

POINT OF NO RETURN

The Asylum-seeker's Guide to
**INTERNAL FLIGHT
ALTERNATIVE**



A **Publication**

for asylum-seekers and human rights
defenders in the international protection
process

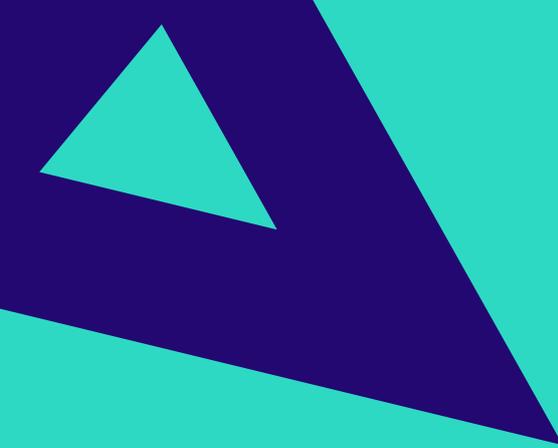
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Issue 1

Edited By:

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CORK, IRELAND



POINT OF **NO RETURN**

The Asylum-seeker's Guide to
INTERNAL FLIGHT
ALTERNATIVE

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Quianna Canada is an anti-racism human rights activist, law student, and self-proclaimed direct provision representative.

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Table of Contents

1

Acknowledgements

2

Summary

3

**Internal Flight
Alternative**

4

**Personal Circumstances
& Undue Hardship**

5

**State & Non-state
Agents of
Persecution**

6

**Analyzing the Internal Flight
Alternative**

7

Conclusion

8

References

1 Acknowledgements

2 Summary

3 Internal Flight Alternative

- NOTIFICATION OF THE INTERNAL FLIGHT ALTERNATIVE

1. What is the International Flight Alternative?

2. History of the Internal Flight Alternative

4 Personal Circumstances & Undue Hardship

- UNDUE HARDSHIP

Personal Circumstances, Past Persecution, Safety & Security, and Respect for Human Rights 4.1

Economic Survival 4.2

Can Immigration Official Force You to Pass Through the Original Area of Persecution? 4.3

5 State & Non-State Agents of Persecution

- WHAT IS AN AGENT OF PERSECUTION?

1. When the agent of persecution are the officials in your country

2. When the agent of persecution are non-governmental persons

6 Analyzing the Internal Flight Alternative

1. Who is exempt from IFA?

2. Must you seek protection from everyone?

3. Start of the legal analysis	6.1
4. The burden-shifting framework	6.2
<hr/>	
1. Notice of IFA	6.3
<hr/>	
2. A Prospective Assessment	6.3
3. The Relevance Analysis	6.4
4. The Reasonableness Analysis	6.5
<hr/>	
5. Effective Protection & No New Risk of Persecution	6.5
6. Specific Considerations	6.6
I. Sexual Orientation & Gender Identity	6.6
<hr/>	
II. Conscientious Objectors	6.7
III. Armed Conflict	6.7
7. Timing, Accessibility, & Failure to Protect	6.8
<hr/>	
I. Timing	
III. Failure to Protect	
<hr/>	
<i>Selected Judgments:</i> Cases from the European Court of Human Rights	
<hr/>	
1. Sufi & Elm v. The United Kingdom	7.1
2. Salah Sheekh v. The Netherlands	7.2
3. A.A.M. v. Sweeden	7.3

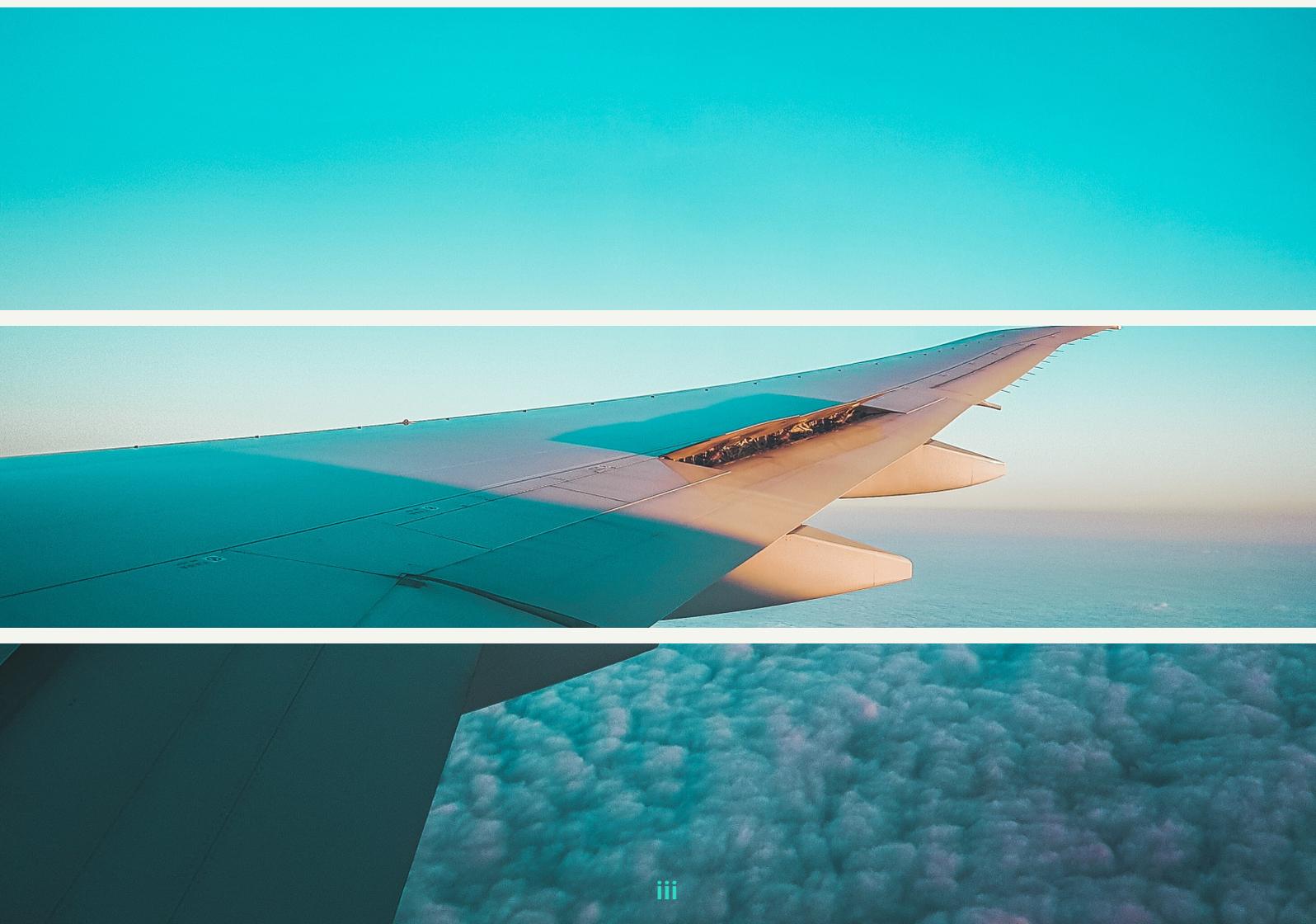
Treaties & Guidelines: Other Resources for Asylum-seekers in the International Protection Process

1. The Vienna Convention on the Laws of Treaties 8.1

2. The Michigan Guidelines 8.1

7 Conclusion

8 References



ACKNOWLEDGEMENTS

THE PURPOSE

My mission is to help asylum applicants (herein "you") understand the presumption of an Internal Flight Alternative, which is commonly raised in the International Protection process.

