# The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives

**May 2009**

**Contents**

## List of acronyms and explanatory notes

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| **COI** | Country of Origin Information |
| **NAM** | New Asylum Model |
| **RFRL** | Reasons for Refusal Letter |
| **UNHCR** | United Nations High Commissioner for Refugees |

**Immigration Advisory Service (IAS)**
The Immigration Advisory Service is the UK's largest charity providing representation and advice in immigration and asylum law.

**Research and Information Unit (RIU)**
The IAS Research and Information Unit provides a case specific COI research service to all IAS legal representatives for Merit Testing, the submission of Initial Representations and for appeal court bundles. The Research Unit receives over 100 requests for research per month, of which approximately 60% are refused decisions going to appeal.

**UNHCR Quality Initiative**
Under the Quality Initiative Programme (QIP) the UNHCR enacts a supervisory role (as set out in Article 35 of the 1951 Convention), providing expertise to the Home Office on the quality of asylum procedures and first instance decision-making. Since 2003 the UNHCR has published five annual reports on UK asylum determination practice. The QIP has identified a number of causes for concern, including the application of the refugee definition, the approach to establishing the facts ('credibility') and the conduct of interviews. The recommendations made in the QIP reports have covered recruitment, training & accreditation, identification and management of stress, interviews, use of interpreters, provision of COI and guidance, targets, assessment and monitoring of decisions and interviews.

**Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)**
The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) was established in March 1999 and is part of the Austrian Red Cross. ACCORD provides case related query responses to all parties involved in Refugee Status Determination procedures, COI training and, together with European partner organisations, the online information system http://www.ecoi.net. ACCORD cooperates with the Federal Austrian Asylum Agency and NGOs and is integrated in European networks. For more information on its research methodology see ACCORD, ACCORD COI Network & Training. Researching Country of Origin Information: A Training Manual, September 2004, http://www.unhcr.org/refworld/docid/42ad40184.html (accessed 20/06/2008).

## ACCORD Standards for COI

- **Relevance**

COI relevance relates to the substance of the information produced in research, and determines whether researched information can be used in the refugee status determination process. Relevant material will have a direct bearing on the questions posed in the determination process

- **Transparency**

Transparency refers to the use of retrievable, verifiable and assessable material in COI research. Thorough and accurate referencing is crucial to transparent COI, normally including source, date, and web address.

- **Reliability & Balance**

To be reliable and balanced COI should be correlated amongst a variety of sources, and over-reliance on single or favoured sources should be avoided. Sources should be assessed for political and ideological orientation, organisational mandate and reporting methodology.

- **Accuracy & Currency**

Accuracy and currency are closely related to reliability and balance. Key methods of maintaining accuracy include verification and corroboration. For situations where events are changing the most appropriate COI will be the most recent. In more constant situations, less current information may still be relevant.

**Advisory Panel on Country Information (APCI)**
The Advisory Panel on Country Information (APCI) is a statutory body whose function is to review and provide advice about the country of origin materials produced by the Home Office. For more information on its remit and to access minutes and reviewed country of origin products visit: www.apci.org.uk

**Operational Guidance Notes (OGNs)**
Operational Guidance Notes are brief summaries of the situation in countries of origin to provide guidance to case owners on what type of claim is likely to justify what type of protection. They are produced by the Country Specific Asylum Policy Team, which is part of the Home Office's Asylum and Appeals Policy Directorate.

**Home Office Country of Origin Information Service – Country of Origin Information Products**
The Home Office Country of Origin Information Service currently produces the following four Country of Origin Information products:

- Country of Origin Information Reports*
- Country of Origin Information Key Documents**
- Country of Origin Information Bulletins***
- Country of Origin Information Fact-Finding Mission Reports

In addition, they also provide a case specific research service.

*The Country of Origin Information Reports are provided on the 20 countries which generate the most asylum applications in the UK. These reports have been published bi-annually since 1997, but are currently being updated on a more frequent basis. These reports are "detailed summaries compiled from material produced by a wide range of external information sources. [...] Each report focuses on the main asylum and human rights issues in the country, but also provides background information on geography, economy and history".[1]
**The Country of Origin Information Key Documents are produced for countries that generate fewer asylum applications and bring together all the main source documents that would be provided with a Country of Origin Report, but with a brief country profile and index rather than an actual report.[2]
***The Country of Origin Information Bulletins are produced on an ad hoc basis in response to emerging events or in relation to a country for which a country of origin report is not available.[3]

The Research and Information Unit believes that although Home Office Country of Origin Information Service Key Documents and Home Office Country of Origin Information Service Bulletins fall within the list of available COI products produced by the Home Office Country of Origin Information Service, they do not fulfil the same role as the Home Office Country of Origin Information Service Reports or other COI materials. The Home Office Country of Origin Information Service Key Documents are a bibliography or starting point in the process of gathering COI, whilst the Home Office Country of Origin Information Service Bulletins are mainly produced on an ad hoc basis in response to emerging events, mostly to do with elections or state emergencies.

1 For more information and to access all Country of Origin Reports visit: http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 23/04/2008).

2 For more information and to access all COIS Key Documents visit: http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 23/04/2008).

3 For more information and to access all COIS Bulletins visit: http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 23/04/2008).

# Preface

*Elizabeth Williams*[4]

It is generally accepted that Country of Origin Information (COI) is central to refugee status determination (RSD) in order to inform decision makers about conditions in the countries of origin of asylum applicants and to assist them in establishing an objective criteria as to whether an asylum claim is well founded. The importance of COI has been endorsed by statements, reports and policy documents of the UNHCR, the international body of Immigration Judges (IARLJ), the European Union and the Home Office Asylum Policy Unit.

Whilst the centrality of COI in RSD is acknowledged, the term 'Country of Origin Information' and the way that it is used in practice has received inadequate attention in the field, especially in the UK context. Whilst descriptively COI is taken to define any information that pertains to the country of origin or transit of an asylum applicant, COI lacks substantive reality. That is, it is not underpinned by a theoretical discipline and does not exist as a body of knowledge in itself. Rather, COI only exists in so far as it is information that is employed in RSD. Indeed, most of the information that is presented as COI in RSD is not information that is created with the asylum context in mind. In practice, COI is drawn from a variety of sources including government bodies, international human rights institutions, domestic and international NGOs, think tanks, the media and academic institutions. Given the divergent mandates of these institutions and the lack of uniformity in approach to the production of information by these sources, issues necessarily arise over identifying criteria for an ideal standard of COI. Whilst ACCORD[5], UNHCR[6], and the European Union[7] have provided useful guidance to address these issues, these guidelines focus on how to conduct COI research and how to improve the quality of COI products, not on how COI is applied to RSD.

The application of COI in RSD in the UK is complicated by the fact that it is employed by a multitude of actors at various stages of RSD who, it must be understood, all act within the context of an adversarial RSD process. These actors include: Home Office case owners, legal representatives, Immigration Judges, Home Office country specific policy makers, experts and COI researchers. Institutional guidance on the use and assessment of COI material therefore varies across the respective organisations, as does the amount of COI- specific training that these COI users receive. Other factors that impact on the way in which COI is used across RSD include differential access to COI and to specialist COI support services and temporal and financial constraints affecting that access.

