



**Country of Origin Information:
Towards Enhanced International Cooperation**

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I. Introduction

1. The present paper focuses on policy concerning the provision of country of origin information (COI) and attempts to explore the possibilities in this regard for enhanced co-operation among States, and between UNHCR and States, through a more systematic exchange of information based on common standards.¹
2. Accurate and reliable information about the causes of refugee and other coerced population movements is essential for UNHCR and States alike: COI is decisive in determining who is in need of international protection and should be accorded asylum and protection, as well as to formulate solution strategies, including plans for voluntary repatriation. In addition, reliable, complete and up-to-date COI is essential in the determination of whether and when to invoke the cessation of refugee status and concerning repatriation decisions. COI is also essential to develop preventive approaches aimed at removing or reducing the reasons for flight. COI facilitates the identification of those who do not require international protection and can assist in the development, in other *fora*, of an effective international response to general migration questions.² Finally, COI plays a critical role in academic research and scholarship.
3. Despite its importance, it has been observed that there has been relatively little research conducted on the collection, quality, use, or availability of country of origin information.³
4. This paper focuses on the use of COI in national refugee status determination (RSD) procedures.⁴ In this regard, it is undisputed that “[d]ecision-makers should have access to accurate, impartial and up-to-date country of origin information from a variety of sources.”⁵ Indeed, the need for COI flows directly from the definition of a refugee in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees; States must determine whether claims are well-founded, that is, sufficiently established on the facts or on the available evidence. The individual applicant's testimony is the primary consideration in reaching a

¹ This paper is an amended version of a report prepared by UNHCR under the European Refugee Fund project “Provision of Country of Origin Information and related information,” JAI/2002/ERF/010. The purpose of the paper is to “...to assist in the development of country of origin information standards, tools, and mechanisms, hence, contribute towards more consistency in decision-making.”

² UNHCR, “Informed decision-making in protection: the role of information”, ExCom Sub-Committee of the Whole on International Protection, 27 September 1993. EC/1993/SCP/CRP.6, see *Refworld 2003 CD-Rom issue 11*, CD1.

³ Morgan, B., Gelsthorpe, V., Crawley, H. and Jones, A., “Country of origin information: a user and content evaluation,” Home Office Research Study 271, Home Office Research, Development and Statistics Directorate, September, 2003 page 1 (further “Home Office Report”). See also “Practical Guide to the effective Gathering and Usage of Country Information,” ICMPD sponsored by the EC Odysseus Programme and the Swiss Government, p. 4, 13-15 February 2002, Prague (further, the “Prague Paper”).

⁴ For purposes of terminological convenience, the term “RSD procedure” is used in this paper to refer to a procedure for determining the need for international protection under the 1951 Convention or the 1967 Protocol relating to the Status of Refugees, or for complementary forms of protection.

⁵ See “Asylum Processes (Fair and Efficient Procedures)”, 2nd meeting of the Global Consultations on International Protection, EC/GC/01/12, 31 May 2001. See *Refworld 2003 CD-Rom issue 11*, CD1.

decision, but "*cannot [...] be considered in the abstract, and must be viewed in the context of the relevant background situation.*"⁶

5. An objective and transparent COI system that can deliver rapid and reliable information is thus central to any RSD procedure. The underlying philosophy is to facilitate access to a wide range of opinions and information in an objective way. By comparing and contrasting information from a variety of different sources, decision-makers are assisted in forming an unbiased picture of prevailing conditions in countries of concern. Although national RSD procedures may differ from each other, the type and quality of information needed in any procedure is the same.⁷ It follows that one way of improving the consistency in decision-making between, as well as within countries of asylum, could be the use of a common knowledge base and common assessments concerning the situation in countries of origin.
6. International cooperation on COI has already been taking place for many years, at both formal and informal levels. In general, this cooperation has tended to centre around bilateral and regional information exchange and among States, with input from UNHCR, other international organizations and NGOs. Normally such cooperation is restricted to the sharing of *information* and stops short at producing an actual common *assessment* or *evaluation* of a country situation, although there are notable exceptions, such as the power of the European Council to adopt a decision establishing temporary protection for persons from a particular country of origin.⁸
7. If there is one common facet applicable to all efforts in collecting country of origin information, it can be safely stated that there is much diversity in standards and procedures.⁹ There are also limits to the degree to which country information and assessments can be harmonized; each application for refugee status has to be examined on its individual merits, with no documentary proof as such being required. At the same time, in UNHCR's view there does seem to be scope for considerably enhanced international cooperation in the field of COI, particularly at the regional level.
8. To this effect, UNHCR would support proposals by the European Commission to improve, initially through the strengthening of networks at the level of senior policy-makers and practitioners, the collection and dissemination of comprehensive, accurate, objective, and up-to-date information on asylum statistics and COI. The same would apply to aligning the application of legal and

⁶ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR 1979, re-edited 1992, paragraph 42 (hereafter "Handbook" in *Refworld 2003 CD-Rom issue 11*, CD3).

⁷ Nicolaas de Zwager, "The ICMPD Information Exchange System," AWR-Bulleting, 2001, p. 70. See also "Prague paper," in particular Tables on structure of COI units, the legal status of COI etc... .

⁸ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. See *Refworld 2003 CD-Rom issue 11*, CD3.

⁹ See for example Elisa Mason, "Guide to Country Research for Status Determination," 15 February 2001 on LLRX.COM, up-dated 31 January 2002, <http://www.llrx.com/features/rsd2.htm>.

protection principles in Member States' asylum processes and their consequences for the treatment of individual asylum applications. UNHCR would expect to be closely associated with any future such networks and contribute actively to the joint evaluation of country situations and the application of specific legal or protection principles.¹⁰

II. Scope and purpose of country of origin information

A. Objectives of country of origin information¹¹

9. The information needed to assess a claim for asylum is both general and case-specific.¹² Decision-makers must assess an applicant's claim and his/her credibility and place his/her "story" in its appropriate factual context, that is, the known situation in the country of origin. Credibility assessment is itself a function of best judgement, facts and the interviewer's ability to draw appropriate inferences. To aid the decision-making process, the COI used needs to be as accurate, up-to-date and comprehensive as possible.
10. As recently observed by one refugee tribunal, "*[a]ny information which is of potential assistance to the decision maker in carrying out what can sometimes be the extraordinarily difficult task of assessing a claimant's credibility is to be welcomed.*"¹³
11. This notion is repeated in the UK Home Office study:

*Provision of complete, accurate and timely country of origin information is ... of vital importance to the efficiency of determination procedures and for the appropriate assessment of applications for asylum.*¹⁴
12. Indeed, access to accurate and reliable information is a condition *sine qua non* for identifying who is, and who is not, in need of international protection, as well as for developing strategies for solutions, including plans for voluntary

¹⁰ UNHCR, "Towards a Common Asylum Procedure and Uniform Status, Valid throughout the European Union, for Persons Granted Asylum," November 2001, COM (2000) 755 final) para. 19. See *Refworld CD-Rom issue 11*, CD 3.

¹¹ The present part of the report draws on the findings of Thoolen, Hans, Chief CDR, "Final Report, Consultancy on Country of Origin Information, prepared for the Coordinating Group of the Task Force on Information and Documentation, Seminar on the Functioning of Asylum Procedures arranged in the context of the Inter-governmental Consultations on Asylum-Seekers in Europe and North America, in cooperation with the French Government", Evian, 13-15 June 1990, pp. 22-28 ("Evian Report").

¹² Decision makers require information tailored to the specific case under assessment (e.g. "*was the claimant part of a group of demonstrators arrested on 1 July 1999 in city X?*") as well as answers to more general questions (e.g. "*was there a demonstration at all?*" or "*did anybody get arrested?*"). The exception is collective/group recognition, or temporary protection (or cessation).

¹³ New Zealand Refugee Status Appeals Authority, Refugee Appeal No. 73545/02, 11 October 2002. <http://www.refugee.org.nz/Fulltext/73545-02.htm>, para. 53 (or forthcoming *Refworld CD-Rom 2004 issue 12*).