My goal is to proactively provide access to fully researched materials so that you can approach the International Protection process with knowledge and confidence.

Point of No Return also helps you articulate:

- **The desire for safety.** Your goal is to articulate a world free from persecution.
- **Madness.** Your goal is to regain your honour and break free from the madness in your home country.
- **Curiosity.** Your goal is to understand the International Protection process.
- **Activism.** Your goal is to change your life or the lives others for the better.
- **Protection.** Your goal is to enjoy freedom from harm.

THANKS

I would like to thank the United Nations High Commissioner for Refugees; Cathryn Costello, Michelle Foster, Jane McAdam's for *The Oxford Handbook of International Refugee Law*; Ninette Kelley, for her analysis in the paper that has been cited throughout this publication, and Canva for providing me with the graphic design platform—all of which has made **Point of No Return** possible.

-Quianna Canada



The possibility of relocating internally may be relevant only if there is clear evidence that the persecuting authority has no reach outside its own region and that there are particular circumstances to explain the national government's failure to counteract the localised harm.



UNHCR

Guidelines on International Protection No 4.

Summary

2

Section 3 of **Point of No Return: An Asylum-seeker's Guide to Internal Flight Alternative** begins with the moment you first receive notice from the decision-maker or case officer that an Internal Flight Alternative (IFA) has been identified. It describes IFA in detail and delves into the history of the presumption, which is commonly used to deny asylum-seekers International Protection.

Section 4 examines your personal circumstances and any undue hardship you may face in the IFA. It includes but not limited to past persecution, safety and security, respect for human rights, and economic survival. A big question that asylum-seekers ask is, "Can immigration officials force me to pass through the original area of persecution?" Section 4 answers this question.

Section 5 covers state and non-state agents of persecution. It begins with identifying the agent of persecution; how the IFA is applied when the agent of persecution is the officials in your country, and how it is applied when the agent of persecution is non-governmental persons (e.g., gang members).

Section 6 is the 'meat and potatoes' of this publication. It provides a deep analysis of the IFA along with examples of who is exempt from an IFA. A question often raised in the International Protection process is whether an asylum-seeker must seek protection from everyone in their country—this section answers that question. It also journeys through the legal analysis of the IFA. Here, you will find a clear definition of the burden-shifting framework. While this section revisits the IFA Notice, you'll discover that it was important for me to do so. You will further learn about the different types of assessments and analyses used to evaluate your claim, such as the prospective assessment, the relevance analysis and the reasonableness analysis. The content contained in section 6 also provides additional rebuttals you may raise (e.g., effective protection (or failure to protect), timing of an IFA, new risks of persecution; sexual orientation and gender identity, conscientious objectors, and areas of armed conflict) if you encounter an identifiable IFA.

Excerpts from **Thirunavukkarasu v. Canada** (Minister of Employment and Immigration), **Sufi & Elm v. the United Kingdom**, **Salah Sheekh v. The Netherlands**, **A.A.M. v. Sweden** and others are incorporated in the publication to get you familiar with how courts decide IFA cases. Treaties and guidelines, such as the **Vienna Convention on the Laws of Treaties** and the **Michigan Guidelines**, have been included for you to review at your leisure. The conclusion summarizes the content of the publication.

DISCLAIMER

Although I have made every effort to ensure that the information in this publication is correct at the time of publication, and while this publication is designed to provide accurate information in regard to the Internal Flight Alternative, I assume no responsibility for errors, inaccuracies, omissions, or any other inconsistencies herein and hereby disclaim any liability to any party for any loss, damage, or disruption caused by errors or omissions, whether such errors or omissions result from negligence, accident, or any other cause. This publication is meant as a source of valuable information for the reader, however it is not meant as a substitute for direct expert assistance or legal advice. If such level of assistance or advice is required, the services of a competent professional should be sought in your jurisdiction.

Internal Flight Alternative

3

Notification of the Internal Flight Alternative



So, you've been to your **International Protection Interview** and you just received a letter in the post from the **International Protection Office**. Your hands are shaking as you tear open the letter.

You skim it only to find you have been rejected because the International Protection Office identified an **Internal Flight or Relocation Alternative (IFA)** in your country of origin. A what? What in the world is an IFA?

1

What is the Internal Flight Alternative?

The concept of an IFA refers to whether it is possible for you to relocate to a specific area in your country that you do not fear.¹ Your case officer evaluates what you told them. If they suggested an IFA, they likely believe you could reasonably move to another part of the country and live a normal life.²

The IFA is shorthand way of describing factual situations³ and stems from the premise that if there is a safe place within your country of origin or the country where you were living in prior to seeking asylum, you can move back there. In other words, you are not a refugee.⁴

2

History of the Internal Flight Alternative

The concept of IFA began in Germany in the 1970s.⁵ The practice of applying the IFA bloomed in the mid-1980s, owing to the arrival of increased number of refugees from countries that were different from the West,

where growing number of individuals fled largely regionalized threats rather than aggressor countries.⁶

Footnotes

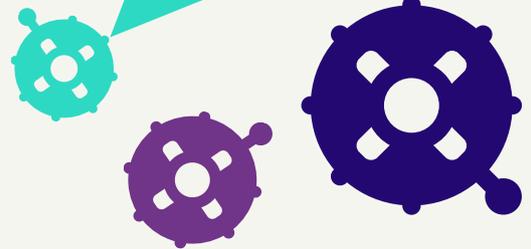
1. UNHCR (2019). Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection. Under the 1951 Convention and The 1967 Protocol Relating to the Status of Refugees. Geneva. HCR/1P/4/ENG/REV. 4. See p. 178, para.51.
2. Id.
3. Thirunavukkarasu v. Canada (Minister of Employment and Immigration) 1993 CarswellNat 160, [1993] ACF 1172 para 2 (Thirunavukkarasu).
4. Costello, C.; Foster, M.; & McAdam, J. (2021). The Internal Protection Alternative. In The Oxford Handbook of International Refugee Law. See p. 695.
5. Id., History and Development of the Internal Protection Alternative. See p. 698.
6. Id.

