London: Asylum Aid.
- Ceneda, S. *Women Asylum Seekers in the UK: A Gender Perspective*, London: Asylum Aid
- Coffey, G. (2003) 'The Credibility of Credibility Evidence at the Refugee Review Tribunal' 15 *International Journal of Refugee Law* 377
- Collier, B. (2007) *Country of Origin Information and Women: Researching Gender and Persecution in the Context of Asylum and Human Rights Claims*, London: Asylum Aid.
- Ellison, L. & Munro, V. (2009) 'Reacting to Rape: Exploring Mock Jurors' Assessments of Complainant Credibility' 49 (2) *British Journal of Criminology* 202
- Freedom From Torture (Medical Foundation for the Care of Victims of Torture) (2011) *Body of Evidence: Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal*, London: Freedom from Torture
- Good, A (2007) *Anthropology and Expertise in the Asylum Courts*, Abingdon / New York: Routledge-Cavendish
- Gosden, D. (2006) 'What if no one had spoken out against this policy? The rise of asylum seeker and refugee advocacy in Australia' 3(1) *Journal of Multidisciplinary International Studies* 1- 21, at: <http://epress.lib.uts.edu.au/ojs/index.php/portal/article/view/121/87>
- UKBA Quality Audit and Development Team (2011) *Quality And Efficiency Report: Thematic Review Of Gender Issues In Asylum Claims*, London: Home Office
- Jaffe, P., Crooks, C., Dunford-Jackson, B.L. & Town, M. (2003) 'Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice' 54 *Juvenile and Family Court Journal* 1
- Kagan, M. (2003) 'Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination', 17 *Georgetown Immigration Law Journal* 367
- Levin, A. & Greisberg, S. (2003) 'Vicarious Trauma in Attorneys' 24 *Pace Law Review* 245
- Maroney, T. (2006) 'Law and Emotion: A Proposed Taxonomy of an Emerging Field' 30 *Law and Human Behaviour* 119
- Nussbaum, M. (1996) 'Emotion in the Language of Judging' 70(1) *St John's Law Review* 25
- Powell, M. & Bartolomew, T. (2003) 'Interviewing and Assessing Clients from Different Cultural Backgrounds: Guidelines for all Forensic Professionals' in D. Carson & R. Bull (eds) *Handbook of Psychology in Legal Contexts* (3rd ed.), Chichester: Wiley
- Ramji-Nogales, J., Schoenholtz, A. & Schrag, P. (2009) *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*, New York: NYU Press
- Rousseau, C., Crepeau, F., Foxen, P. & Houle, F. (2002) 'The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board' 15 *Journal of Refugee Studies* 43
- Surawski, N., Pederson, A. & Briskman, L. (2008) 'Resisting Refugee Policy: Stress and Coping of Refugee Advocates' 20(2) *Australian Community Psychologist* 16
- Thomas, R. (2011) *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication*, Oxford: Hart
- Westaby, C. (2010) 'Feeling like a Sponge: The Emotional Labour Produced by Solicitors in their Interactions with Clients Seeking Asylum' 17(2) *International Journal of the Legal Profession* 153

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