¹⁴ See "Home Office Report," page 1.

repatriation and cessation. It can also assist in the development of an effective international response to general migration questions.¹⁵

13. From the point of view of COI, there exist five main stages in any given asylum procedure:¹⁶

- (i) **Establishing identity:** Using basic bio-data, identity papers, travel documents, photographs, fingerprints and travel route to *establish the identity* of the asylum seeker.
- (ii) **Hearing:** The interview and the applicant's written submission are used to establish the "*story*."
- (iii) **Assessing:** To assess the *veracity* and *well-foundedness* of the claim, and whether the *grounds of persecution* invoked may be accepted in relation to the treatment claimed, the following may be used: reference works (maps, encyclopaedia, yearbooks); general country condition reports (governmental, UNHCR and NGO); event or group specific reports (minority profiles, reports from trials); claimant specific reports (Embassy checks, fact finding missions); news and media (clippings, databases); legal materials (laws, jurisprudence etc.); cross-checking and other refugee claims (experience).
- (iv) **Deciding at first instance:** To make a *determination* and to formulate a *decision*, the official must have access to facts of all of the above; as well as applicable refugee norms (national and international); previous decisions in similar cases; jurisprudence from other jurisdictions. Obviously all in the light of applicable guidelines that need to be applied in a systematic manner.
- (v) **Determining appeals:** Appeals often rely on the same information as at first instance. However, this is not always the case if the applicant invokes new reasons that pertain to recent developments; there are also differences when the appeal is administrative or before a court in the type of permissible evidence (e.g. only procedural issues, not the merits of the claim, are assessed).

14. Distinguishing neatly between these five stages is not always possible and realities may be blurred if only because not every stage is conducted by the same person or unit. All officials, however, stand to benefit if they have at their disposal a critical mass of data and user-friendly tools with which they can rapidly access COI.¹⁷ Reliable and accessible country information is important already at the interview stage (since a poorly prepared interview may lead to re-interviewing the claimant) but facilitates particularly every stage where the official must assess the veracity of the claim and formulate a defensible decision. When equipped with sufficiently informative and reliable sources, the interviewer is likely to understand

¹⁵ See "Informed decision-making in protection: the role of information."

¹⁶ See "Evian Report," pp. 22-28.

¹⁷ UNHCR's Refworld collates UNHCR guidelines along with the most relevant COI and human rights information for governments, NGOs, and academia. See <http://www.unhcr.org/refworld> or *Refworld 2003 CD-Rom issues 10&11*.

and identify genuine claims and protection needs, including those that are manifestly well-founded, and spot inconsistencies or contradictions in the “*story*” early on, which in turn generates considerable savings in procedural costs.

B. Government country of origin information efforts

15. Even countries confronted with large case-loads do not always systematically develop full-fledged COI systems.¹⁸ Optimally, and resources permitting, States in varying degrees make provision for specialist researchers, or trained documentalists, to collate general or specific reports from public or internal sources. In many administrations, COI is produced and managed only as an after-thought and remains chronically under-funded. Sometimes the only systematic collection of COI conducted is by the caseworkers themselves who create *ad hoc* collections of hardcopy folders of relevant background documents or randomly store electronic data in non-relational databases.
16. In other words, all RSD agencies and national policy-making bodies as well as intergovernmental organisations in this area, should by definition be involved in one way or another in establishing COI systems. Typically, RSD authorities initially rely on information provided by their respective foreign ministries; but when confronted with increasing caseloads, depending on available resources, agencies attempt to build up their own “*national*” COI collections.¹⁹ The greater the lack of own dedicated structures, the greater reliance on information received from others (e.g. bilateral information exchanges, Refworld, ACCORD²⁰). This implies other problems, as conducting RSD in a foreign language environment is difficult, and access to translators or staff with language skills is dependent on resources.
17. Recently, states have been showing increasing interest in new “*types*” of information that can also fall under the category of COI. With the introduction of accelerated/simplified procedures or the “*safe country of origin*” concept, states see a growing demand for new types of information (to take into account observance of human rights standards, the functionality of democratic institutions, stability, etc.). In the context of temporary protection, states increasingly deal with appeals based on medical and humanitarian reasons. Such claims need to be assessed in connection with the advisability/feasibility of the potential return to the country of origin in the light of availability of specific medical treatment, access to housing, transport, documentation needs, etc. The former IES, now

¹⁸ This would encompass the storage and retrieval of internally-produced country reports, as well as a press clipping service, specific research products and analyses, collections of questions and answers, legal documentation and jurisprudence and specific libraries with monographs, periodicals, literature related to involuntary movements, etc.

¹⁹ After the Czechs, Hungarians, Romanians Slovaks, and Slovenians, recent efforts to establish a resource centre commenced in Croatia (EU funded CARD programme) and in Turkey, funded by the European Union and supported by the German BAFI (Bundesamt für die Anerkennung ausländischer Flüchtlinge).

²⁰ Austrian Centre for Country of Origin and Asylum Research and Documentation, (ACCORD), see <http://www.rotekreuz.at/822.html>. ACCORD has held eight COI seminars to date.

SCIS,²¹ caters on a contractual basis to this emerging area of demand and has developed specific institutional and operational safeguards, including standard operating procedures and contracts with participating States, to process information requests pursuant to international standards.

18. States increasingly demand better maps (“*fuzzy text*” searchability and minute detail to cross check the applicant’s knowledge as well as those that are specific to refugee producing situations – e.g. giving positions of refugee camps, etc.) and the possibility to verify the authenticity of various documents, such as marriage certificates, court orders or id cards. With the introduction of language analysis, new methods are being devised to ascertain the country of origin of an applicant. Fact-finding missions practised by several States and the reports generated are yet another form of “*data mining*” for COI.
19. What most RSD systems have in common is reliance on the widest possible number of COI public sources. Given finite resources and the need to enhance productivity, preference is naturally given to information and/or assessments already “*digested*” (evaluated) from a reputable source (another government, an intergovernmental agency,²² or an NGO). One general problem is that certain types of information age quickly and lose relevance when country situations can change rapidly. Collections, unless regularly up-dated, become retrospective rather than forward-looking. Another widely recognized problem is “*round-tripping*” when secondary sources begin to cite each other.²³
20. While COI is often available, either in written or electronic form, it remains difficult to access, select and meaningfully consult or to retrieve in a useable form. Although information technology theoretically allows access to infinite volumes of data from a bewildering array of sources, not everyone enjoys the luxury of collection, analysis, and dissemination facilitated by information systems to the fullest. Moreover, most users will not have adequate Internet access for the near future.²⁴ The reality is that not all theoretically available information can be successfully accessed in a timely fashion and potentially integrated into an accessible form that can feed into the decision-making process.

²¹ Source Country Information Systems, a department of ICMPD. For more see “Comments on the Source Country Information System (SCIS)” May 2003, PIS/DIP UNHCR and ICMPD-SCIS Central Unit, “Response” thereto, Vienna December 2003. See <http://www.unhcr.org/refworld/legal.htm>.

²² E.g., UNHCR “International protection considerations” also sometimes referred to as “Eligibility guidelines,” *Refworld 2003* on CD-Rom or <http://www.unhcr.org/refworld>.

²³ According to the Home Office Report, “[R]eliance on secondary sources can draw producers into a false sense of pluralism... NGOs too are primarily reproducers of country information, which leads to information ‘roundtripping,’” p. 14.

²⁴ Although “*broadband*” access is expected to greatly facilitate use in the future, until everyone is properly equipped to routinely utilise friendly web-based information systems, information users will continue to experience problems with accessing and downloading information from the Internet. In addition to security considerations and firewalls, access privileges restricted to selected units or staff and compatibility problems of internal Intranet systems, one must also recognise the limitations posed by download speeds and the costs in terms of the time consuming nature of searching for primary information.