Despite these considerations and their related impact on good quality decision making, the way in which COI is applied within RSD has not been the focus of any particular study, nor is there any body in the UK which scrutinises the *use* of COI across RSD. In fact, the only organisation that has reviewed COI in any capacity is the Advisory Panel on Country Information (APCI). The APCI was set up by statute in 2002 with the limited function to consider and make recommendations about the content of country information produced by the Home Office. A study of the use of COI in RSD therefore fell outside of the remit of the APCI, which in any case was formally disbanded in November 2008, with its function subsumed by the Chief Inspector of UKBA.[8]

It is against the background of these considerations that the Research and Information Unit (RIU) at the Immigration Advisory Service decided to undertake a study into the use of COI in

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[5] Austrian Red Cross/ ACCORD, Researching Country of Origin Information; A Training Manual, 2004 updated 2006
[6] UNHCR, Country of Origin Information: Towards Enhanced International Cooperation, February 2004
[7] Common EU Guidelines for processing Country of Origin Information, April 2008
[8] See Advisory Panel on Country Information, Minutes of 10th Meeting held on 1 May 2008, 1.5 http://www.apci.org.uk/PDF/tenth_meeting/APCI%2010%20M%20%20minutes.pdf

RSD in early 2007. The RIU is comprised of 5 experienced COI researchers that carry out COI research on an average of 120 asylum cases a month at various stages of RSD and is uniquely placed to undertake such a study as the RIU comes into contact with a wide range of COI products, OGNs and Country Guidance Case Law on a daily basis. Moreover the RIU engages with the COI relied on in decision making as represented in Reasons For Refusal Letters (RFRLs) and judicial determinations in order to frame the issues for COI research.

Whilst an all-encompassing scrutiny of the application of COI in RSD would examine its usage by all COI users within RSD mentioned above, due to resource constraints it was decided to focus the study on the use of COI by decision makers in the Home Office and AIT. It is the premise of this collection of papers, that an investigation into the use of COI by Home Office case owners at first instance decision making, by Immigration Judges at second instance decision making and into the COI contained in OGNs will provide an indication of the current level of understanding of the purpose, scope and limits of COI among key decision makers. In addition the study will demonstrate the extent to which such understanding is being translated into good practice.

The first paper of this study investigates the use of COI as objective evidence in reaching refused initial decisions by Home Office case owners. Given that decisions to grant asylum at the first instance are not available to IAS COI researchers, the cases in the sample are all refused decisions, in the form of RFRLs that have been given permission to appeal. The paper analyses a sample set of 83 RFRLs for 8 countries over a six month period.

The second paper of this study examines the use of COI by Immigration Judges in second instance decision making. As it was not possible to gain access to a sample of both allowed and refused appeals from the AIT, the sample was drawn from cases that IAS had open at the time of collection. In order to provide a parallel to the RFRL study, the sample contains only determinations in unsuccessful appeals. The paper analyses a sample set of 39 determinations from the same 8 countries as the RFRL study.

The underlying assumptions of these studies, informed by the experience of RIU staff, were that there is a lack of consistency in the use of COI and a lack of transparency in how COI assessments are made by refugee status decision makers as evidenced by the citation of COI in RFRLs and determinations. Further concerns at the outset of this study were the use of speculative arguments in reaching asylum decisions that were not substantiated by country information, the inappropriate selection of COI materials, and the under-application of COI to case related questions.

It is also the experience of RIU staff that Home Office country policy documents - Operational Guidance Notes - are routinely used as sources of COI by refugee status decision makers, despite their intended purpose as policy documents. The third paper of this study therefore examines the way in which COI is used in OGNs and challenges its use for the purpose of objective COI evidence. The study examined a representative sample of 6 OGNs including those which were complemented by or drew their COI from COI products produced by the Home Office, whilst others did not.

In the context of the lack of attention paid to the use of COI in this field, these studies highlight the need for further analysis of COI usage. The IAS is therefore currently undertaking an 18 month research and training programme that is intended to improve access to, understanding about and use of COI in the advice and representation given to asylum seekers. Through identifying the barriers and facilitators to using and accessing COI, the programme seeks to train legal practitioners and other stakeholders in employing good practice. Furthermore, the project aims to stimulate debate about COI and promote greater dialogue between stakeholders by bringing them together in non-adversarial settings.

# *The Use of Country of Origin Information in Reasons for Refusal Letters*

*Jo Pettitt*[9]

## Summary

The need for Country of Origin Information (COI) in Refugee Status Determination procedures is well established in the literature on good practice in this field, and is further established in United Nations High Commission for Refugees (UNHCR) guidelines, in the European Union 'Qualification Directive' and in the Home Office's own Policy Instructions. The purpose of this study, as part of a wider project to analyse the use of COI in Refugee Status Determination in the UK, is to examine the way in which country information is used in initial decision-making by the Home Office, and the impact this may have on the quality and sustainability of those decisions.

Specific areas of concern identified at the outset, based on the experience of Immigration Advisory Service[10] research officers and others, focussed on the lack of consistency in the use of COI; the inadequate referencing of COI used; the appropriateness of the selection of COI and the application of COI to case-related questions. The study examined a sample set of 83 Reasons for Refusal Letters (RFRLs) for eight countries over a six month period from a variety of Home Office decision centres. The RFRLs were analysed in relation to (1) whether COI is cited; (2) what sources of COI are used; (3) the referencing of COI; (4) the sufficiency and relevance of COI used and (5) the use of speculative argument not substantiated by COI. The key findings of the study indicate that there is a high level of inconsistency and substantial evidence of poor practice in the use of COI by initial decision-makers in all the areas identified, which may have a significant impact on the quality of decision-making. It is recommended that good practice guidelines in the use of COI are developed for Home Office case owners,[11] which could be implemented and monitored through the training and quality control procedures of the Home Office Quality Assurance, Processing and Improvement Unit.

The first part of this paper (Introduction) examines the context for the use of COI in Refugee Status Determination, as well as the rationale and the methodology for the study. The second part of the paper (Findings) then presents the results of the study in relation to the 5 issues outlined above. For each issue, the findings are set against the existing relevant Home Office guidance to case owners, and this frames the discussion of the results. The paper concludes by outlining key areas of concern and by making recommendations towards the development of good practice in the use of COI in the initial decision making process.

## Key findings

- COI appears not to have been used at all in a significant number of initial decisions on asylum claims represented in this sample.
- There is a consistent pattern of under use of COI by initial decision makers to address both contextual issues and case specific questions that arise in individual asylum claims, as evidenced by the lack of citation of COI in RFRLs.
- Where COI is used there is a significant discrepancy between the use of COI by different case owners in terms of the extent of its use and whether it is used to provide context or to answer case specific points of fact or establish credibility.
- There is no consistent pattern of referencing of COI sources in RFRLs. Some sources are not referenced at all while many others have incomplete references.

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[10] See explanatory notes for further clarification and information on this body.

[11] UK Home Office staff responsible for decision making in asylum cases were know as 'case owners' prior to the introduction of the New Asylum Model (NAM), from which point they were designated as 'case owners', reflecting the case ownership model adopted under NAM. For reasons of simplicity the term 'case owner' will be adopted here.

- There is a tendency to use 'standard' excerpts of sources from Home Office Country of Origin Information Service[12] reports to address particular issues, which do not always support the conclusions drawn or address the specifics of the case.
- There is persistent use of outdated and undated COI material, as evidenced by sources cited in RFRLs. Where COI is sourced from Country of Origin Information Service reports, the date of the report is given (usually the most recent), but this does not accurately reflect the currency of the original source material, which may be considerably older.
- COI is used inaccurately on a significant number of occasions to support unfounded conclusions about the credibility of a claimant or the nature of the risk they may face.
- Initial decision makers regularly make use of speculative argument, without reference to COI, to dismiss aspects of a claimant's account and credibility or the claim in its entirety.
- Operational Guidance Notes (OGNs),[13] despite being policy documents, continue to be used as a source of COI as evidenced by their citation in RFRLs, against the Home Office's own guidance.

## Recommendations

- Case owners should make full use of COI in the consideration of all asylum claims. Where sufficient, relevant and current COI is not available from existing Country of Origin Information Service reports to address case specific questions, full use should be made of the case specific research service offered by the Country of Origin Information Service country officers.
- COI should be used where necessary to address contextual issues as well as for the assessment of case specific questions in relation to the credibility of a claimant's account as well as the assessment of future risk, should the claimant be returned to his/her country of origin.
- Where COI has been supplied by an asylum applicant's representative this should be fully and explicitly taken into account in the consideration of the claim.
- Sources cited in the RFRL or consulted in the course of making the initial decision in an asylum claim should always be referenced in full. This includes instances where sources are cited from Country of Origin Information Service reports. The original source should be stated, including author, title of the report and date, as well as relevant section or paragraph numbers.
- Case owners should be explicitly instructed not to use OGNs as a source of COI, but as the policy documents they are intended to be.
- The use of speculative argument by case owners, as opposed to reasoned argument based on explicitly cited objective evidence, should not be tolerated under any circumstances.
- In the light of the above, the Home Office Quality Assurance, Processing and Improvement Unit should consider investigating the use of COI by case owners with a view to identifying training and support needs and implementing an effective monitoring process.
- Good practice guidelines in the use of COI should be developed and incorporated into the Asylum Policy Instructions as well as the standard training and accreditation process for Home Office case owners and should be routinely monitored as part of the Home Office Quality Assurance programme.