Personal Circumstances & Undue Hardship

4

UNDUE HARDSHIP

In order for the case officer to recommend an IFA, it must be accessible to you.⁷



THIRUNAVUKKARASU

The Canadian Federal Court of Appeal, which most countries rely on, said you cannot be required to encounter great physical danger or to undergo suffering while you travel or stay in the suggested IFA. For example, you should not be required to cross battle lines where fighting is going on at great risk to your life in order to reach a place of safety.⁸

UNHCR gives examples of when an area would not qualify as an IFA if you cannot safely access the area. For⁹ instance, you cannot be asked to travel through or subject yourself to:

1. Mine Fields

2. Political Fighting

3. Shifting War Fronts

4. Banditry

5. Harassment

6. Exploitation



7. Supra, note 4, p. 706.

8. Id. See also, Thirunavukkarasu, 687–688.

9. Id.

Personal Circumstances

Your personal circumstances should always be given due weight in assessing whether it would be harsh to send you back and therefore unreasonable for you to relocate in the area the officer suggests.¹⁰ Factors such as your age, sex, health, disability, family situation and relationships, social or other vulnerabilities, ethnic, cultural or religious considerations, political and social links and compatibility, language abilities, educational, professional and work background and opportunities, and any past persecution and its psychological effects should be taken into account.¹¹

Indeed, psychological trauma arising out of past persecution may be relevant in determining whether it is reasonable to expect you to relocate in the area the officer suggests.¹²

You must be able to find safety and security and be free from danger and risk of injury. This must be stable, not illusory or unpredictable.¹³ In situations where the suggested IFA is under the control of an armed group and/or State-like entity, the officer must carefully examine the stability of the situation there and the ability of the controlling entities to provide protection and stability.¹⁴

Where respect for basic human rights standards, including in particular non-derogable rights, is clearly problematic, the suggested area cannot be considered an IFA.¹⁵ An assessment of whether your rights will not be respected or protected are fundamental to you, such that the deprivation of those rights would be sufficiently harmful to render the area an IFA.¹⁶

Safety & Security

Respect for Human Rights

Past Persecution

What is non-derogable?

A right that, at least in theory, cannot be taken away or compromised. In human rights conventions certain rights have been considered so important that they are non-derogable: the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude, and the right to be free from retroactive application of penal laws.¹⁷

10. Supra, note 1, p. 112, para. 25.

11. Id.

12. Id., para. 26.

13. Id., para. 27.

14. Id.

15. Id., para. 28.

16. Id.

17. Unterm (n.d.) Non-derogable right. Available at: <https://redirect.is/cnnfm7u>.

Economic Survival

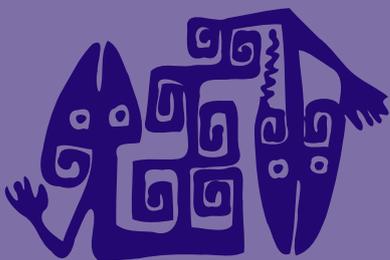
If the situation is such that you will be unable to earn a living or to access accommodation, or where medical care cannot be provided to you or is clearly inadequate, the area may not be an IFA.¹⁸ If you are without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless you would be able to sustain a relatively normal life at more than just a minimum level.¹⁹ Furthermore, if you would be denied access to land, resources and protection in the suggested area because you do not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable.²⁰



Photo taken by Ken Kahiri
@kahiriken

IS IT AN IFA IF YOU ARE DENIED ACCESS TO LAND & RESOURCES?

If the person would be denied access to land, resources and protection in the suggested area because he or she does not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable.²¹



18. Supra, note 15. See also, infra, note 34, p. 40.

19. Id.

20. Id., p. 113, para. 30.

21. Supra, note 1, p. 113, para. 30.

Can Immigration Officials Force You to Pass Through the Original Area of Persecution?



If you would have to pass through the original area of persecution in order to access the suggested area, that area cannot be considered an IFA.²¹ Similarly, passage through airports can render access unsafe, especially in cases where your country is the persecutor or where the persecutor is a non-state group in control of the airport.²²

The suggested area must also be 'legally accessible.'²³ In other words, you must have the legal right to travel there, to enter, and to remain. Indeed, uncertain legal status can create pressure to move to unsafe areas, or to the area of original persecution.²⁴

Germany and Slovakia consider that most parts of Russia can constitute an IFA for Chechen asylum-seekers, whereas in France the IFA is not applied to this group.²⁵ Cyprus, Germany, Sweden, Norway, and the UK consider that Mogadishu can be an IFA for Somali asylum-seekers, whereas Italy, Malta, and Spain do not.²⁶ Hungary, Czechia, Denmark, Finland, Malta, the Netherlands and Slovakia, presume there is an IFA in the USA.²⁷

Finally, Austria, the UK, the Netherlands, Australia, and Finland all consider that Kabul can be an IFA for Afghan asylum-seekers, whereas Switzerland and France do not.²⁸

21. Supra, note 1, pp. 110-111, paras. 11, 21.

22. Id.

23. Id, at para. 12.

24. Id.

25. Supra, note 4, p. 694.

26. Id.

27. EASO (2021). 'Safe country of origin' concept in EU+ countries. Situational Update. Issue 3. [9 June 2021]. Available at: <https://redirect.is/m61edxe>.

28. Supra, note 25.

State & Non-state Agents of Persecution

5

What is an agent of persecution?

According to paragraph 65 of the UNHCR Handbook, an agent of persecution can be the authorities of your country, "the local populace" or "sizeable fractions of the population".²⁹

Sizeable fractions of the population embraces any non-governmental group such as a guerilla organization, death squads, anti- as well as pro- government paramilitary groups, (etc.). It also includes, a fortiori, non-recognized entities exercising de facto authority over a part of the national territory, which will be discussed later in the non-state agent section.³⁰

officials, such as the police, are presumed to act throughout the territory of a country, making it difficult, if not impossible, for you to avoid detection by them.³³ If police officers assaulted you because of your political opinions at a protest, you may assert that for those reasons, the suggested IFA would not be safe for you,³⁴ as law enforcement's reach may be countrywide.

2 When the agent of persecution are non-governmental persons

Where you fear persecution by a non-state agent of persecution, case officers should assess the motivation of the persecutor, the ability of the persecutor to pursue you in the suggested area, and the protection available to you in that area from government officials.³⁵

1 When the agent of persecution are the officials in your country

Where the feared persecution comes from, or is condoned, or tolerated by the country and/or officials working in your country, an IFA will generally not be available, as the country officials will be presumed to have control and reach throughout the country.³¹

Where the risk of being persecuted emanates from local or regional bodies, organs or administrations within a State, it will rarely be necessary for you to consider potential relocation, as it can generally be presumed that such local or regional bodies derive their authority from the country.³² If you are threatened with persecution countrywide, an IFA may not be available. This is because the

(2 cont.) It can be presumed that if your country is unable or unwilling to protect you in one part of the country from these individuals, it may also not be able or willing to extend protection in other areas of the country.³⁶

29. UNHCR (1995). Agent of Persecution, UNHCR Position. Available at: <https://www.refworld.org/docid/3ae6b31da3.html> [accessed 26 November 2021]. See para. 5.