21. There is also a tendency to fragment information systems where each instance or entity builds its own information system (e.g. in countries where first and second instance authorities are separate, both tend to have their own information centres). Increasingly administrations coordinate such efforts or share information they "produce" not only within their own government, but also across borders. Not all COI units enjoy "independence" (are administratively autonomous) and are consequently not always recognised as providers of objective and impartial information. In one known case where the independence for the COI authority was contested (as it remained part of the same administration that decides on refugee claims), an effort is underway to ensure the highest standards of impartiality and quality through an independent oversight mechanism.²⁵

III. Legal safeguards, standards and limitations

A. Principle of the benefit of the doubt

22. Considering the special situation in which asylum-seekers find themselves, it is well-established that RSD procedures should pay particular attention to the fact that cases in which an applicant can provide evidence of all of his/her statements will be the exception rather than the rule. As such, evidence requirements should not be too strictly applied and it is frequently necessary to give the applicant the benefit of the doubt.²⁶ However, as stated in the UNHCR Handbook:

*The benefit of the doubt should [...] only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.*²⁷

²⁵ In the United Kingdom, the Advisory Panel on Country Information (APCI) is an independent body established under the Nationality Asylum and Immigration Act 2002, "to consider and make recommendations to the Secretary of State about the content of country information." See <http://www.ind.homeoffice.gov.uk/default.asp?pageid=4470>.

²⁶ Paragraphs 195 to 205 of the *Handbook* and in UNHCR's Note on Burden and Standard of Proof in Refugee Claims (1998). See *Refworld 2003, CD-Rom issue 11, CD3*.

²⁷ Handbook, paragraph 204. See also paragraph 196:

It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

23. In individual claims, the particular circumstances and the credibility of the claimant will often be the most decisive elements. Internal or external evidentiary contradictions do not necessarily mean that the claimant is not generally credible, and excessive reliance should not be placed upon information systems at the expense of the claimant's own testimony.

B. Selection and evaluation of sources

24. In developing its information contacts with governments, UNHCR has used every opportunity to stress its concern not just with the collection of information, but also with its reliability and subsequent use. Experience shows that a coherent body of information requires multiple sources, and that no particular source can generally be ruled out.²⁸ The objectivity and reliability of collated information is of particular concern as otherwise the entire RSD procedure outcome can be fundamentally flawed and cast doubt on the fairness of the procedure.²⁹ The appropriate use of information includes the training of RSD staff on how to use and access it. Failures in this area only spur appeals, drive-up costs and generally undermine confidence in the asylum system.

25. Information is compiled for further or immediate analysis, and the selector should be in a position to make well-reasoned choices that will ensure the highest degree of integrity and objectivity of the final product. The very nature of the task implies that applicable criteria cannot purport to be exhaustive, and a reasonable degree of latitude must be applied together with common sense. The selection process is a function both of personal judgement and of available resources (e.g. language, time and access to sources). In addition, consistency in style, content and format of COI papers is desirable.³⁰ If reasonably and consistently applied, the following criteria have been found to unify the processes involved and to improve the overall quality of the collated information:

- (i) Duplication:³¹ It is advisable to consult with other known providers of information to prevent duplication and thus a considerable waste of resources. This is obviously not always possible; however, planning and consulting with colleagues should reduce the scope for overlap.
- (ii) Subject: Ensure that the content relates to asylum related issues, *i.e.*, refugees and durable solutions, human rights violations, forced migration, advocacy and remedies. According to the purpose of the paper, specific attention may be focussed on situations concerning minorities, displaced

²⁸ UNHCR, "Informed decision-making in protection: the role of information, Sub-committee on International Protection", EC/1993/SCP/CRP.6, 27 September, 1993. *Refworld 2003 CD-Rom issue 11*, CD1.

²⁹ The Immigration Advisory Service published a critical analysis of the country information produced by the Home Office that revealed highly selective use of source material. It was claimed that by excluding information that might help asylum seekers, a positive "*spin*" is often put on reports by Non-Governmental Organisations that are in reality very critical of the countries concerned. See "Home Office Country Information Dangerously Inaccurate and Misleading," 3 September 2003, http://www.iasuk.org/press_office/display.asp?id=203&type=news&cat=56

³⁰ E.g., UNHCR, Protection Information Section's Style Guide, October 2002.

³¹ Also referred to by the UK "Home Office Report" as "*round-tripping*," p. xii.

persons, applicable legislation/practice, and its compatibility with international standards or the absence of it. In the context of early warning one should pay attention to questions related to peacekeeping, international humanitarian law and State practice.

- (iii) Author: Who is the author and what is his/her reputation? Although not requisite, an author should be known for reputable publications in the subject area. If the author is little known or unknown then the work must at least have a well-known publisher whose standards for selection of authors are well-established. If neither of the aforementioned exist, but the subject covered is one necessary to the collection (e.g. because little exists on the subject), then other criteria need to prevail. These include a review of the work's bibliography, noting who the author has read, reviewed, or included in his or her work. This takes some knowledge of the subject area and will require consultation with those who have expertise. For example, on mental health and refugees, an expert in the field should be consulted. If the origins of the document are dubious (e.g. questions arise owing to the document being of poor quality paper or only a Xeroxed copy), it should not be selected. Preference should be given to sources of high repute, notably internationally recognised institutions, e.g. United Nations Special Rapporteurs.
- (iv) Publisher: Who is the publisher? Once identified, it is important to know something regarding the criteria of various publishers for choosing works for publication. In this regard, it is important to ensure that the publisher is known for reputable and accessible publications. Though this should be general practice, it may not always apply, as some works will not fit this rule. Generally, information from reputable sources such as EU or UN bodies, NGOs such as Amnesty International, Human Rights Watch, or universities should be sought. Additionally, several countries provide publicly accessible COI, such as US State Department Reports and the Immigration and Refugee Board of Canada, to name two.
- (v) Date and Timeframe for a Report: Identifying the date of publication or timeframe of the report will assist in selection. If literature, then an historical as well as present and future perspective should be encouraged. If a legal text, then its publication date relates directly to the subject matter, i.e. if the text covers new legislation or jurisprudence then the publication bearing the latest date should be selected. Unless deeper research is the objective, human rights reports or other related COI should as a rule be the latest available and, for the Country of Origin collection, not go back more than three years.
- (vi) Cost: Obviously, cost may be a factor when deciding on the extent of primary research to be undertaken. The rule here is to determine a timeframe for the product so that it is released while still relevant and thus useable. When selecting the source to be consulted (subscription or acquisition cost) one may also consider continued shelf life in terms of future reference.

(vii) Language: In a national context, the official State language is preferred, however, quotations are preferable in the original language and when translations are used, it should be clearly indicated whether it is official or not. For short extracts, it is useful to add the original text.

(viii) The Internet: Special care must be given to collating information from websites if the source is relatively unknown. Sources that seem to provide "*information about information*," anonymous sources, inaccurate data and incorrect use of grammar should be treated with caution.

26. In general, to evaluate any particular source it is important to ascertain:

- (i) Who produced the information and *for what purposes* (taking into account such considerations as the mandate and the philosophy of the information producer);
- (ii) Whether the information producer is *independent* and *impartial*;
- (iii) Whether the information producer has *established knowledge*;
- (iv) Whether the information produced is couched in a *suitable tone* (objective rather than subjective perspective, no overstatements, etc.);
- (v) Whether a *scientific methodology* has been applied and whether the process has been *transparent*, or whether the source is overtly judgmental.

27. Finally, information sources should be regularly re-evaluated as changing circumstances can affect the accuracy and reliability of information.