[12] See explanatory notes for further clarification and information on this body.
[13] See explanatory notes for further clarification and information on OGNs.

## Introduction

### i. Context – use of COI in Refugee Status Determination to establish "well-founded fear"

The need for COI in Refugee Status Determination procedures is well established in the literature on good practice in this field.[14] As UNHCR argues, the wording of the 1951 Refugee Convention and its 1967 Protocol, while not explicitly stating it, creates a need for COI.[15] According to Article 1A (2) of the 1951 Geneva Convention a refugee is a person who

> … owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence [...], is unable or, owing to such fear, is unwilling to return to it.[16]

The role of COI implied in this definition is to provide information which enables the decision maker to assess whether the asylum seeker's subjective fear is based on objective circumstances and therefore whether an asylum claim is *well-founded*.[17]

The UNHCR Handbook sets this out as follows:

> 42. As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin--while not a primary objective--is an important element in assessing the applicant's credibility…[18]

The 2004 UNHCR report 'Country of Origin Information: Towards Enhanced International Cooperation' furthermore states:

> 9. The information needed to assess a claim for asylum is both general and case specific. 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.[19]

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[14] Mark Henderson, Best Practice Guide to Asylum and Human Rights Appeals, London, ILPA & RLG, 2003, Section 3 Evidence, Country Information 18.1-18.2 p183; Mark Symes and Peter Jorro, *Asylum Law and Practice*, Lexis Nexus, 2003, Chapter 14 Procedure Before Adjudicators and Evidence, s 2(i) Documentary Evidence: Particular Forms of Documentary Evidence, (iv) Human Rights Reports; UNHCR, *Country of Origin Information: Towards Enhanced International Cooperation,* February 2004; Home Office Research, Development and Statistics Directorate, *Country of Origin Information: a user and content evaluation,* Study 271, September 2003; COI-CG Working Party, Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist, Paper for the Biennial IARLJ World Conference, November 2006.

[15] UNHCR*, ibid*, 2004 p1.

[16] UN, 1951 Convention and Protocol Relating to the Status of Refugees, http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf, (accessed 04/04/07)

[17] ACCORD, *Researching Country of Origin Information – A Training Manual*, Austrian Red Cross, 2004, http://www.coi-training.net/content/doc/en-COI%20Manual%20Part%20I%20plus%20Annex%2020060426.pdf (accessed 21/01/08).

[18] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, paragraph 42.

[19] UNHCR, *ibid*, 2004, II. Scope and purpose of country of origin information, A. Objectives of country of origin information.

A paper prepared for the International Association of Refugee Legal Judges (IARLJ) Biennial World Conference in November 2006[20] on judicial criteria for assessing COI concurs with this assessment, stating:

> 1. In the course of dealing with asylum appeals judges will depend to a great extent for their ability to make sound judgments on having before them up-to-date and reliable country background information or "Country of Origin Information" (COI) . The probative value of an asylum seeker's evidence has to be evaluated in the light of what is known about the conditions in the country of origin. [21]

In the UK context, on 9 October 2006, changes to the Immigration Rules were introduced which set out in detail the criteria for granting asylum or humanitarian protection in the UK. The new Rules, based on European Council Directive 2004/83/EC (the 'Qualification Directive'), were implemented in domestic law by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2525/2006). From this date, all asylum or other claims raising a risk of human rights abuses in the applicant's country of origin, are determined in light of the Regulations and the Rules. Article 4 of the Qualification Directive deals with assessment of facts and circumstances relating to a claim for international protection and Article 4(3) highlights the importance of COI to decision makers as follows:

> The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:
> (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied...[22]

Finally, at the level of Home Office decision-makers in the UK Refugee Status Determination process, the Home Office Asylum Policy Instructions, Assessing the Asylum Claim, state the following in relation to establishing 'well-founded fear':

> 6. WELL-FOUNDED FEAR
> In order to qualify as a refugee an applicant must demonstrate that they have a "well-founded fear" of persecution. In assessing whether an applicant's fear is well-founded, the decision maker must be satisfied both that:
> a) the applicant has manifested a subjective fear of persecution or an apprehension of some future harm, and
> b) objectively there are reasonable grounds for believing that the persecution feared may in fact occur in the applicant's country of origin.
>
> 6.1 Consideration of applications
>
> … When assessing whether an asylum claim is well founded, decision-makers will need to consider the following points, as set out in Paragraph 339J of the Immigration Rules:
> i) all relevant facts as they relate to the country of origin or country of return at the time of taking a decision on the grant; including laws and regulations of the country of origin or country of return and the manner in which they are applied…[23]

## ii. Rationale for the study

[20] The paper was prepared by the COI-CG Working Party of the IARLJ, whose Rapporteur was Hugo Story of the UK AIT.
[21] IARLJ, *op cit*. .
[22] EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML (accessed 31/12/08).
[23] UK Home Office, *Asylum Policy Instructions*, Assessing the Asylum Claim, October 2006, accessed (29/08/2008). http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/assessingtheclaim.pdf?view=Binary (accessed 31/12/08).

Concerns about the quality of initial decision-making in the UK asylum process, and the use of country information within that process, have been widely expressed by advocates and legal representatives within the asylum/refugee sector, as well as by organisations such as Amnesty International and the Medical Foundation for the Care of Victims of Torture (Medical Foundation).[24] In it's 2004 study of RFRLs and Home Office decision making, Amnesty International found that the quality of initial decision making on asylum claims in the UK is inadequate and highlighted three areas where standards of decision making "persistently fall short":

1. Accurate information relating to the human rights situation in countries;
2. Objective consideration of issues relating to the individual credibility of asylum applicants;
3. Appropriate consideration of allegations of torture and medical evidence.[25]

Such concerns, among others, have been addressed since 2003 in the form of the Quality Initiative project conducted by UNHCR within the Home Office.[26] Significantly, the Home Office has also committed itself to the improvement of the quality of initial decision making in the introduction of the New Asylum Model (NAM) in 2005. The 'modernisation' of the asylum system in the form of NAM had the stated aim of enabling the Home Office to:

- Ensure that a higher percentage of asylum seekers whose asylum claims fail are removed from the country quickly.
- Maximise deterrents against unfounded applications.
- **Ensure that asylum seekers who are genuine refugees have their claims settled quickly and accurately and are then granted leave to remain in the UK**.
- Improve cost effectiveness including reduced support costs.[27] (Emphasis added)

The design of NAM incorporated a number of recommendations of the UNHCR Quality Initiative Project, such as the recruitment of staff at a higher grade and salary than previous asylum decision makers and the introduction of a 55 day training course, developed specifically for NAM case owners.[28] Furthermore, as well as introducing faster decision-making processes NAM also introduced end-to-end management of cases through all stages of the asylum process by a single case owner, giving more direct accountability for the decisions made at the initial application stage.[29]

Since NAM was implemented incrementally between 2005 and 2007, it has been difficult to assess the impact the new processes have had on the speed and particularly the quality of decision-making.[30] However, the fourth report of the UNHCR Quality Initiative project in January 2007 raised ongoing concerns that 'the assessment of credibility and establishing the

[24] The Medical Foundation study examined Reasons for Refusal Letters (RFRLs) as "…as evidence of full and reasoned decisions on asylum claims", reporting on, among other issues, the relationship between the content of the RFRL in cases from Cameroon and the various sources of country of origin information available to the Home Office at the time of the decision, including the Home Office's own Country Assessments on Cameroon; Medical Foundation for the Care of Victims of Torture, *Right First Time? Home Office Asylum Interviewing and Reasons for Refusal Letters,* February 2004
See also Poppy Project & Refugee Women's Resource Project at Asylum Aid, *Good Intentions: A review of the New Asylum Model and its impact on trafficked women claiming asylum*, June 2008 and Amnesty International, *Get it Right: How Home Office Decision Making Fails Refugees*, February 2004 1. Introduction.