30. Id.

31. Supra, note 1, p. 199, para. 60.

32. Id., p. 110, para. 114.

33. Supra, note 4, p. 703.

34. Kelley, N. (2002). Internal Flight/Relocation/Protection Alternative: Is it Reasonable? International Journal of Refugee Law Vol. 14, No. 1. Oxford University Press. See p. 13.

35. Supra, note 31, p. 110, para. 15.

36. Id.

Agents of Protection

There is considerable disagreement over whether non-state actors can qualify as actors of protection for the purposes of establishing an IFA.³⁷ Although some argue that the term 'protection' in the refugee definition refers only to lack of state protection,³⁸ modern-day interpretation of the Refugee Convention permits refugee status to be denied where effective protection is available from non-state actors such as international organizations, NGOs, shelters, or clans.³⁹ While under international law, international organisations do not have the attributes of a country,⁴⁰ the **EU Qualification Directive** provides that international organizations may qualify as actors of protection.⁴¹

CAN YOU BE PROTECTED BY A MOSQUE, LOCAL CLAN, OR MILITIA?

According to UNHCR, it is inappropriate to find that you can be protected by a local clan, militia or mosque in an area where they are not the recognised authority in that territory and/or where their control over the area may only be temporary.⁴² Protection must be effective and of a durable nature: It must be provided by an organised and stable authority exercising full control over the territory and population in question.⁴³

Research on domestic practice indicates that while decision-makers consider a broad range of non-state entities in the IFA inquiry, they often conclude that the suggested actors do not offer sufficient protection.⁴⁴



5.1

37. Supra, note 4, p. 703.

38. Ghráinne, B.N. (2014) 'UNHCR's Involvement with IDPs—"Protection of that Country" for the Purposes of Precluding Refugee Status?' 26 IJRL 536, 538-542;

Hathaway, J.C. & Storey, H. (2016) 'What is the Meaning of State Protection in Refugee Law? A Debate'. 28 IJRL 486, 486 (Hathaway's position). Id.

39. Supra, note 37.

40. Supra, note 1, p. 110, para. 16; pp.178-179, para. 51; p. 228, para. 41,

41. Supra, note 39. See also, note 34, pp. 17-18.

42. Supra., note 40, pp. 110-111, para. 17.

43. Id.

44. Supra, note 37, p. 704.

** Photo by David Monje, @davidmonje

Analyzing the Internal Flight Alternative

6

1 WHO IS EXEMPT FROM THE IFA?

Consideration of IFA is not relevant for those coming under the purview of Article I(2) of the **OUA Convention Governing the Specific Aspects of Refugee Problems in Africa 1969**.⁴⁵ Article I(2) specifically clarifies the definition of a refugee as follows:

“...every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality”.



2 MUST YOU SEEK PROTECTION FROM EVERYONE?

International law does not require you to go to everyone who can help before seeking asylum.⁴⁶ In other words, it does not consider asylum to be the last resort. Decision-makers should not invoke the IFA in a way that would undermine important human rights tenets underlying the International Protection regime, namely the right for you to leave your country, the right to seek asylum, and your right to be protected against refoulement.⁴⁷ Indeed, the and IFA cannot be used solely to deny you refugee protection.⁴⁸

Some countries have used the IFA to effectively raise the standard for who qualifies for protection, or in its most restrictive form, use the IFA as a threshold test requiring you to show ‘country-wide persecution’ or to prove that you had a well-founded fear of persecution in all regions of your country.⁴⁹



UNHCR

45. Supra, note 1, p. 108, para. 5; see also supra note 4, pp. 700-701. Storey, H. (1998). ‘The Internal Flight Alternative Test: The Jurisprudence Re-examined’. 10 IJRL 499, 502; Schultz, 162.

46. Id., para. 4.

47. Id.

48. Id.

49. Supra, note 4, p. 707.

3 THE START OF THE LEGAL ANALYSIS

The absence of state protection is widely recognized as a cornerstone of the International Protection obligation.⁵⁰ Countries have held that there exists a nexus between the IFA and the refugee definition in two main ways.⁵¹ The first is based on the definition's requirement that your fear must be 'well founded'. This has been interpreted to mean that your fear is not well founded where the persecutory source of the fear could be avoided by relocating to a safe area within the country of origin.⁵² The second basis for the IFA lies in the notion of 'protection'. If within that country, obtaining its 'protection' is merely a question of relocating, it implies that inability or unwillingness to return is for reasons extrinsic to those set out in the Refugee Convention and that you are therefore not a refugee.⁵³

Be that it may, if the IFA is to be considered in the context of refugee status determination, not only must a particular area be identified, you must also be given an adequate opportunity to respond.⁵⁴

BURDEN-SHIFTING FRAMEWORK

Burden-shifting framework or 'shifting the burden of proof'⁵⁵ simply means it's your responsibility to produce enough evidence to prove your basic asylum case. If that burden is met, then the burden of proof shifts to the case officer to identify a safe IFA. This puts you in the position of having the burden to prove, while it may be suggested, that the IFA is not safe.



4 The burden of establishing a claim of refugee status lies with you.⁵⁶ This does not mean that you must show countrywide persecution and/or an absence of country protection in every unspecified area of your country.⁵⁷ Indeed, the requirement that you must show you have a fear of being persecuted 'throughout the entire country' cannot be sustained on either a two-part or holistic approach to Article 1(2)(A) of the Convention.⁵⁸

50. Supra, note 34, p. 7.

51. Supra, note 4, p. 698.

52. Id.

53. Id.

54. Supra, note 1, p. 109, para. 6.

55. Shifting the Burden of Proof. (n.d.) The People's Law Dictionary. (1981-2005). Retrieved November 27 2021 from <https://legal-dictionary.thefreedictionary.com/Shifting+the+Burden+of+Proof>.