C. Accessibility of information and its sources

28. UNHCR itself remains committed to the use of publicly available material that, if gathered and used on the basis of coherent standards, has the advantage of being open to review and verification. Unlike confidential information, public information may be easily shared with others, which helps ensure that similar claims are afforded similar treatment. Moreover, disclosing the information on which individual decisions on refugee status are based also ensures equality of arms in situations where the applicant wishes to contest the information relied upon. This is of primary importance if an asylum seeker is to have access to an effective remedy, and to ensure procedural fairness.³²

29. If research is conducted on an individual case to verify a fact, a precondition to the processing of personal data should be the consent of the individual unless,

³² See UNHCR comments on Article 7, "UNHCR annotated comments on the amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status," (COM(2002) 326 final of 18 June 2002, presented by the Commission). See *Refworld 2003, CD-Rom issue 11*, CD3.

exceptionally, a legitimate over-riding interest is at stake. The Individual should consent to the following:

- (i) The disclosure of his or her personal data;
- (ii) The onwards transfer of his or her personal data (a) outside the EU, and (b) to persons seeking the data in the country of origin.

30. Consent must be freely given, explicit and unambiguous, and fully and properly informed. Any conditions imposed by the individual should be respected, such as any restrictions concerning the permitted extent of disclosure of his or her personal data and the contact persons to whom disclosure may be made.³³

31. Information with confidential sources has its limits. For a third party, confidential information cannot always be verified as to its reliability and it therefore loses relevance. In cases when pertinent information is considered too sensitive to release, such information will always have a limited utility. Whenever a collection contains confidential information, one needs to restrict the circle of persons who have required clearance. Conversely, a database containing solely public domain information may be relatively easily shared with other agencies, foreign governments, lawyers, NGOs, or academia. Given the amount of resources invested into the collation of data and analysis, it would evidently be more cost effective to devise systems of sharing information that would free up considerable resources for other tasks.

32. Exceptionally, anonymous evidence (where the source is concealed) may be relied upon, but only where this is necessary to protect the safety of witnesses and the asylum-seeker's ability to challenge the substance of the evidence is not substantially prejudiced. Secret evidence or evidence considered in camera (where the substance is also concealed) should not be relied upon to exclude from refugee protection. The desire to withhold the nature of certain evidence will tend to arise where national security interests are at stake, but such interests may be protected by introducing procedural safeguards that also respect the asylum-seeker's due process rights.³⁴ For example, consideration should be given to disclosing the general content of the sensitive material to the individual but reserving the details for his or her legal representative only (on the basis that the latter has been vetted to receive such evidence). Moreover, the exclusion decision, including the fairness of relying on such partially-disclosed material, could be challenged in private hearings before an independent tribunal (which has access to all relevant evidence).³⁵

³³ There is obviously no need for consent if an information request contains data that is "*anonymous*," as opposed to "*personal*." However, separating the "*anonymous*" from the "*personal*" is not necessarily a straightforward matter, especially in the context of a foreign country and culture. What may seem an anonymous fact to an official in an asylum country could be quite the opposite when placed in context in the country of origin.

³⁴ UNHCR, Guidelines on International Protection: Application of Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/05, 4 September 2003, paragraph 36. See *Refworld 2003, CD-Rom issue 11*, CD3.

³⁵ UNHCR, "Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees," 4 September 2003, paragraph 113. See *Refworld 2003, CD-Rom issue 11*, CD3.

33. UNHCR therefore recommends that information and its sources may be withheld only under clearly defined conditions where disclosure of sources would seriously jeopardise national security or the security of the organisations or persons providing information.³⁶
34. Many countries utilise "*situation reports*" (official messages between offices) and often these are designated as confidential. While most are sourced (footnotes, citations), sometimes the source of confidential information is not disclosed. In most countries information is collated from a number of Government agencies and public and internal sources (immigration police, MFA, etc.) and although not always subject to verification, once given the "*official seal*" of approval in the national context, this sort of information from official sources is deemed acceptable.³⁷

D. Information sources in the country of origin

35. UNHCR has noticed a trend in recent years whereby some States, particularly in Europe, are increasingly checking claims made by asylum seekers with information sources in the country of origin. Increasingly some jurisdictions are reluctant to rely on COI produced from secondary sources, and are calling for COI to be based on primary research or on information vetted by UNHCR. Fact-finding missions, especially in concert with other countries, have been cited as a useful mechanism, as long as they are cost-effective.³⁸ Naturally, this should comply with EU standards, such as Article 22 of the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.³⁹
36. Such checking may be carried out by a fact-finding mission despatched from the country of asylum, or directly by an embassy official on the ground. Alternatively, checking may be carried out by, for example, employing the research services of a local lawyer or of an independent organisation. The information sources

³⁶ According to the European Court of Human Rights, *Chahal v the United Kingdom*, Application no. 70/1995/576/66, 11 November 1996:

It is well established in the case-law of the Court that expulsion by a Contracting State may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 (art. 3) in the receiving country. In these circumstances, Article 3 (art. 3) implies the obligation not to expel the person in question to that country.

³⁷ See "Evian report."

³⁸ Home Office Report, p. 15-17.

³⁹ Article 22 reads:

- 1) Member States shall not disclose the information regarding individual applications for asylum to the authorities of the country of origin of the applicant for asylum.
- 2) Member States shall take appropriate measures to ensure that no information required for the purpose of examining the case of an individual applicant shall be obtained from the authorities of his country of origin in a manner that would result in the disclosure to those authorities of the fact of his having applied for asylum.

COM (2002) 326 final — 2000/0238(CNS) (Submitted by the Commission on 18 June 2002), *Official Journal of the European Communities*, C 291, E/143, 26.11.2002.

consulted may include, *inter alia*, private individuals, local non-governmental organisations (NGOs), international organisations and local and national authorities. The information sought may be general or particular, and in some cases may include information about specific individuals, including asylum seekers themselves. To further enhance a report's authoritative and unbiased nature, government fact-finding missions would benefit from the participation of independent experts and/or NGO representatives. This would not only increase transparency but also lend more objectivity and authority to the findings. Another method would be to create an independent oversight body.⁴⁰

37. Clearly, recourse to information sources in the country of origin can, in appropriate circumstances, be a useful means of helping to establish the facts of a claim for refugee status. However, equally clearly, there is a need to ensure that national and international standards for the protection of personal data are observed, and that the security of asylum seekers and of their relatives and associates is not jeopardised through prejudicial disclosure. It is also essential to ensure the safety of the sources consulted, and not to undermine the safety and integrity of any ongoing humanitarian operations.⁴¹ The reliability of the information gathered is another critical issue and may depend *inter alia* upon the question and how it is asked, who the source of information is and how he or she perceives the questioner and the purpose of the question, why the source chooses to respond and whether he or she may be under any pressure from any other quarter.

E. Protection of personal data

38. One issue on which UNHCR has received questions concerns the protection of the personal data of asylum-seekers, in particular vis-à-vis the country of origin.

39. UNHCR ExCom Conclusion No. 91 (LII) (2001) on Registration of Refugees and Asylum-Seekers stresses the "*confidential nature of personal data and the need to protect confidentiality*" whilst recognizing that the

appropriate sharing of some personal data in line with data protection principles can assist States to combat fraud, to address irregular movements of refugees and asylum-seekers, and to identify those not entitled to protection under the 1951 Convention and/or 1967 Protocol.

The need to respect confidentiality applies to all stages of the asylum procedure, including if and when an application for refugee status is rejected.⁴²

⁴⁰ E.g., the Independent Advisory Panel established by the UK Home Office.