[25] Amnesty International*, ibid*,, February 2004 1. Introduction.

[26] See explanatory notes for further clarification and information on the Quality Initiative project.

[27] UK Home Office, 'Controlling our borders: Making migration work for Britain, Five year strategy for asylum and immigration', TSO, February 2005, Annex 2 New Asylum Model. http://www.archive2.official-documents.co.uk/document/cm64/6472/6472.pdf (accessed 31/12/ 08).

[28] NAM processes were applied from mid-2005 onwards to regional offices as they were established around the UK, and since March 2007 every new asylum claim has been considered under the NAM process. Any case not formally within the NAM by the 5th March 2007 will be dealt with by the separate Legacy Directorate; Refugee Council Briefing, The New Asylum Model, March 2007; UNHCR Quality Initiative Project, Second Report to the Minister, February 2006, paragraph 2.3.4; Poppy Project & Refugee Women's Resource Project at Asylum Aid, *ibid*, 2008.

[29] UK Home Office*, ibid*, 2005.

[30] Poppy Project & Refugee Women's Resource Project at Asylum Aid*, ibid,* 2008 p8.

facts of an asylum claim is a problem area for a significant proportion of NAM decision makers'.[31] Furthermore, the Independent Asylum Commission in its first report in May 2008, while noting improvements that have been made in the quality of initial decision making with the introduction of NAM and the involvement of the UNHCR Quality Initiative project, states

> …we have received significant evidence suggesting that some asylum seekers continue to 'fall through the net' and receive a poor quality service in relation to their initial decision. Asylum seekers' representatives continue to highlight improvement of the initial decision-making process as the main way to secure a system which is fair and efficient.[32]

The same report, in its discussion of COI, acknowledges improvements in the provision of COI to decision-makers and the scrutiny of COIS reports[33] by the Independent Advisory Panel on Country Information (APCI), but nonetheless states that, according to their evidence, ongoing 'concerns have been expressed as to how COI is being interpreted and applied by some case owners in their decisions.'[34]

Although the use of COI has formed part of research undertaken so far on the quality of initial decision making, it has not been the focus of any particular study. The purpose of this study, therefore, as part of a wider project to analyse the use of Country of Origin Information in refugee status determination in the UK, is to examine the way in which country information is used in the initial decision-making process by the Home Office.

Initial decisions on applications for asylum or humanitarian protection in the UK are made by Home Office case owners. If negative, the decision is given to the applicant in the form of a R RFRL which should set out the applicant's case and present the findings and decision of the Home Office against the available objective evidence. It is the assumption of this study that a systematic examination of a sample of RFRLs should therefore produce some insight in to the use of COI as objective evidence in reaching initial decisions on asylum cases.[35]

The experience of IAS researchers, based on case specific COI research conducted for over 100 asylum cases per month, suggests that the use of COI in initial decision making, as reflected in RFRLs, is problematic. Specific areas of concern are:

- Consistency in the use of COI
- Adequacy of referencing of COI, transparency of sources
- Appropriate selection of COI
- Application of COI to case related questions

This study examines in depth a sample of RFRLs for eight 'asylum producing' countries over a six month period, dating from January 2007 to June 2007. Given that the selected time period of the sample spans the point at which NAM was fully implemented for all new asylum cases (March 2007), it is also hoped that it may be possible to make an assessment of the impact of NAM on this aspect of decision-making.

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[31] UNHCR, 'Quality Initiative Project Fourth report to the Minister, 'United Nations High Commissioner for Refugees, January 2007, p4-5, cited in Poppy Project & Refugee Women's Resource Project at Asylum Aid*, ibid*, 2008 p9.

[32] Independent Asylum Commission, Saving sanctuary, The Independent Asylum Commission's first report of conclusions and recommendations: How we restore public support for sanctuary and improve the way we decide who needs sanctuary, May 20th 2008, p24.

[33] See explanatory notes for further clarification and information on COIS reports.

[34] Independent Asylum Commission, *op cit*.

[35] A direct means of assessing the use of COI in successful applications was not available for the purpose of this study; the QI Project is a joint IND/UNHCR initiative which monitors the quality of asylum decisions at first instance has however undertaken monitoring of decisions, positive and negative. UNHCR staff members have been based in Lunar House since August 2004 and are involved in the assessment of asylum decisions and interviews. http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/unhcr.pdf?view=Binary (accessed 31/12/08).

## iii. Methodology

The sample of RFRLs which represents the data set for this study consists of all RFRLs received in the IAS Research and Information Unit[36] for eight selected countries over a six month period; January to June 2007.[37] Given that decisions to grant asylum at the first instance are not available to IAS researchers, the cases in the sample are all refused decisions that have been given permission to appeal.[38] Five of the eights countries selected are those most frequently represented in IAS asylum cases during the last quarter of 2006; at least those for which research was requested by IAS legal representatives.[39] These countries are all within the Home Office 'top twenty' asylum producing countries[40] and regularly updated COIS reports are available to Home Office case owners.[41] The selected countries are Afghanistan; DRC; Iran; Somalia and Zimbabwe.

A small sub-set of RFRLs are also included in the sample from countries outside the Home Office 'top 20', for which standard COIS reports are not available. For those countries that still fall within the 'top 50' asylum producing countries, COI Key Documents are provided by the COIS.[42] For those that fall outside this group, it is assumed that the only source of COI material available to case owners is the COIS case specific research service. The selected countries in these categories are Cote D'Ivoire (Key documents); Guinea (Key documents) and the Occupied Palestinian Territories (Israel) (no COIS provision).

Each RFRL was examined against the following set of questions:

1. Is COI cited?
2. What sources of COI are used and for what purpose?
3. Is the COI correctly referenced?
4. Is the COI used sufficient and relevant?
5. Is speculative argument not substantiated by COI used?

In addition, information about the data set was recorded as follows: date of application; country of origin; gender; basis of claim; and decision centre.

Each refusal letter was examined individually in relation to the questions outlined above and the information elicited was recorded in tabular form. The resulting findings were analysed both in relation to various questions identified as described and where possible in relation to the significant variables such as the country of origin of the claimant, the type of claim decision centre (NAM system or ACD). The findings of this process were then set against the Home Office's own practice guidelines in relation to assessing an asylum claim and preparing a RFRL, as well as the relevant recommendations drawn up by the UNHCR in the course of the Quality Initiative project.

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[36] See explanatory notes for further clarification and information on this body.
[37] The sample RFRLs for this study were taken from the cases of IAS clients only and are therefore not assumed to be representative of all asylum cases.
See Appendix 1: Detailed description of data set.
[38] Applications for asylum that were refused but not appealed were also not available to IAS researchers and therefore do not form part of this sample.
[39] The IAS Research Unit provides a case specific COI research service to all IAS legal representatives for Merit Testing, the submission of Initial Representations and for appeal court bundles. The Research Unit receives over 100 requests for research per month, of which approximately 60% are refused decisions going to appeal.
[40] UK Home Office, Asylum Statistics, Asylum Statistics: 4th Quarter 2006 United Kingdom, Table 3, http://www.homeoffice.gov.uk/rds/pdfs07/asylumq406.pdf (accessed 31/12/08).
[41] See explanatory notes for further clarification and information on the COIS products.
[42] *Op cit.*

## Findings

### i. Is COI used in the RFRL?

#### Home Office Guidance on use of COI

The Home Office Asylum Process Manual states the following in relation to the use of COI in deciding an asylum claim:

> Assessing the Evidence
>
> …Decision makers should assess all the available evidence in accordance with the Asylum Policy Instruction on Assessing the claim and any country information produced by Country of Origin Information Service (COIS)…[43]
>
> Deciding the Claim
>
> …Decision makers must assess objectively in each individual case whether there is a reasonable likelihood of the fear of persecution being realised should the applicant be returned to their country of origin. While events that took place in the past are likely to be central to the consideration of a claim for asylum, and are indicative of treatment that may occur should the applicant return to his country of origin, decision makers should ensure that they take account of available country information when assessing the likelihood of future risk.[44]

#### No reference to COI in RFRLs

Of the total number of 83 RFRLs considered in the sample, 14 made no reference to COI at all. Of the 72 RFRLs relating to countries for which there are Home Office COIS reports available (Afghanistan, DRC, Iran, Somalia and Zimbabwe), 12 made no reference to COI.