56. Supra, note 50, p. 10.

57. Id.

58. Id., p. 8.

While some courts require you to show the persecution you fear is countrywide, this is a mistake that stems from misreading the Convention.⁵⁹ As mentioned above, it is agreed that you do not have to show countrywide persecution and/or an absence of state protection in every area of your country, as it would be burdensome.⁶⁰

In approaching this issue, one should understand that the fear of being persecuted need not always extend to the whole territory of your country.⁶¹ For example, in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country.⁶² If this is your situation, you should not be excluded from refugee status merely because you could have sought refuge in another part of the same country, if it would not have been reasonable to expect you to do so.⁶³ Decision-makers should, however, not forget that an IFA must be durable, as Article 7 of the **EU Qualification Directive** mandates that protection be of 'non-temporary' nature.⁶⁴

AYDIN SALAHADIN ABDULLA

In *Abdulla*, the Court of Justice for the European Union (CJEU) held that protection is of a 'non-temporary' nature when it can be said that the factors that formed the basis of the refugee's fear of persecution may be regarded as having been permanently eradicated.⁶⁵ This implies that the body providing protection need not be present permanently, but rather that it has the ability to completely eradicate the persecution feared. The **European Council for Refugees and Exiles** found that many EU Member States rarely assess the durability of protection in practice.⁶⁶ The ECtHR has taken a similar approach. Although it has found that the IFA must provide a reliable guarantee against persecution,⁶⁷ in the case of *Sufi and Elmi* the ECtHR held that the fact that 'safe' areas were controlled by armed groups with a tenuous hold over the territory did not disqualify it on functionality grounds.⁶⁸

Courtesy of Wiki Commons

59. *Id.*, p. 10.

60. *Id.*

61. *Supra*, note 4, p. 699; see also UNHCR Handbook, para. 91.

62. *Id.*

63. *Id.*

64. *Id.*, p. 704.

65. *Id.*, *Salahadin Abdulla and Others v. Bundesrepublik Deutschland*, C-175/08; C-176/08; C-178/08 & C-179/08, EU: CJEU, 2 March 2010, available at: <https://www.refworld.org/cases,ECJ,4b8e6ea22.html> [accessed 28 November 2021], para. 73. European Council on Refugees and Exiles, 'The Impact of the EU Qualification Directive on International Protection' (2008).

66. *Hilal v. United Kingdom* (2001) 33 EHRR 2.

67. Schultz, J. (2018). *The Internal Protection Alternative in Refugee Law*. Brill. p. 306.

1 NOTICE OF IFA

Basic rules of procedural fairness require that you be given clear and adequate notice that an IFA is being considered.⁶⁹ The purpose of notice is to allow you to prepare an adequate response, recognizing that you may not have personal knowledge of other areas of the country and will need time to gather evidence.⁷⁰

If the case officer does not clearly specify an IFA has, courts have found this to be an error of natural justice leading to sending the case back for evaluation.⁷¹



THIRUNAVUKKARASU

"A refugee claimant enjoys the benefit of the principles of natural justice in hearings before the Refugee Division. A basic and well-established component of the right to be heard includes notice of the case to be met . . . The purpose of this notice is, in turn, to allow a person to prepare an adequate response to that case. This right to notice of the case against the claimant is acutely important where the claimant may be called upon to provide evidence to show that no valid IFA exists in response to an allegation by the Minister. Therefore, neither the Minister nor the Refugee Division may spring the allegation of an IFA upon a complainant without notice that an IFA will be in issue at the hearing.⁷²

2 A PROSPECTIVE ASSESSMENT

The assessment of the IFA must also be based on current country conditions. For example, it must be accessible from the country of asylum and/or place in the country of origin to which you may be returned.⁷³ If there is a reasonable chance of persecution for any other Convention refugee ground and an absence of protection from that risk in the suggested area, it will not be an IFA for the obvious reason that the conditions there would sustain an independent claim to refugee status.⁷⁴

See also UNHCR, 'Asylum in the European Union: A Study of the Qualification Directive' (November 2007); AIDA, 'Mind the Gap: An NGO Perspective on Challenges to Accessing Protection in the Common European Asylum System' (Annual Report 2013–14). *Sufi and Elmi v. United Kingdom* (2012) 54 EHRR 9; pp. 272-277. 68. Id.

69. *Supra*, note 34, p. 10; see also, *supra*, note 1, p. 113, para. 35.

70. Id., (You can offer arguments as to why the IFA is not relevant in your case).

71. Id., pp. 10-11.

72. Id., *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589.

73. Kelley, p. 43.

74. Id., pp. 22-23.

3 THE RELEVANCE ANALYSIS

I. Before a case officer can suggest an IFA, they must answer the following questions:

- (a) Is the area of relocation practically, safely, and legally accessible to you? If any of these conditions is not met, consideration of an IFA within the country would not be relevant.⁷⁵

As we discussed earlier, governmental officials being identified as the agent of persecution is highly relevant.

- (b) Government officials persecuting you? National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an IFA is not available.⁷⁶
- (c) Is the agent of persecution a non-state agent? Similarly, where there is a risk that the non-state actor will persecute you in the suggested area, then the area will not be an IFA.⁷⁷
- (d) Would you be exposed to a risk of being persecuted or other serious harm upon relocation? This would include the original or any new forms of persecution or other serious harm in the area of relocation.⁷⁸

II. The Relevance Analysis also involves the Reasonableness Analysis

- (a) Can you, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect you to move there.⁷⁹



Photo by Sven Ciupka

SHARED RESPONSIBILITY?

While the burden of proof in principle rests on you, the duty to ascertain and evaluate all the relevant facts is shared between you and the case officer. In some cases, it may be for the case officer to use all the means at their disposal to produce the necessary evidence in support of the application.⁸⁰

75. Supra, note 1, p. 109, para. 7.

76. Id.

77. Id.

78. Id.

79. Id.

80. Id., p. 113, para. 33. See also, para. 196.

4

THE REASONABLENESS ANALYSIS

The “**reasonableness test**” is a useful legal tool which, while not specifically derived from the language of the 1951 Convention, has proved sufficiently flexible to address the issue of whether or not, in all the circumstances, you could reasonably be expected to move to the suggested area to overcome your well-founded fear of being persecuted.⁸¹ It is not an analysis based on what a hypothetical “**reasonable person**” should be expected to do.⁸² The question is what is reasonable, both subjectively and objectively, given the your personal circumstances and the conditions in the suggested IFA.⁸³ To be sure, the **flexible approach** assesses the ‘reasonableness’ of a proposed IFA by looking at a myriad of claimant specific factors and applying them to the facts of a specific case.⁸⁴

5

EFFECTIVE PROTECTION & NO NEW RISK OF PERSECUTION

Effective protection from the original risk of persecution essentially means that the relocation area must be an ‘antidote’⁸⁵ to the persecution feared. Indeed, the House of Lords said in **A.H. Sudan** “...if the claimant had a well-founded fear of persecution, not only in the place from which [they have] fled, but also in the place to which [they] might be returned, there can be no question of internal [protection].⁸⁶

Moreover, there must be no new risk of being persecuted; of refoulement,⁸⁷ nor the risk of ‘chain’ or ‘constructive’ refoulement. In other words, you should not be returned to an inadequate IFA where the conditions there are such that you may, in desperation, return to the territory of [your] persecutors or another area where there is a real risk of serious harm.⁸⁸



Persecution is not **WRONG** because it is **CRUEL**;
it is **WRONG** because it is **CRUEL**.