⁴¹ Note the duty to ensure the safety and security of United Nations and associated personnel provided for in Article 7 of the *UN Convention on the Safety of United Nations and Associated Personnel*, 1994, <http://www.un.org/law/cod/safety.htm>

⁴² UNHCR, "Asylum Processes (Fair and Efficient Asylum Procedures)", Global Consultations on International Protection, Third Track – Executive Committee Meetings, EC/GC/01/12, 31 May 2001, paragraph 50(m): "*The asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request. No information on the asylum application should be shared with the country of origin.*" See also UNHCR,

40. With respect to the protection of personal data in general, international data protection principles require that an individual consents to the sharing of his or her personal data with a third party unless there is an overriding interest at stake, either of the individual concerned, or of another individual or of society at large.⁴³ Circumstances in which consent is not required are an exception, in which case disclosure must be necessary, in accordance with law, and proportionate to the legitimate aim pursued. These general principles are as applicable to refugees and asylum seekers, and other aliens, as they are to the nationals of an asylum State.⁴⁴
41. Confidentiality in asylum procedures is particularly important because of the vulnerable situation in which refugees and asylum-seekers find themselves. For example, unauthorized disclosure of personal data to third parties in the country of origin or elsewhere could:

"Informed decision-making in protection: the role of information," ExCom Sub-Committee of the Whole on International Protection, 27 September 1993, paragraph 8: "*In developing and implementing an information strategy, UNHCR is [...] conscious of the need to ensure that national and international standards for the protection of personal data are observed, and that individuals do not suffer loss of protection through prejudicial disclosure.*" See *Refworld 2003 CD-Rom issue 11*, CDs 1 & 3.

⁴³ At a more general level, the "Data Protection Directive" (Directive 95/46/EC) establishes far-reaching standards under European Community law for the processing of personal data. According to the Directive, personal data may be processed only if the individual concerned has "*unambiguously given his consent*" or certain other conditions obtain. The processing of special categories of personal data, namely data "*revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and [...] data concerning health or sex life,*" is expressly prohibited, save for certain exceptions such as the "*explicit consent*" of the individual concerned. [Article 8(1) of the Data Protection Directive. According to article 8(2)(a) of the Data Protection Directive, the laws of a Member State may provide that the prohibition on processing such special categories of data may not be lifted by the individual concerned giving his or her consent.] It should be noted that "processing" of personal data within the sense of the Directive by no means necessarily involves disclosure of the data to a third party.

⁴⁴ See the *United Nations Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live* (1985), article 5(1): "*Aliens shall enjoy, in accordance with domestic law and subject to the international obligation of the State in which they are present, in particular the following rights: [...] (b) The right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence.*" See further, for example, Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, 1980, article 1: "*The purpose of this convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ('data protection').*" As stated in paragraph 26 of the *Explanatory report* on the 1980 Convention: "*[...] The guarantees set out in the convention are extended to every individual regardless of nationality or residence. This provision is in accordance with the general principle of the Council of Europe and its member States with regard to the protection of individual rights. Clauses restricting data protection to a State's own nationals or legally resident aliens would be incompatible with the convention.*"

- (i) Inhibit an asylum-seeker from fully explaining his or her case, or even from making a claim for refugee status;⁴⁵
- (ii) Endanger any relatives or associates of the asylum-seeker remaining in the country of origin;
- (iii) Endanger the asylum-seeker in the event of his or her return to the country of origin;
- (iv) Endanger the asylum seeker in the country of asylum;
- (v) Cause the asylum seeker to become a refugee "sur place."

42. Hence, while an asylum seeker has a duty to assist the examiner to the full in establishing the facts of his or her case,⁴⁶ the examiner is not ordinarily entitled to disclose the asylum seeker's personal data to a third party, whether in the country of origin or elsewhere.⁴⁷

⁴⁵ See *Handbook*, paragraph 198:

A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case." Ibid. paragraph 200: "[...] It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings. In creating such a climate of confidence it is, of course, of the utmost importance that the applicant's statements will be treated as confidential and that he be so informed.

⁴⁶ See *Handbook* paragraph 205(a).

⁴⁷ The basic rule is that Member States should only permit transfers to third countries if the recipient country ensures an adequate level of protection for personal data (**Article 25.1**). Adequacy is to be assessed in the context of a particular data transfer or category of transfer and the Directive defines the factors to be taken into consideration (**Article 25.2**). Consequently, it may well be that the same third country can ensure an adequate protection for a transfer in one sector, but not in another sector. **Article 26.1** specifies exceptions to the rule that transfers may only take place if the third country ensures an adequate level of protection. These may be summarized as follows:

- (a) where the data subject has given his or her unambiguous consent,
- (b) where the transfer is necessary for the performance of contract with the data subject,
- (c) where the transfer is necessary for the performance of contract between the data controller and a third party in the interest of the data subject,
- (d) where the transfer is necessary on important public interest grounds or for the establishment, exercise, or defence of legal claims,
- (e) where the transfer is necessary for protection of the data subject's vital interests, or
- (f) where the transfer is made from a public register.

In addition, **Article 26.2** enables Member States to authorise transfers to third countries that do not have an adequate level of protection if the controller provides sufficient guarantees for the data subject's rights and the exercise of them. Appropriate contractual clauses are given as an example of adequate safeguards. With a view to ensuring that a common Community policy is uniformly implemented across the EU, the Directive confers on the European Commission certain powers in relation to assessing the adequacy of protection in third countries. The Commission will be assisted in this regard by the Working Party set up under **Article 29** and the Committee set up under **Article 31** of the Directive. *Directive on the protection of individuals with regard to the processing of personal data and on the freedom of movement of such data*, 95/46/EC, 24 October 1995.

43. It is UNHCR's view that personal data of asylum seekers should in principle not be shared with the country of origin.⁴⁸ Where an asylum-seeker believes that compelling evidence in his or her favour is obtainable from the country of origin, and that this evidence may be obtained only by disclosing certain of his or her personal data, he or she may occasionally request the authorities of the country of asylum for help in obtaining such evidence.⁴⁹ However, this does not constitute a general waiver of confidentiality and the authorities must continue to seek the consent of asylum-seekers to check their personal data in the country of origin. Although the duty to ascertain and evaluate all the facts of a claim for refugee status is shared between the applicant and the examiner, refugee status determination is not an investigative procedure and the burden of proof in principle rests on the applicant.⁵⁰
44. UNHCR recognizes that there may be exceptional cases of "over-riding interest" where the consent of an asylum-seeker is not required to disclose certain of his or her personal data to the country of origin. In particular, UNHCR shares the legitimate concern of States that there should be no avenue for those supporting or committing terrorist acts to secure access to territory, whether to find a safe haven, avoid prosecution, or to carry out attacks. The sharing of data between States is crucial to combating terrorism, and appropriate mechanisms need to be put in place in the field of asylum as in other areas. However, at the same time, care should be taken to ensure a proper balance with the refugee protection principles at stake. Thus, should it exceptionally be deemed necessary to contact the authorities in the country of origin, in case there is suspicion of terrorist involvement and the required information may only be obtained from these authorities, there should be no disclosure of the fact that the individual has applied for asylum.⁵¹
45. Regarding persons found not to be in need of international protection, the limited sharing of personal data with the authorities of the country of origin could be legitimate in order to facilitate return, even if this is without the consent of the individuals concerned. Such cases usually arise when nationality is in question

⁴⁸ UNHCR, "Addressing Security Concerns without Undermining Refugee Protection," para 11, November 2001 Rev.1. See *Refworld 2003, CD-Rom issue 11*, CD3.

⁴⁹ Outside the context of RSD proceedings, there may be certain situations where asylum seekers and refugees may quite naturally consent to sharing certain of their personal data with the country of origin. For example, some personal information will need to be shared, subject to the consent of the persons concerned, with the authorities of the country of origin in the context of organized voluntary repatriation arrangements, or to facilitate family reunification, transfer of assets, or voter registration and election procedures. Only necessary information should be released, e.g. in the context of organized voluntary repatriation, information that is necessary to obtain clearance for administrative formalities or in order to benefit from amnesty guarantees. In UNHCR's own practice, staff must ensure that the sharing of information (general or personal) will not put *any* individual at risk, and that it will not jeopardise the organization's country operations. For example, even if a refugee or asylum seeker consents to share his or her personal data with a third party in the country of origin for a certain purpose, UNHCR staff are required to bear in mind that, depending on the country situation, information sharing with, *inter alia*, local NGOs or local staff of international NGOs may be problematic because their vulnerability may render them more exposed to pressure from State authorities, secret services, or other interested third parties.