RFRLs relating to Zimbabwe stand out in this particular sample; out of a total of 24, 7 RFRLs made no reference to COI. Leaving aside more case and profile specific issues, 5 of these 7 cases concerned risk to and therefore treatment of family members of MDC supporters in Zimbabwe; two concerned sexual violence related to political violence and one had the additional issue of risk to those involved in writing dissident articles for the foreign press. The levels of political violence in the country and the situation on return for failed asylum seekers were cross cutting issues of relevance to all these cases, for which there was no reference to COI.

Similarly the 3 cases from Iran which made no use of COI were concerned with, among other issues, those who are imputed to have anti-regime political opinions, and the treatment of those involved in the distribution of dissident materials and the availability of a fair trial; while those from DRC and Somalia concerned treatment of people from a particular ethnic group by non government agents and protection available.

Of the 11 RFRLs relating to countries for which there are no Home Office COIS reports available (Cote d'Ivoire, Guinea and the Occupied Palestinian Territories), 2 made no reference to COI, both from Cote d'Ivoire, from a sample of 5 for that country. One of the cases concerned involvement with a political opposition group and had multiple case and fact specific issues in relation to the client's credibility and the other concerned issues of slavery and the return of a lone woman with no family support to her country of origin.

The absence of any reference to COI in all these cases suggests either a level of indifference and complacency by the case owner towards the situation in the applicant's country of origin or that COI sources were consulted but that it was not considered important to cite or properly reference them (see Appendix 2: No reference to COI in RFRLs, Table 7 RFRLs with no

[43] UK Home Office, *Asylum Process Manual*, Chapter 2, Considering Application, Considering Asylum Claims, Assessing the Evidence.
[44] UK Home Office, *Asylum Process Manual,* Chapter 2, Considering Application, Considering Asylum Claims, Deciding the Claim.

COI). UNHCR, in its 2nd Quality Initiative report in 2006, commented as follows on the issue of case owner's skills and abilities

> 2.3.1 UNHCR strongly believes that refugee status determination requires specialist competencies, knowledge and skills combined with strong analytical abilities.
> 2.3.2 UNHCR's file assessment and feedback process suggests that some established caseworkers and a number of SCWs may lack, or not be equipped with, the necessary skills and knowledge for refugee status determination. UNHCR has found widespread use of weak analysis, poor written English, and limited or non-existent research. The feedback sessions held with individual caseworkers lead UNHCR to conclude that a number of caseworkers have a limited interest in, and understanding of, global affairs.
> 2.3.3 It has been observed that COI research is often inadequately conducted or misapplied, with relevant information often overlooked and not pursued or tested.[45]

Indeed it was concerns such as these that led UNHCR to conclude that some case owners do not fully acknowledge and take responsibility for their role as decision makers, instead attributing this role to Immigration Judges.[46] This was one of the critical observations that led to the recommendation of a system of end to end case ownership, taken up by the Home Office through NAM.[47] According to UNHCR, file ownership by individual case owners

> 2.3.4…will help ensure that all feasible decision making steps, including considering documentary and other testable evidence or requesting a medical report, take place at the initial decision making stage, which may reduce unnecessary appeals.[48]

Data from the present study, however, indicated no significant change in the reference to COI in NAM decision centres. 5 of the RFRLs which made no reference to COI were from ADC decision centres and 5 from NAM decision centres. The remaining 4 were from the other decision centres, as identified in Table 3 (See Appendix 2: No reference to COI in RFRLs, Table 6 Use of COI - ACD/ NAM). Although it may be the case that it will take time for the NAM process to fully establish itself, this issue is still apparently a live one.

### ii. What COI sources are used?

#### Home Office Guidance to case owners on sourcing COI

The Home Office Asylum Process Manual states the following in relation to the sources of COI that should be used in deciding an asylum claim:

> Assessing the Evidence
>
> Decision makers should assess all the available evidence in accordance with the Asylum Policy Instruction on Assessing the claim and any country information produced by Country of Origin Information Service (COIS).[49]

The APM, dated 2000, elaborates as follows:

> To obtain information relevant to an asylum claim, Caseworkers should, in the first instance, read the Country Assessments and Bulletins produced by CIPU. Having examined these sources and any hard copy material, it may be appropriate to consult a Senior

[45] UNHCR, Quality Initiative Project, Second Report to the Minister, February 2006, 2.3. Caseworkers skills and abilities.
[46] *Op cit.*
[47] *Op cit.*
[48] *Op cit*.
[49] UK Home Office, *Asylum Process Manual*, Chapter 2, Considering Application, Considering Asylum Claims, Assessing the evidence; Home Office, Asylum Policy Instructions, Assessing the Asylum Claim, October 2006, accessed (29/08/08).
http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/assessingtheclaim.pdf?view=Binary (accessed 31/12/08).

> Caseworker…The Senior Caseworker should only be consulted after checking all the available material on the Knowledge Base and in hard copies...[50]

### Home Office Country of Origin Information Service (COIS)

For Home Office case owners the standard practice for accessing country information in the course of making a decision on an asylum claim, as indicated by the guidance in the relevant sections of the Asylum Process Manual, is, at the time of writing, to refer the country reports prepared in house by the Country of Origin Information Service (COIS) in the Research Development Statistics department (RDS). According to the RDS website, 'the COI Service provides accurate, up to date, objective and sourced information on asylum seekers' countries of origin for use by UK Border Agency (UKBA) officials at all stages of the asylum determination process.'[51] There are three main RDS products available to decision makers, these being the COI Reports, the COI Key Documents and the COI Bulletins.[52]

A further case specific research service, provided by the relevant COIS country officers, is available to case owners where the necessary country information has not been found in any of the RDS 'products'. This service can only be accessed with the prior approval of a Senior Case owner, as specified in the relevant APN:

> To obtain information relevant to an asylum claim, Caseworkers should, in the first instance, read the Country Assessments and Bulletins produced by CIPU. Having examined these sources and any hard copy material, it may be appropriate to consult a Senior Caseworker. This course of action should only be taken where the information required is deemed essential to the consideration of a claim and worthy of possible delays and resource implications.
>
> The Senior Caseworker should only be consulted after checking all the available material on the Knowledge Base and in hard copies.
>
> Approaching CIPU/AAPD direct should not be done routinely. The Senior Caseworker acts as a filter for enquiries to CIPU/AAPD. The Senior Caseworker may be aware of similar enquiries and will be able to help with assessing whether the information is really needed in order to take a decision on the case.
>
> The Senior Caseworker may decide that it is necessary to refer to the appropriate CIPU Country Officer for further information or he/she may tell the Caseworker to do so. (Such contact should normally be via e-mail or on file).[53]

### Reference to COI sources in RFRLs

Of the data sample selected for this study, five countries have COI Reports prepared by the RDS (Afghanistan, DRC, Iran, Somalia and Zimbabwe), two countries have Key Documents (Cote d'Ivoire and Guinea) and one has no country information provision (Occupied Palestinian Territories). There are Bulletins available for Afghanistan (dated December 2005); Zimbabwe (dated April, June and November 2005) and Cote d'Ivoire (dated November 2004).