-RICHARD WHATELY-

81. Id, p. 111, para. 23.

82. Id.

83. Id.

84. Supra, note 73, p. 24.

85. Supra, note 4, p. 707.

86. Id., *A.H. (Sudan) v. Secretary of State for the Home Department*, [2007] EWCA Civ 297, United Kingdom: Court of Appeal (England and Wales), 4 April 2007, available at:

https://www.refworld.org/cases,GBR_CA_CIV,46b89f4c2.html [accessed 28 November 2021]. See p. 21.

87. Supra, note 85.

88. Id.

II. Conscientious Objectors

If you are a conscientious objector to State military service, where the country does not provide for exemption or alternative service, and where the fear of persecution is related to these laws and/or practices and their enforcement, a consideration of an IFA would not be relevant, as it can be assumed that you would face persecution across the country.⁹³

III. Armed Conflict

Your case officer should carefully assess the relevance of an IFA in situations of armed conflict and violence.⁹⁴ Situations of armed conflict and violence are often characterized by wide-spread fighting, are frequently fluid, with changing frontlines and/or escalations in violence.⁹⁵ They also often involve a variety of state and non-state actors, who may not be easily identifiable, operating in diverse geographical areas.⁹⁶ Thus, it is not reasonable to expect you to relocate to a zone of active armed conflict and violence.⁹⁷



Photo by Jordy Meow
@jordymeow

93. Id., p. 199, para. 60.

94. Id., p. 228, para. 40.

95. Id.

96. Id.

97. Id., para. 41.

7 TIMING, ACCESSIBILITY, & FAILURE TO PROTECT

I. Timing

Kelley (2002) contends there is growing consensus that because the refugee definition is forward looking, the IFA analysis cannot be rooted in past conditions and must reflect the actual availability of meaningful protection for an asylum-seeker.⁹⁸

II. Failure to Protect

However, where evidence shows the authorities in your country failed to intervene to protect you, Kelley (2002) argues this should trigger the presumption against state protection and the finding of an IFA.⁹⁹

The Convention does not specify whether decision-makers should require you to seek protection from other entities. Nevertheless, the Convention does refer to the inability or unwillingness of you to avail yourself 'of the protection of that country' [emphasis added]. These words indicate, as Kelley contends, is not the absence of protection that is at issue but is the absence of protection from the country.¹⁰⁰



"Upholding the right to seek and enjoy asylum, and providing durable solutions for refugees, must be the cornerstone of Europe's Approach."

MARY ROBINSON

CHAIR OF THE ELDERS

FORMER PRESIDENT OF IRELAND

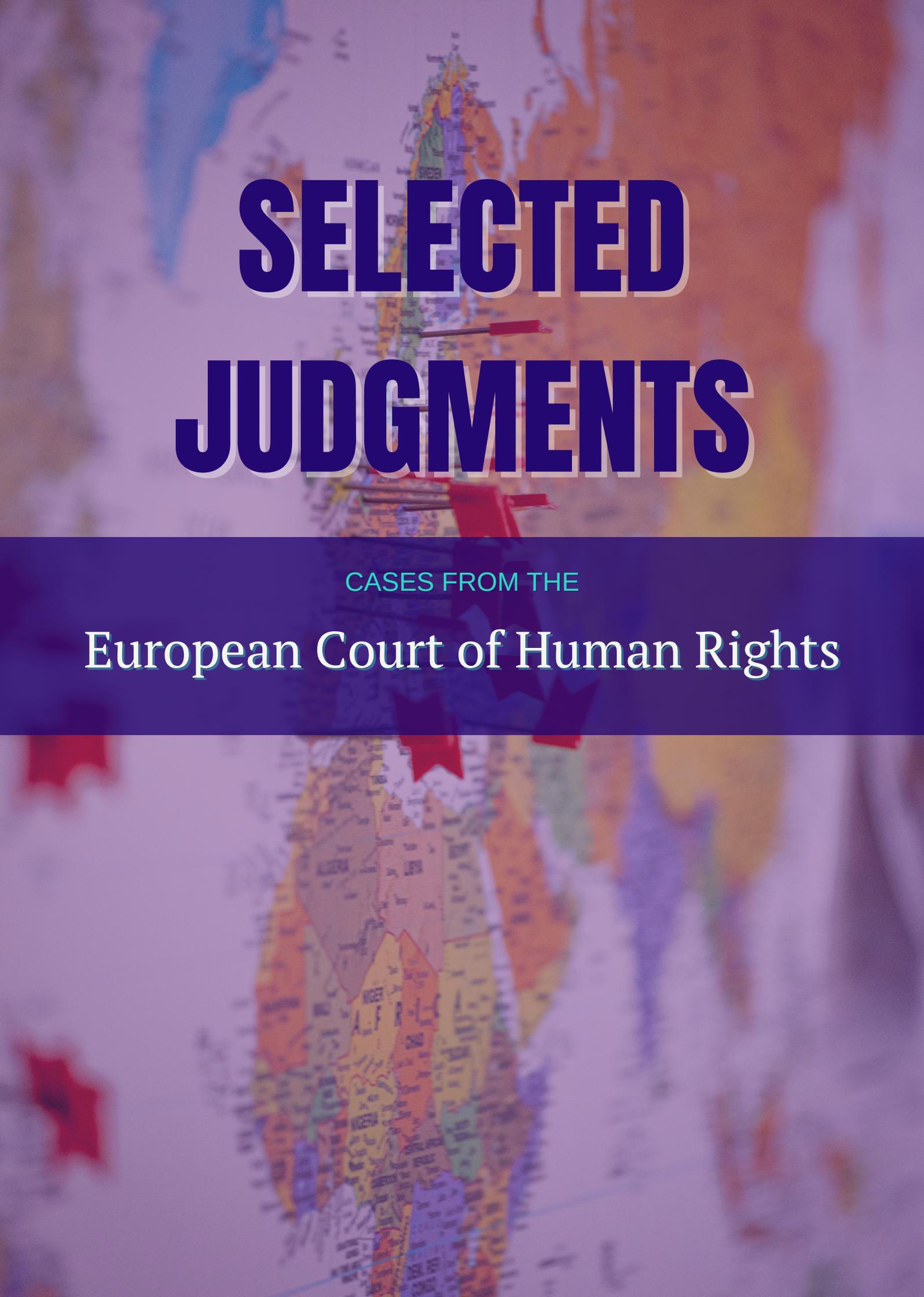
FORMER UN HIGH COMMISSIONER FOR HUMAN RIGHTS

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98. Supra, note 34, pp. 13-14.