⁵⁰ See further paragraph 196 of the *Handbook*.

⁵¹ *Addressing Security Concerns without Undermining Refugee Protection*, Rev.1, paragraph 11.

and/or the individual has no national travel or identification documents. However, disclosure should go no further than is lawful and necessary to secure readmission, and there should be no disclosure that could endanger the individual or any other person,⁵² not least disclosure of the fact that the individual has applied for asylum. Moreover, everything should be done in the first instance to secure the voluntary nature of return.

46. Personal data conveys information which by direct (e.g. a civil registration number) or indirect linkages (e.g. an address) may be connected to a particular physical person.⁵³ An individual need not be explicitly identified for unauthorized disclosure of his or personal data to occur: it must be ensured that particular asylum seekers cannot even be *indirectly* identified through information gathering activities. The precise dividing line between data that is "*personal*" and data that is "*anonymous*" can be difficult to draw and, given the potentially serious prejudicial consequences of disclosure, extreme caution is called for when determining in a particular case that data may be shared without an asylum seeker's consent on account of it being "*anonymous*". What may seem like an anonymous fact to an official in an asylum country could be quite the opposite when placed in context in the country of origin.

F. Credibility and authoritativeness of the information provider

47. While in substance the key concern is the degree of reliability of data and information generated for the purpose of RSD, there is also the related question of the authority and respect such data enjoys. This is a matter that goes beyond efficacy (well-founded decisions are less prone to judicial challenge, reducing thus costs connected with appeals and a protracted procedure) but of credibility of the entire process. Country of origin information deemed to be selective, biased or patently wrong thwarts attempts to execute fair asylum procedures as fairly and objectively as feasible and opens them to challenge by the applicant and his advocates. In order to secure the highest possible repute for the information provider the question of independence needs to be addressed both as a question of principle and practice.

48. Central in this regard is the question of the functional and substantive "*independence*" of the COI provider. The information provider is perceived as reliable only when the COI that is generated is credible and allows for justifiable

⁵² See further section IV below.

⁵³ Organization for Economic Cooperation and Development, "Explanatory Memorandum to the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data," 1980 (hereinafter "OECD Guidelines"), paragraph 41. See further *OECD Guidelines*, article 1(a): "*personal data*' means any information relating to an identified or identifiable individual (data subject)"; Council of Europe, *Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data*, 1981, article 2(a): "*personal data*' means any information relating to an identified or identifiable individual (data subject)"; *Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data* (hereinafter the "Data Protection Directive"), article 2(a): "*personal data*' shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors to his physical, physiological, mental, economic, cultural or social identity."

decisions by all users, including the primary users (researchers and decision makers in Government agencies), the secondary ones (claimants, legal practitioners and NGOs) and tertiary users (public at large and media). This presupposes also that decisions are taken on the basis of publicly available sources and according to clear information handling criteria that can be verified by third parties. These elements when applied jointly contribute to the "substantive" independence of the information provider.

49. The factual independence flows from the legal status and authority of the COI provider and is dependent on a number of factors, including the budget and reporting lines. Practice shows that a separate budget coupled with administrative independence from the decision-making authority are the most effective avenues to dispel perceptions of bias.
50. Independent oversight endowed with sufficient powers presents an alternative option that can guarantee, if not *de jure*, then at least *de facto* autonomy that sufficiently shields the information provider from political pressures that may attempt to "customize" COI to achieve a particular purpose.

IV. Cooperation and country of origin information

51. The need to exchange information in practice concerns both public and confidential information. However, a systematic exchange of any substantial quantity of data among even a limited number of actors requires – in addition to organisational arrangements and computerised tools accessible to various users – an "unrestricted" exchange of information among the partners.
52. Proposals for the inter-governmental sharing of COI date back at least into the late 1980s. In January 1989, a COI Workshop was held in Dardagny in the framework of the Inter-Governmental Consultations. UNHCR's feasibility study⁵⁴ made an inventory of various developments at the national level and investigate possibilities for data exchange, access to computer systems and other methods of co-operation in the field of documentation and COI.

⁵⁴ The 1990 "Evian Report" provided some basic direction:

- a) *Scope – the main scope of the database would be material describing the human rights situation in countries from where there are refugees coming or likely to come;*
- b) *Public Material – the database would contain only public material, including non-conventional and unpublished material provided it is from a named and traceable source;*
- c) *Full text – the database at the start would contain bibliographic references, to be completed by full text;*
- d) *Control body – control over the content of the database should be left in the hands of a relatively independent centre with a professional information staff, responsive to the needs of the users;*
- e) *Access – access to the database, containing only public material, could be open to everyone, although the prime users group of refugees determination agencies will be served on a priority basis;*
- f) *Language – the database will ultimately cover material in all languages, but start with material written in English, French, Spanish and German; its own records will be limited to a few languages, to start with only English (depending on resources).*

53. Even a cursory survey of practices today confirms that little has changed. While publicly available COI is collected and stored by a myriad of non-governmental and international organisations – ecoi.net⁵⁵ and UNHCR's Refworld,⁵⁶ to name just two – an intergovernmental system for gathering, storing, analysing, and distributing COI remains relatively undeveloped.⁵⁷
54. Some governments have chosen to create dedicated documentation centres managing powerful data bases. Systematised methods of sharing COI among governments are still, however, in their nascent stages and often underpinned by informal arrangements.⁵⁸ While inevitable to some extent due to linguistic and caseload differences, UNHCR's view is that more could be gained by expanding information exchange, especially in areas that are currently heavily duplicated.
55. No single entity has the capacity or resources to collect, verify and disseminate all the information required for a fair and efficient RSD procedure. Co-operation provides one way to achieve helpful divisions of labour concerning the collection, treatment, and exchange of information.
56. Although some systems are converging, UNHCR notes that States continue to conduct RSD in the context of their own administrative and judicial frameworks and have their own preferences. Varying legal cultures and sovereign interests constitute a continued obstacle to unification.
57. Nevertheless, experience has shown that while better co-ordination and information sharing is not straightforward, there is little doubt that COI requirements of host countries, in those instances when they refer to the same case-load, are, by their very nature, the same for one host country as they are for another.
58. Reciprocal visits by information specialists from national refugee determination agencies have become an important best-practice sharing mechanism. For example, the Intergovernmental Consultations (IGC) Working Group on COI has developed such a mechanism, which has proven to be beneficial.⁵⁹
59. Users can achieve considerable savings by taking joint action. This would reduce existing fragmentation and unnecessary overlap, and diminish possible backlogs and abuse of asylum systems. Such a common pool would be particularly

⁵⁵ European Country of Origin Network, a joint initiative of ACCORD (Austria), GEA Slovenia, and Informationsverbund Asyl (Germany), in cooperation with ECRE and UNHCR, <http://www.ecoi.net>.

⁵⁶ See <http://www.unhcr.org/refworld>. Refworld is also available on CD-Rom.

⁵⁷ According to the Home Office Report, besides the US State Department and the UK Home Office, three other countries are notable for their products: DIRB of Canada, Bundesamt für die Anerkennung Ausländischer Flüchtlinge (BAFI) of Germany, and the Swiss documentation Centre. Home Office Report, p. 13.

⁵⁸ The Home Office notes cooperation among government officials in Germany, Austria, the Netherlands, and Switzerland. Home Office Report, p. 13.

⁵⁹ The 1990 Dublin Convention foresees in Article 14 an exchange of legal information, statistical data, and general information on new trends and on countries of origin. UNHCR also continues to co-operate closely with the EU with EURASIL the successor of CIREA.

feasible for references to and the full-text of material already in the public domain. Although such a database would not fully satisfy the needs of all users, (e.g. language problem) there is no doubt that even a partial service would free-up time and energy to deal more systematically with the information that is not-so-commonly needed (e.g., geared towards one particular application) or not-so-shareable (e.g., confidential or in a local language). Informal (oral or written) exchanges of information, whether of a factual nature or opinion, will continue to have an important place in the area of policy making among countries and organisations, and the scope for systematisation of such an exchange would be, per definition, limited. Moreover, informal channels of communication would directly benefit from not being over-loaded by what is already in the public domain.