It was assumed that use of country information resources as specified above would be indicated by citation in the RFRL. On this basis it was found that of the 72 RFRLs for countries with COIS country reports, only 44 made direct reference to these reports; 28 therefore did not. Given that of this sample, 12 RFRLs made no reference to COI, it follows

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[50] UK Home Office, *Asylum Process Manual*, Chapter 1 Handling Applications, APN052000, Accessing country information. January 2005, (2nd edition).
Note: It is not the object of this particular study to provide a critique or commentary on the quality of Home Office COI products, but instead to focus on the use of the COI products that are available to Home Office decision makers. This does not imply an endorsement or otherwise of the quality of these products, which indeed merits a separate area of study, particularly given that the work of the monitoring body for COIS, the APCI, has been transferred to the remit of the Chief Inspector of UKBA.
[51] UK Home Office, Research Development Statistics, Country of Origin Information Service http://www.homeoffice.gov.uk/rds/country_reports.html (accessed 31/12/08).
[52] See explanatory notes for further clarification and information on COIS products.
[53] UK Home Office, 2005, *op cit*.

that the remaining 16 made some reference to COI, although the COIS materials were not specified. However, the case specific COIS Research Query Service was cited on 7 occasions, while 'other sources' were cited on 27 occasions across the RFRLs.[54]

It should be noted that where other sources were cited, it was not clear whether these had been taken from the COIS report or had been independently sourced, given the inconsistent methods of referencing used across all RFRLs (see section iii, Referencing of COI). Given that case owners are not permitted to conduct research independently it seems likely that COI sources referred to in this way have either been taken from the COIS country reports or from a COIS Research Query response.

In the case of the two countries for which only Key Documents are available, these were referred to in only 1 RFRL out of a total of 8. 'Other sources' were cited in 4 instances. All 3 RFRLs for the country with no COI provision cited 'other sources', although again it was not clear if these sources had been obtained as a result of a specific Research Query or by other means.

### Operational Guidance Notes as a source of COI

As indicated in Table 8 below, this study also examined the extent to which Home Office country specific policy documents, Operational Guidance Notes (OGNs), are used as a source of country information in the RFRLs under review. According to the Home Office website:

> …Operational guidance notes (OGN) provide a brief summary of the general, political and human rights situation in the country and describe common types of claim. They aim to provide clear guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave.[55]

However, the issue of the use of OGNs as a source of COI has been the matter of some concern and discussion, particularly in the forum of the Advisory Panel on Country Information (APCI), whose statutory function is to review and provide advice about the COI materials produced by the Home Office.[56] While it has been accepted by the APCI that OGNs are policy documents and on this basis beyond the remit of the panel[57], given the acknowledged COI content of the documents, it was proposed by the APCI in 2006 that the panel review the COI elements of the OGNs.[58]

The Home Office response in rejecting this suggestion is interesting in that it makes explicit the fact that the country material provided in OGNs for the purpose of contextualising policy guidance is not intended to be a substitute for the COI provision supplied by the RDS:

> • OGNs are policy documents which provide guidance on the treatment of particular categories of asylum and human rights claims. The country information element of these documents is interwoven with wider policy considerations and case law. For this reason it would be difficult to extract the country information element and retain its sense without the context of the original document.

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[54] It should be noted that direct reference to COIS reports was recorded in 44 separate RFRLs; in the case of reference to the COIS Research Query Service and 'Other sources', incidence of use was recorded, which includes reference to more than one type of source in the same RFRL.

[55] UK Home Office, Policy and Law, Guidance and Instructions, Country Specific Asylum Policy http://www.ind.homeoffice.gov.uk/policyandlaw/guidance/csap/, (accessed 04/04/07)

[56] http://www.apci.org.uk/

[57] OGNs are produced by the Country Specific Asylum Policy Team (CSAPT) in the Home Office, http://www.ind.homeoffice.gov.uk/policyandlaw/guidance/csap/. COI Research, formerly conducted in the Country Information Policy Unit (CIPU), was separated from policy within the Home Office when it was transferred to Research, Development and Statistics (RDS) in January 2005, See Advisory Panel on Country Information APCI.5.1 Home Office Organisational Changes, Home Office September 2005 http://www.apci.org.uk/PDF/apci51.pdf, (accessed 21/01/08)

[58] Advisory Panel on Country Information APCI.7.2, Future Directions for the Advisory Panel on Country Information, Dr Khalid Koser, Chair APCI, 16 October 2006, http://www.apci.org.uk/PDF/APCI_7_2_Future_directions.pdf,(accessed 21/01/08)

> • The country material cited in OGNs is selected / summarised specifically in order to provide sufficient explanation – alongside wider policy considerations and case law – of the guidance given on particular categories of claims. This country material does not seek to provide detailed information on all aspects of an issue and is not a substitute for the COI provided in COIS products. OGNs explicitly instruct decision makers to refer to the relevant COIS product/original sources for the full picture. The country material in OGNs could not therefore be evaluated in the same way as COIS COI products.[59]

A 2003 Home Office study entitled 'Country of origin information: a user and content evaluation of COI', raised the concern that OGNs are used in practice by case owners as a source of COI, at times in place of other sources of more detailed country information, to the detriment of the adequate consideration of the case.[60]

> …Some respondents suggested that the use of OGNs may result in caseworkers stereotyping claims from particular nationalities, and may lead to other sources of more detailed country information, such as country assessments and the source documentation in caseworker libraries, being under utilised. It should be noted, however, that OGNs aim to ensure the consistent application of country of origin information with the view to securing consistent asylum decision making amongst caseworkers (providing the OGNs are used with other sources of COI such as the country assessments and source documents in the caseworker libraries).[61]

Data from the present study indicates that some case owners are still using OGNs as a source of COI and, in some instances, as the only source of COI (see Appendix 3: What COI sources are used? Table 8, COI sources cited in the RFRL). Of the data sample of 83 RFRLs, the OGN was used as a source of COI in 17 cases. In 7 of these cases, the OGN was the only source of COI that was made reference to in the RFRL and in all of these cases the COI was insufficient to address the specific issues of the case, the common pattern being that the case was refused on credibility grounds, in some cases on the basis of speculative argument (see section V, Does the RFRL contain speculative argument not substantiated by COI?).

Even where the OGN was used in conjunction with other sources of COI, there was a fairly consistent pattern of under-use of COI in relation to the issues upon which case owners were making factual findings. These include, for example Afghan cases which raised the issues of forced conversion and forced marriage of Sikhs, the power and reach of local commanders or former 'warlords', the risk to family members of those wanted by Hisb-i-Islami and the availability of protection in Kabul for those who have internally relocated and fear non-state agents.

The use of OGNs as a source of policy guidance in decision making was not made explicit in any of the RFRLs where OGNs were cited.

## iii. Referencing of COI

According to the Home Office Asylum Process Manual:

> … Decision makers should state the source of any objective evidence used in the Reasons for Refusal letter. This includes information or documents that are obtained from sources such as Home Office Country Reports, Operational Guidance Notes (OGNs), or US State Department Reports, and which were subsequently used to test an applicant's credibility in the reasons for refusal letter. This is helpful to the Presenting Officer and Immigration Judge at the appeal stage.[62]

[59] Advisory Panel on Country Information APCI.8.3, Operational Guidance Notes, February 2007 http://www.apci.org.uk/PDF/APCI.8.3%20OGNs.pdf, (accessed 20/06/08)
[60] UK Home Office Research Study 271 Country of origin information: a user and content evaluation, RDS September 2003, http://www.homeoffice.gov.uk/rds/pdfs2/hors271.pdf
[61] *Op cit.*
[62] UK Home Office, *Asylum Process Manual*, Chapter 3 implementing decisions 14.4.2 Disclosure in the credibility section.

UNHCR in its 2004 report on the provision of Country Information emphasises the importance of using publically available sources of COI, which "if gathered and used on the basis of coherent standards" ensures that they are open to review and verification.[63] 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.[64]

The guidance given in the Home Office Asylum Process Manual is unambiguous in that it requires the source of any objective evidence used in the RFRL to be stated. The data set in this study however revealed that case owners from ACD and NAM decision centres used no standardised form of referencing of COI. Referencing of sources of COI in RFRLs appears to be carried out on an ad hoc basis, moreover in a significant number of instances, sources of COI were not referenced at all, or not in any meaningful way.