99. Id., at p. 17.

100. Id., at p. 20.



SELECTED JUDGMENTS

CASES FROM THE

European Court of Human Rights

THE UNITED KINGDOM



SUFI & ELMI V. THE UNITED KINGDOM

In *Sufi & Elmi v. the United Kingdom*, two Somali nationals' asylum claims were rejected on the basis of an IFA. The ECtHR held for the area which is considered for the return, the following elements need to be taken into account: applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame.¹⁰¹ This case provides an illustration of the personal circumstances that can be taken into account when assessing an IFA; whether the applicant had family connections in the area of relocation, and whether the applicant had a recent experience of living in his country of origin.¹⁰²

101. ECtHR, judgment of 28 June 2011, *Sufi & Elmi v. the United Kingdom*, Nos 8319/07 and 11449/07, ECLI:CE:ECHR:2011:06 28JUD000831907. See paras. 283.

102. *Id.*, paras. 294-295.

THE NETHERLANDS



SALAH SHEEKH V. THE NETHERLANDS

In *Salah Sheekh v. the Netherlands*, the case concerned a Somali national whose claims were refused on the IFA. The ECtHR found the IFA not applicable because the conditions related to the ability to travel and to gain admittance to the safe area were not met.¹⁰³ While the Court found the local authorities of the area to be safe in Somalia, the authorities in the region were opposed to the ‘forced deportation of various classes of refugees’ and did not accept the EU travel documents.¹⁰⁴ Further, the judgment differentiated between the position of individuals who originated from those areas and had clan and/or family there, from individuals traveling from elsewhere in Somalia who did not have such links need to be taken into account.¹⁰⁵

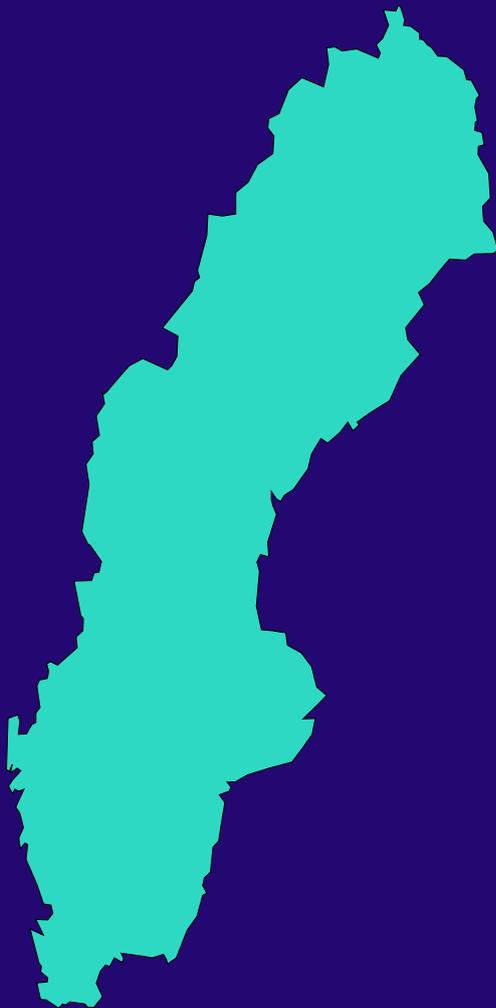
The Court held that the Applicant’s expulsion to Somalia would be in violation of Art. 3 of the ECHR.

103. ECtHR, judgment of 11 January 2007, *Salah Sheekh v. the Netherlands*, No 1948/04, ECLI:CE:ECHR:2007:0111JUD000194804. See paras. 139, 141.

104. *Id.*, para. 142.

105. *Id.*, para. 139.