60. The technical and organisational complexity of any data exchange is admittedly considerable (especially at the trans-national level). It therefore seems preferable to start with co-operation on public material, not hampered by considerations of confidentiality. Another practical reason to start with public information is the fact that much of the information needed is nowadays readily available in the public domain on various websites. For obvious reasons public material is likely to show the highest rate of overlap among existing systems. At the same time, until most users enjoy broadband high-speed access, a degree of duplication is the only option. Maps are just an example of uncontroversial information – labour-intensive to collect individually – that could be centrally-stored and made available to all subscribers.
61. Likewise, subscribers would be encouraged to openly share analyses of COI and its application.⁶⁰ While most organisations will want to make the interpretation and analysis for themselves, even such documents may be shared and eventually integrated into common positions.

V. Concluding remarks

62. With regard to COI, the situation remains rather complex. Many different actors have made initial moves towards systematisation, but these have been usually limited to in-house applications. COI cannot lead to standardised or automated conclusions – there is no "cookbook" for RSD. Progress can only be achieved with information tools that allow for a timely but well-founded assessment of a large numbers of applicants. The fact that many status determination agencies have to manage the introduction of new staff or suffer from a high turn-over makes the need for such tools even more pronounced.

⁶⁰ See, e.g., *UK Home Office Operational Guidance Notes* that are in the public domain. The Country Information and Policy Unit (CIPU – Home Office Asylum and Appeals Policy Directorate) develops country specific asylum policies and provides policy advice to caseworkers and others in the asylum decision-making process. <http://www.ind.homeoffice.gov.uk/default.asp?Pagelid=3805>.

63. While the determination of each case on its individual merits remains the cornerstone of the RSD procedure, governments have the responsibility to make available to their decision makers reliable and updated COI. To this end, an effective COI sharing mechanism would improve the quality and selection of information available, facilitating a more efficient use of scarce human and technical resources.
64. Given that "*automated*" decision-making processes are neither feasible nor desirable, access to reliable and timely COI will remain important for individual status determination systems. Over-reliance on COI can also have negative implications and UNHCR has expressed its concern with regard to accelerated procedures, when processing so-called manifestly-unfounded claims or when judicial appeal has no suspensive effect. In such cases, aberrations can occur, for example, when a certain asylum claim refers to an event that is not well-documented and this "*fact*," or the absence of it, is interpreted as inference of implausibility of the entire claim or casting doubt on the credibility of the applicant.
65. On the regional or international level few broad-based networks have tackled the issue, but without providing a comprehensive and operational service. While objective reasons may currently limit systematic exchange of COI to data available in the public domain, it definitely makes sense to access as much data as possible from the same place.
66. In the longer term, UNHCR would favour the establishment of a European documentation centre for the collection, dissemination, and evaluation of COI. Such a centre could also track, analyse and provide guidance on protection issues.⁶¹ At the same time, given the range of practical considerations and direct operational interests, including the imperative to store information gathered by the various administrations from their own sources (RSD interviews, reports from Embassies, works from academia etc.), national authorities will find great difficulty on fully relying on information from "*others*" and will therefore strive to build up and maintain their own COI centres. COI requires constant updating, especially with regard to information gained from RSD interviews providing a fresh indication of patterns of persecution and risks.
67. Information-sharing should be seriously re-examined as an option if any system is to successfully cope with COI demands. Modern information technology – despite its drawbacks and difficulties – offers powerful tools and UNHCR and governments are well advised to invest into initiatives in this area.
68. UNHCR's view is that more could be gained by expanding information exchange, especially in areas that are currently heavily duplicated. There is no need for every asylum authority to collect separately all data sets and it is obvious that, for example, maps, applicable national legislation or jurisprudence could be collected centrally and then shared with all potential information users (e.g. to divert "*savings*" at the national level to pay for translations that would facilitate access to more information sources in the native language).

⁶¹ *Ibid.* para. 20.

69. It is also possible to contemplate that specific guidelines and COI background information on at least the major refugee producing situations would stand to benefit from a degree of harmonisation. Agreeing on the main potential groups at risk, applicable exclusion criteria or the feasibility of options such as the internal flight alternative would go a long way to harmonise procedures, especially if vetted by UNHCR.
70. In sum, reliable and timely access to COI will remain crucial to establish both the subjective and objective elements of any refugee claim and is important in regard to all available durable solutions. In establishing and developing information systems, due account should be taken of the special situation in which asylum-seekers find themselves, including the need for confidentiality, and of the fact that no matter how good information systems are, they only support and cannot substitute a careful evaluation of all the details of a claim for refugee status. As noted above, excessive reliance should not be placed upon information systems at the expense of the asylum-seeker's own testimony, as asylum seekers are ordinarily the primary source of information about their own case. RSD will always remain an imperfect exercise and asylum seekers should not be required to remember every detail of events of years past.
71. A functional division of labour and exchange of data is necessary for participants in the exchange to cover fully and professionally not only their own areas, but also to ensure reciprocal access to their information in an easy and compatible manner. This is particularly the case with databases containing "*Questions and Answers*" to specific queries such as *REFINFO* of the Canadian Immigration and Refugee Board.⁶²
72. UNHCR's would hope that by reducing and avoiding unnecessary duplication, the integrity of the system of international protection would be enhanced by effectively dividing responsibilities appropriately among States and international organisations. In the absence of a coherent international mechanism for information collection, verification and exchange, no single entity will have the capacity or resources to process all the information required for a fair and efficient RSD procedure. While varying legal cultures will continue to constitute obstacles to unification, several areas do already lend themselves to increased cooperation and information sharing, notwithstanding the subjective and objective obstacles involved,
73. UNHCR has already been approached to contribute to fact-find missions and has been queried on the potential to establish a European COI structure. It remains UNHCR's view that the authoritative and unbiased nature of reports could be best guaranteed if, for example, government fact-finding missions would include independent experts and/or NGO representatives. UNHCR also appreciates the

⁶² REFINFO is a compilation of responses to requests for information submitted to the Research Directorate during the refugee determination process, covering issues related to refugees, migration, and human rights. See http://www.irb.gc.ca/cgi-bin/foliocgi.exe/refinfo_e? or *Refworld 2003 CD-Rom issue 11*, CD2.

rational to guarantee the highest possible degree of independence of COI authorities and their staff.

74. While UNHCR would continue to caution that systematic exchange of information has its limits and should not be over-estimated or considered a panacea for all the ills of the asylum system, the Office of the High Commissioner welcomes every opportunity for close co-operation with Governments, NGOs and relevant intergovernmental initiatives. We stand by our views expressed to the Commission in November 2001:⁶³

... (19) UNHCR supports the Commission's proposal to improve, initially through the strengthening of networks at the level of both senior policy makers and practitioners, the collection and dissemination of comprehensive, accurate, objective and up-to-date information on asylum statistics, country of origin information and the application of legal and protection principles in Member States' asylum processes and their consequences for the treatment of individual applications. UNHCR would expect to be closely associated with any future such networks and contribute actively to the joint evaluation of country situations and the application of specific protection or legal principles.

(20) In the longer term, UNHCR would favour the establishment of a European documentation centre for the collection, dissemination and evaluation of country of origin information, as well as legal and protection issues and trends. Such a centre should, to the extent possible, work in all openness and transparency and be accessible to policy-makers, practitioners, international organisations, NGO representatives and academics. UNHCR may be given a role in the governing structures of such a centre and participate in expert meetings, and its information and guidance should be made available through this centre to the administrative and judicial asylum bodies in all Member States.