Table 9 illustrates the kinds of referencing problems observed in the data set of RFRLs. Across the entire sample of 69 RFRLs which made any reference to COI[65], only 20 RFRLs had at least one source correctly referenced. In this case 'correctly referenced' is taken to mean the inclusion of the source author, the name of the report and the date of publication. For ease of access to COI material cited, report section and paragraph numbers should be also stated. While these are generally stated when direct reference is made to COIS reports (the COIS report paragraph is stated, not the relevant paragraph in the original source), they are not stated in any other instances.

Home Office COIS reports are not sources in themselves, they are "…compiled from reliable material produced by a wide range of external information sources such as the US Department of State, UNHCR, human rights organisations, and news media…"[66] When COIS reports are cited as COI source material in RFRLs, the original source document and author is often not stated (23 instances). Although the paragraph reference is given, which means that it is possible to refer back to the COIS report and check the source, it is not possible to make an immediate assessment of the nature of the source of the objective evidence being used. Similarly the date of the original source[67] is not stated in many cases (19 instances) which is particularly relevant given that the COIS reports are compilations of sources including material spanning back many years. When objective evidence is brought to bear on a specific case, it is of fundamental importance to establish the temporal relevance of that evidence.

An IARLJ paper on judicial criteria for assessing COI states:

> … in order to maintain the integrity of the decision-making it is vital, when our national legislation requires us to assess current risk, that we make our assessments in the light of the latest evidence and that we avoid reliance on obsolete or out-of-date COI. That can be a tall order in some cases, since even some very well-established country reports, when examined closely, can be seen to rely on sources that are no longer recent.[68]

On the other hand, in a significant number of instances COI sources are cited in the RFRL but it is not stated whether they have been extracted from the COIS report or have been independently sourced (11 instances).[69] It is problematic that in some cases objective material is referenced to COIS with no acknowledgement of the original source, while in others the material is cited to its original source but the COIS report is not referenced. This

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[63] *Op cit*.
[64] UNHCR, *ibid,* 2004, C. Accessibility of information and its sources.
[65] 83 RFRLs in total minus 14 RFRLs which made no reference to COI, see Table 5.
[66] http://www.homeoffice.gov.uk/rds/country_reports.html
[67] As opposed to the date of the COIS report, which is not the same thing.
[68] IARLJ, Judicial Criteria for Assessing Country of Origin Information (COI): a Checklist, Paper for 7th Biennial IARLJ World Conference, Mexico City, 6-9 November 2006.
[69] Given that case owners are not permitted to carry out independent research, it may assumed that they are taken from the COIS report but in many instances this is not made clear.

highlights a lack of consistency and coherence in the approach of case owners to referencing COI and undermines the ability of the asylum applicant and their representative to verify the objective evidence and if necessary contest the conclusions drawn.

Beyond the citing of COI from the COIS reports, in a significant number of instances, no source at all was given for country information referred to in the RFRL. In a total of 12 instances across all the RFRLs where COI was used (69), the source origin was either not stated at all or the information given was incomplete (did not contain either the source author or the name of the report). In a further 4 instances, while the source name and author was stated, the date of the source was not given (see Appendix 4: Referencing of COI, Table 9 Referencing, Pre-NAM/NAM).

As Table 9 (Referencing Pre-NAM/ NAM) demonstrates, referencing patterns in RFRLs from ACD and NAM decision centres do not show a remarkably different pattern. In both cases, for example, in a significant number of instances sources cited from COIS reports are not identified and are not dated. The data sample selected in fact shows a higher incidence of this occurring in the NAM RFRLs, which suggests either that case owners have not received additional training in the correct use of COI, or that they are not consistently implementing their training in practice. This impression is reinforced by the finding that the number of instances where the COI source is simply not stated or is given but with incomplete information was the same in pre-NAM and NAM decisions.

### iv. Is sufficient and relevant COI used accurately in answering case related questions?

A 2004 Medical Foundation study revealed a high level of inconsistency between RFRLs and COI reports, as well as a tendency on the part of Home Office decision makers to "distort or misconstrue country-of-origin source materials, invariably to the detriment of the claimant, with the effect that apparently legitimate accounts were dismissed on the basis of corrupted information."[70] It was noted in the First Report of the UNHCR QI Project in February 2005, furthermore, that COI used by Home Office case owners is frequently both out of date and inadequate for refugee status determination and that it was a matter of some concern to UNHCR that some decisions (both grants and refusals) do not make any reference to COI.[71]

#### Sufficiency

There continues to be a consistent pattern of under-use of COI by initial decision makers in addressing both contextual issues and case specific questions that arise in individual asylum claims, as evidenced by the citation of COI in RFRLs.

For example, refusal decisions for Afghan cases from this sample consistently stated that there is an internal flight alternative to Kabul and that protection is available due to the presence of the ISAF forces, although in none of these cases is this assertion supported by current and sufficient COI relating to the individual profile of a claimant.

RFRLs of Iranian cases cited either insufficient or no COI for the following general and case specific issues related either to the claimant's credibility or to the assessment of future risk:

> Activities and treatment of KDPI; recruitment of Kurds by security services for missions in Iraq; arbitrary arrest; detention without charge; release without charge; release and re-arrest of political detainees; penalties for 'insult to the regime', treatment of those perceived as anti-regime; prison conditions; use of torture in detention; freedom of expression; distribution of anti-regime propaganda; adultery; fair trial; penalty for alcohol smuggling; location of village (disputed Iraq/Iran), knowledge of Farsi in Kurdish regions.

[70] Medical Foundation for the Care of Victims of Torture, *ibid,* 2004, 2.4.2 Concluding comments on the analysis of the claim and the use of country-of-origin information.
[71] UNHCR, Quality Initiative Project First Report to the Minister; 'A UNHCR review of the UK Home Office Refugee Status Determination Procedures', February 2005.

While it is the experience of the IAS Research Unit that it is difficult to find good quality and corroborated COI on the activities of dissident groups in Iran, as well as on some aspects of the activities of the security services, information that would help inform decision making was found to be available in public domain sources for all of the issues mentioned above in the course of research for these cases. As an example, one RFRL stated:

> *…You claim to be an Iranian national; however there is evidence to dispute this claim. You claim that you are from the village of Bardasoor in Iranian Kurdistan. However there is no information regarding a place of that name within Iranian Kurdistan. It is observed that there is a place of the same name within…" (Sentence unfinished, presumed Iraq)*

*Reasons for refusal letter dated 5 June 2007, CMU H12, Asylum Casework Directorate*

While a news report from Relief Web mentions a town named Bardasoor in Iraq, two other sources placed a town named Bardsur inside Iranian Kurdistan.

Refusal decisions for Zimbabwean cases made very little reference to COI overall; in particular there was virtually no reference made in COI to humanitarian conditions in the country or to the current levels of political violence. There was also limited information about issues relating to the treatment of family members and low level supporters of MDC; about the availability of treatment for HIV/ AIDS, the incidence of politically motivated rape and the consequences of writing dissident articles for the press in the UK.

For those countries where there are no COIS reports, some relevant COI was cited (presumably with the assistance of the COIS research service), to address some of the issues raised in the respective cases. However, examples of issues for which there was either inadequate or no COI are as follows:

Cote d'Ivoire: treatment of supporters of RDR/ RJR; protection for a victim of slavery, a lone woman without family support.
Guinea: detention conditions; FGM; availability of medical treatment.
Occupied Palestinian Territories: situation in Gaza (internal armed conflict); suicide bombings; Hamas recruitment methods; treatment of Hamas supporters; treatment of family members of collaborators; treatment of a single mother with no family support; rape and stigma; route of return to OPTs.