SWEDEN



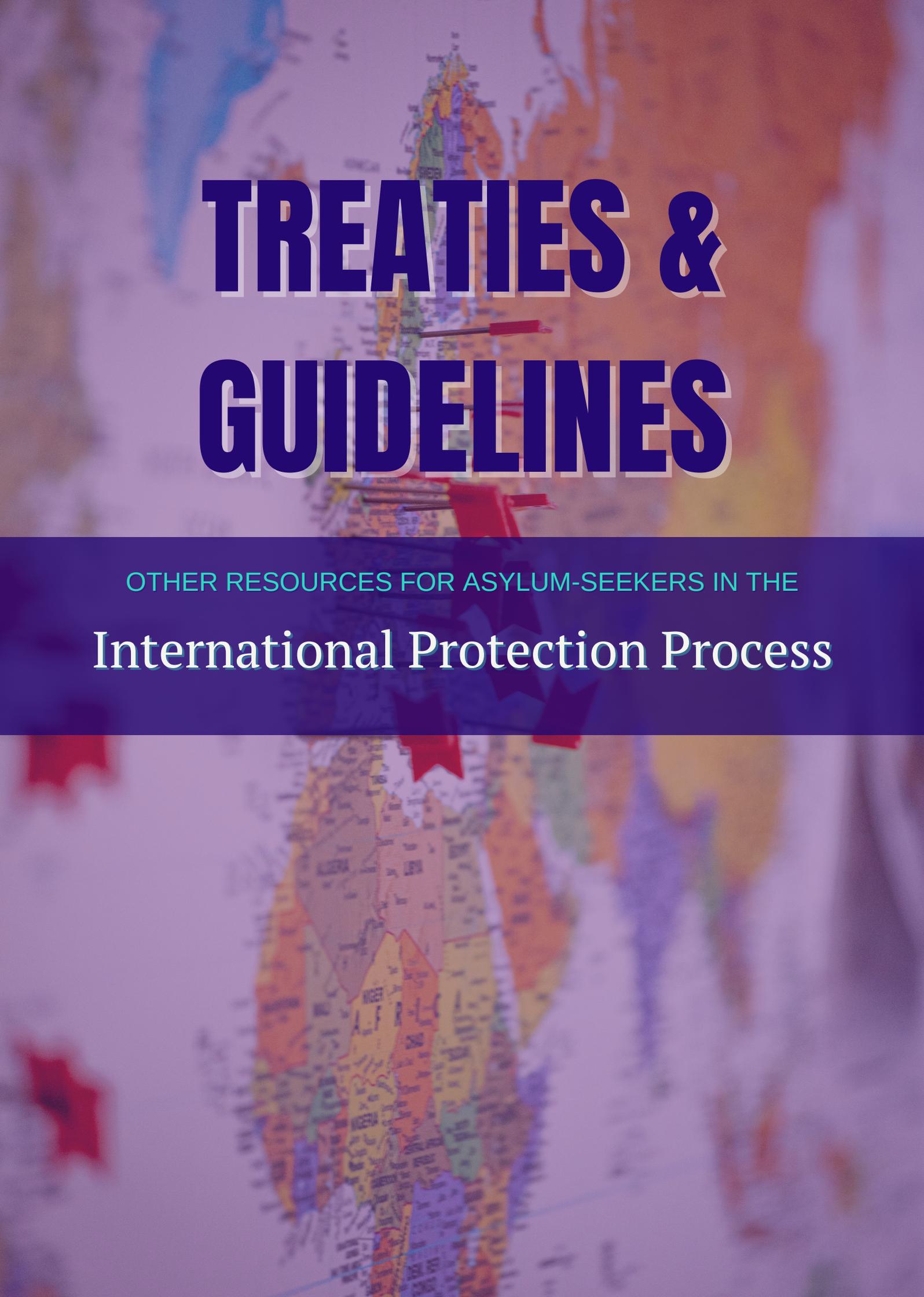
A.A.M V. SWEDEN

In **A.A.M. v. Sweden**, an Iraqi national faced the reasonableness test. According to the judgment, the difficulties above are not decisive if it can be found that the general living conditions for the applicant in the proposed area of the IFA are not 'unreasonable or in any way amount to treatment prohibited by Article 3 [of ECHR]'.¹⁰⁶ Moreover, the ECtHR outlined elements that can be used as indicators for the reasonableness test: the availability of jobs and the 'access to healthcare as well as financial and other support from the UNHCR and local authorities.' While the Court found the application admissible, it ruled that a deportation order against the applicant would not give rise to a violation of Article 3 of the Convention, provided that he is not returned to parts of Iraq situated outside the Kurdistan Region.¹⁰⁷

106. ECtHR, judgment of 3 April 2014, *A.A.M v. Sweden*, No 68519/10, ECLI:CE:ECHR:2014:0403, JUD006851910. See para. 73.

107. *Id.*, *For These Reasons*, at paras. 1-2.

*** **EASO. (2021)**. Practical Guide on the application of the internal protection alternative. EASO Practical Guide Series.



TREATIES & GUIDELINES

OTHER RESOURCES FOR ASYLUM-SEEKERS IN THE
International Protection Process

1 THE VIENNA CONVENTION ON THE LAW OF TREATIES (VCLT)

Article 31(1) of the VCLT provides that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of the treaty's object and purpose. The starting point for determining the criteria for the IFA (and hence how the refugee definition is interpreted) is, thus, the terms of the refugee definition itself, as well as the text of the Refugee Convention as a whole, to which forms part of the refugee definition's context.¹⁰⁸

Article 31(3)(b) of the VCLT also directs decision-makers and case officers to take into account 'other relevant rules of international law' when interpreting the meaning of a treaty.¹⁰⁹

2 THE MICHIGAN GUIDELINES

The **Michigan Guidelines (TMG)** reflect the view of a number of legal scholars who participated in a study of the IFA issue initiated by James Hathaway in April 1999.¹¹⁰

According to TMG, surrogate protection should only be engaged for persons who are unable to receive protection from their own state or who are unwilling to accept it because of a well-founded fear of persecution for a Convention refugee ground.¹¹¹

Under TMG, you are not necessarily entitled to the full range of basic human rights in the area, but only to the protections contained within the Convention.¹¹² TMG further suggest that so long as the state treats you in the IFA equally with respect to the narrow range of rights in the Convention, protection would be satisfied even if a greater range of rights were accorded to your fellow citizens.¹¹³

In **ex parte Robinson**, the English Court of Appeal, relying on TMG in theory, stated that an appropriate factor to consider in an IFA analysis is whether the internal protection meets the basic norm of civil, political and socio-economic human rights.¹¹⁴

108. Supra, note 4, p. 705. See also VCLT, art 31(32).

109. Id., VCLT art 31(3)(c).

110 Supra, note 34, p. 32.

111. Id., pp. 32-33.

112. Id., pp- 34-35.

113. Id., p. 35.

114. Id., p. 37.

In its analysis of the IFA, the **Human Rights Nexus Working Party of the International Refugee Law Judges Association**, recommended that “the framework of analysis that should be applied by refugee law judges and decision-makers is one that accepts that all widely ratified international human rights instruments be applied in determining whether a serious violation of a human right constitutes persecution.”¹¹⁵

To conclude, if conditions in the IFA are such that you, as mentioned in the **Personal Circumstances & Undue Hardship** section of this publication, will be unable to earn a living, or to access accommodation, or where there is insufficient medical care, the IFA may be found to be unreasonable on the basis of your right not to be deprived of life, or subjected to cruel, inhuman or degrading treatment.¹¹⁶



Photo by Pix Poetry
@blackpoetry

International regimes, international treaties, international norms are observed not because of the goodness of anybody but because they bring benefits. If they don't, then the longevity of those agreements come into jeopardy. -Mohammad Javad Zarif-



115. Id., p. 38.
116. Id., p. 40.

Conclusion

As you read, section 3 discussed the moment you first received notice from the decision-maker or case officer that an IFA has been identified. It described the IFA in detail and delved into the history of presumption.

Section 4 examined your personal circumstances and any undue hardship you could face in the IFA. It included but not limited to past persecution, safety and security, respect for human rights, and economic survival. Section 4 answered 'no', as to whether immigration officials can force you to pass through the original area of persecution.

Section 5 covered state and non-state agents of persecution. It identified the agent of persecution; how the IFA is applied when the agent of persecution is the officials in your country, and discussed how it is applied when the agent of persecution is non-governmental persons.

Section 6 provided a deep analysis of the IFA and provided examples of who is exempt from an IFA. This section explained why asylum-seekers are not required seek protection from everyone in their country. In the legal analysis part of this publication, the burden-shifting framework was clearly defined. The section also revisited the IFA Notice. In addition, you learned about different types of assessments and analyses used to evaluate your claim, such as the prospective assessment, the relevance analysis and the reasonableness analysis. As seen in section 6, there are strong rebuttals asylum-seekers can raise if a decision-maker or case officer identifies an IFA, such as whether there is effective protection (or failure to protect), the timing of the IFA, new risks; sexual orientation and gender identity, conscientious objectors, and areas involved in armed conflict.

Excerpts from **Thirunavukkarasu v. Canada** (Minister of Employment and Immigration), **Sufi & Elm v. the United Kingdom**, **Salah Sheekh v. The Netherlands**, **A.A.M. v. Sweden** and other cases were included to show how courts decide IFA cases. Treaties and guidelines such as the Vienna Convention on the Laws of Treaties and the Michigan Guidelines were provided at your leisure and are tools you can use to protect yourself in the international protection process.

Walter Winchell's quote ends this publication quite well: "[I'm] never above you. Never below you. Always beside you.

Thank you Canva

I want to thank my friend Zoya Zoya for being a consistent source of true friendship.

Thank you Unsplash

Thank you Emmy

I want to thank my Mother I love you.
I want my to thank my Creativity + Change Instructors helping me reach from within

Shout out to my Sister

Shout OUTS

AND THANKS
24

I want to say thank you to Richard Noble for challenging me to think outside the box.

I want to say thank you to my friend Thunder when it rains he smiles

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SHOUT OUT TO ALL THE PHOTOGRAPHERS!

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POINT OF NO RETURN

The Asylum-seeker's Guide to
**INTERNAL FLIGHT
ALTERNATIVE**

Point of No Return: The Asylum-seeker's Guide to Internal Flight Alternative

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