(21) UNHCR supports the Commission in its efforts to promote closer co-operation between EU Member States, EU institutions and international organisations in the area of data collection and trends analysis. It stands ready to assist in the drafting of Action Plans and the proposed EU Annual Report in this area, as well as in the preparation of future Community legislation to improve the exchange, analysis and comparability of these statistics. Moreover, UNHCR is willing to co-operate with the EU Commission and Member States in training officials in candidate countries for the collection, analysis and dissemination of asylum statistics. UNHCR calls on the Commission and the Member States to explore the possibilities for the standardisation of the collection and analysis of Member States' asylum and migration data, possibly through the establishment of a central, specialised statistical office...

⁶³ UNHCR observations on the European Commission Communication "Towards a common asylum procedure and uniform status, valid throughout the European Union, for persons granted asylum," (COM (2000) 755 final), Geneva, November 2001, paragraphs 19-21.



75. With clear support and input from the end-users, it should be possible to make electronic information services a more permanent feature in such a way that both quality and cost-efficiency at national level are improved.

Protection Information Section
Department of International Protection
UNHCR Geneva
February 2004

Annex I: Information systems within UNHCR

1. UNHCR has a mandate responsibility to ensure that the object and purpose of the 1951 Convention are attained in co-operation with Governments.⁶⁴ Addressing a meeting of the European Justice and Home Affairs Council in Copenhagen in September 2002 the High Commissioner Mr. Ruud Lubbers reiterated commitment to the establishment of an efficient system for providing Governments with up-to-date information on countries of origin. UNHCR considers that establishing workable rules to execute functional and coherent processing of publicly available information from countries of transit, origin and asylum is a *sine qua non* for international protection and for the solution of refugee problems.⁶⁵
2. In seeking to enhance the international protection of refugees, UNHCR, as part of its information strategy, endeavours to fill the gaps resulting from the lack of an integrated international mechanism for the collection and exchange of information. This information strategy is built on six basic elements:⁶⁶
 - (i) Enhancing access to accurate, up-to-date information about the causes of refugee and refugee-like movements, with a view to improved decision-making at Headquarters and field levels regarding those who should be accorded protection, sounder policy formulation with respect to voluntary repatriation as a durable solution, and in dealing with the preventive dimension of UNHCR's operations.
 - (ii) In co-operation with other international agencies, Governments and relevant NGOs, developing the capacity to collect, analyse, exchange and disseminate public-domain information relevant to UNHCR's protection responsibilities.
 - (iii) Contributing in appropriate fora to the development and standardization of criteria relating to the collection, accuracy, and credibility of information.
 - (iv) At the request of Governments and/or intergovernmental bodies, assisting in the establishment and development of an information capability relating to refugee determination and refugee policy.
 - (v) Maintaining and enhancing the capacity of the Office to serve as a resource for historical material relating to refugees and UNHCR, and for refugee literature, refugee law and refugee status determination decisions.

⁶⁴ See Article 35 of the *1951 Convention*.

⁶⁵ Statement by Mr. Ruud Lubbers, UN High Commissioner for Refugees, at an informal meeting of the European Union Justice and Home Affairs Council, Copenhagen, 13 September 2002. See <http://www.unhcr.org/> (click on High Commissioner / Ruud Lubbers) or forthcoming *Refworld CD-Rom 2004 issue 12*.

⁶⁶ See UNHCR, Sub-Committee on International Protection, "Informed decision-making in protection: the role of information," EC/1993/SCP/CRP.6, 27 September 1993, on *Refworld 2003 CD-Rom issue 11*, CD 1.

- (vi) Ensuring better protection of refugees, *inter alia* by promoting the observance of applicable international standards relating to data protection.
3. UNHCR is not in a position to furnish tailor-made COI to every national system. Limited resources oblige the Office to prioritise and therefore, insofar as the publication of "*country papers*" is concerned, the focus is on countries producing, or likely to produce, large numbers of asylum seekers. Inclusion into UNHCR's "*publishing*" schedule is a function of balancing between different geographic regions and available resources. UNHCR, however, since 1991 systematically collects and disseminates country-of-origin material to its staff and external users.⁶⁷
4. Country of origin papers produced by UNHCR may be divided into two broad categories:
- i) background papers: In-depth profiles of selected countries of origin where feasible in full-text, pertinent sources (the well-known ones such as US State Department annual reports and Amnesty International, but also lesser known but often more up-to-date sources such as fact-finding reports by local NGOs, individual experts and governmental agencies; press reports are also used). They aim to provide an overview of the general political, economic, social and human rights situation prevailing in the respective country, as well as the national and international legal framework, a brief description of the particular groups at risk, and an extensive bibliography of material used, maps, charts and relevant statistical data. In this sense, they serve as an important reference tool for RSD procedures, resettlement and voluntary repatriation purposes, and also policy decisions. Their primary purpose is to facilitate access to knowledge about a country of origin situation and to enhance thus the general capacity to carry out protection functions. Background papers also increasingly respond to needs of Government RSD authorities in countries that do not possess sufficient resources to document all countries systematically. As a rule, they are prepared on the basis of publicly available information, originating from governments, international and non-governmental organisations, research institutes, or reputable media.
 - ii) international protection considerations: Provide an authoritative UNHCR position *vis-à-vis* various groups at risk and applicable exclusion criteria. They are designed to provide focussed guidance to UNHCR and Government staff carrying out RSD.

⁶⁷ The High Commissioner announced at the 1991 Executive Committee plans to commence work on a set of full-text COI databases, with particular attention to be given to refugee-prone regions. See also EXCOM Conclusions nos. 71 (fi) XLIV, 77 (rn) XLVI, 81 (o) XLVIII, 90 (q) LII and 92 (d) LIII or Standing Committee documents EC/1994/SCP/CRP.4 (1994), EC/SCP/88 & 91 (1994 & 1995) or EC/46/SC/CRP.49 (1996). The public domain Refworld databases accessible through the WWW or CD-Rom include full texts of international instruments and national legislation relevant to refugees and asylum-seekers, COI, eligibility reports and policy guidelines, UN Security Council and General Assembly resolutions relevant to UNHCR areas of operation; EXCOM conclusions, refugee literature, national and international case law, operational guidance, maps, the Thesaurus etc.



4. UNHCR papers are a result of a collaborative effort between the Regional Bureaux concerned and the Department of International Protection (DIP). This means that as a rule information is not only corroborated but also incorporates comments from experienced staff and up-to-date assessments directly from the field.
5. UNHCR also draws on external expert analysis, in particular by commissioning papers from WriteNet, a network of researchers and writers on human rights, forced migration, ethnic and political conflict.⁶⁸
6. As information only contributes to informed decision-making if it is easily accessible and readily useable, UNHCR devotes attention to formulating standards that permit user-friendly retrieval and organisation of data. From 1991 onwards, UNHCR's Centre for Documentation on Refugees (CDR) systematically collected and disseminated published country-of-origin material to staff and external users. CDR was closed at the end of August 2001, but, in its place, the new Protection Information Section (PIS) of the Department of International Protection (DIP) has taken over CDR's work, in close collaboration with States and NGOs, to build databases that in many regard to contain unique data on countries that are faced with or are the source of refugee flows. Providing direct on-line as well as "*mobile*" CD-rom access to Refworld databases that encompass a range of information sources (the so-called "*one-stop shopping*" concept), remains a high priority.
7. PIS participates and contributes to the work of relevant COI fora such as the IGC, Eurasil as well as specialised COI seminars organized by States and NGOs such as ACCORD.
8. UNHCR also strives to promote compatible standards – e.g. by producing the International Thesaurus of Refugee Terminology in English, French and Spanish.
9. Finally, UNHCR also has a role to assist others in creating the organisational structure and platforms needed to set up country of origin information centres. In this regard, PIS has launched a traineeship programme and is exploring ways how to closer work with analysts from other country of origin information units. It also advises States on the setting up and methodology of COI structures and procedures compatible to international standards or reflecting best practice.

PIS/DIP
February 2004

⁶⁸ All sources are cited and their common feature is a *disclaimer* that they do not necessarily represent UNHCR's view or position vis-à-vis the country or the group of asylum seekers under review.