### Temporal relevance

Due to the overall inadequacy of referencing, it is difficult to assess the temporal relevance of much of the COI material cited in RFRLs. However, many instances were recorded where COI material cited was outdated, where newer material is clearly available in the public domain. For example, a 2005 report was used in one instance as a source of COI on the Taliban in Afghanistan for a RFRL dated June 2007. Where COI is sourced to COIS reports, the date of the COIS report is given (usually the most recent), but this does not accurately reflect the currency of the original source material, which may be considerably older.

### Accuracy

COI is used inaccurately on a significant number of occasions across the RFRL sample to support unfounded conclusions about the credibility of a claimant or the nature of the risk they may face.

For example in an Iranian case it is asserted in the RFRL that because there is COI evidence that security services have killed many people, the security services would not be likely to give medical treatment to those detained. Since the claimant stated that he was in detention and received medical treatment, the decision maker concludes that he could not have been detained, and his account is therefore dismissed.[72]

[72] Reasons for Refusal letter dated 25 January 2007, CMU H12, (Asylum Casework Directorate).

In a Guinean case it was stated that the UN CEDAW Committee would be able to provide protection and redress in Guinea for the claimant, in her situation as a vulnerable woman:

> … Consideration has been given to your claim that you fear returning to Guinea on the basis of you being a woman and therefore that you constitute a social group for the purposes of the convention…objective evidence provides that the government and other bodies try to eliminate the discrimination that some women in society have experienced. The, "Committee on the Elimination of Discrimination against Women,, which monitors States parties' compliance with the Convention, comprises 23 experts serving in their personal capacity" and which is a clear example of an avenue available to you should you experience any difficulties upon your return to Guinea.

*Reasons for refusal letter dated 2 March 2008, LCT 1, Asylum Casework Directorate*

A further example relates to a Somali case where the credibility of the claimant's account (and therefore of his/ her claim) is undermined by the blanket application of COI evidence from one source to the individual claimant's case:

> …the description of the state in which you claim to have discovered your home in Mogadishu in 2004, is not considered to be consistent with the available country information…The Minority Report of 2000 states that, 'The Benadiri have lost all property in Somalia during the war…Members of Somali clan militias took the majority of Benadiri homes…Those [Benadiri] who are still living in Somalia have seen their houses taken by members of the Somali clan militias…'Based on this information, it is not believed that a house that was basically structurally intact would be left unoccupied by the major clans. Indeed once you had repaired your home it is not considered likely that you would be allowed to keep full ownership of your home by the majority clans.

*Reasons for refusal letter dated 30 January 2008, Asylum Team 1 Liverpool*

An example of a complete mis-reading of COI evidence cited in the RFRL is found in another Iranian case, where the decision maker inverts the information given in COI to the detriment of the claimant's case. The claimant fears the Iranian authorities due to the links he has with the KDPI through his father, who he claims was a high profile member of the organisation who was executed as a political dissident.

> …The USSD report 2005 does state that there were reports of political killings. The government was responsible for numerous killings during the year, including executions following trials that lacked due process. Exiles and human rights monitors alleged that many of those supposedly executed for criminal offences, such as narcotics trafficking, actually were political dissidents. Taking this into account it is therefore not believed that your father was executed due to his political involvement but more the fact that he took part in a gun battle that would then trigger a criminal charge. If this is the case then there is no reason to believe that the Authorities would continue to treat you in any undue way.

*Reasons for refusal letter dated 3 January 2007, Asylum Team 2*

Finally a Palestinian case illustrates the continuing tendency of Home Office case owners to "distort or misconstrue" often inadequate COI material to the detriment of the claimant's case, as described by the Medical Foundation in 2004.[73] In this case the individual's claim was based on a fear of Hamas (in Gaza), who had killed the claimant's father and brother as Israeli spies and who had sent threatening letters to the remaining members of the family, who were all forced to flee. COI evidence from the US Department of State Human Rights Report was cited in the RFRL, which indicated that suspected Palestinian collaborators had been attacked by members of al-Aqsa Martyrs' Brigades as well as, allegedly, Hamas. The decision maker draws the following conclusion from this evidence:

> …it is considered that if you were genuinely suspected of being the daughter of an Israeli collaborator, you would have faced far graver consequences. The fact that Hamas did not take

[73] Medical Foundation for the Care of Victims of Torture*, ibid*, 2004.

more drastic action against you leads to one of two possible conclusions, either that they were satisfied that you were not of adverse interest to them or that you were not of adverse attention to them in the first place. Your fear of persecution from Hamas is therefore not well founded, and it is not believed that you ever received threats from them.

*Reasons for refusal letter dated 23 April 2008, CMU H3, Asylum Casework Directorate*

## v. Does the RFRL contain speculative argument not substantiated by COI?

The use by initial decision makers of speculative argument was highlighted by the UNHCR QI team in their second report to the Home Office Minister in February 2006. In particular initial decision makers were criticised for "attempting to guess the thought process of a third party" and for making findings of "implausibility" based on little or no evidence. UNHCR further comments that case owners tend to apply a "narrow UK-perspective when assessing events alleged to have taken place in significantly different cultural, political and social contexts."[74] These concerns had been highlighted in 2004 by both Amnesty International and by the Medical Foundation, whose report states:

> …an examination of the letters in this study revealed a worrying inability on the part of IND caseworkers to distinguish between arguments of implausibility based on proper evidence, and baseless conjecture…That speculation is common suggests a general failure to train and supervise caseworkers adequately. Where an account is dismissed as implausible, a caseworker must explain, in full, how they have reached their conclusion, and evidence must be available to support any inferences drawn.[75]

Amnesty International found that Home Office decision makers frequently make assumptions about how people would behave in certain situations "which appear to be based on nothing more than the sensibilities of the individual caseworker themselves, in accordance with their own view of what would constitute 'rational' behaviour in a given situation."[76]

Evidence from this study suggests that this tendency persists. Speculative argument of the type described by UNHCR was found to have been employed in 28 of the 83 RFRLs in the sample, and on occasions a claimant's entire account is dismissed as incredible on the basis of cumulative speculative argument.

Examples of this type of use of speculative argument include the following, from DRC and Iranian cases respectively:

> …Your account of the attack that occurred in April 2006 is only considered partially credible…you have recounted the attack as being perpetrated by men in civilian clothes, implying that the attackers could be anybody. You have also stressed the point that the attackers looted your house and robbed you of money and a sewing machine. Whilst it is conceivable that Mai Mai militia may have looted your house for money, it is not considered credible that this group of people would have stolen a sewing machine. By your own admission, the Mai Mai militia live in the mountains and the bush where they have camps and it is considered implausible that with their lifestyle they would have stolen this kind of item…
>
> …It should be noted that by your own admission, you have stated that between April/May 2004 and April/May 2006 there were no physical attacks on you or your family. It is considered that if you were being persecuted to the degree that you describe by Mai Mai militia because of your imputed Nationality then a far more consistent pattern of persecution would have occurred. It is not considered credible that after going to the trouble of attacking your family in 2004, the militia would have then allowed you and the rest of your family to reside in peace for two years until they perpetrated the next attack.

*Reasons for refusal letter dated 5 June 2007, Asylum Team 2 Cardiff*

> …You claim that you were asked to travel across the border to collect material on the KDPI from the KDPI headquarters in Iraq. Your were unsure of exactly how many times you did this and you claim that a car would meet you over the border in 'x' and take you to the KDPI headquarters. This is considered not to be credible. It is unlikely that you would be able to walk for 5 hours, in the dark, avoiding border checkpoints and still manage to find a small village on

[74] UNHCR (QI) Quality Initiative Project Second Report to the Minister, February 2006 Paragraph 2.2.9.
[75] Medical Foundation for the Care of Victims of Torture, *ibid,* 2004 2.3.4 Concluding observations on credibility.
[76] Amnesty International*, ibid*, 2004, 4. A negative culture, Denials of credibility in Home Office Refusal Letters.

> the border where a car was waiting. Furthermore it is not considered credible that you would be able to cover this distance, through the wilderness and return carrying packages full of newspapers and leaflets.

*Reasons for refusal letter dated 1 February 2007 Asylum team 5 Leeds*

In a further example from an Afghan case, it is assumed by the decision maker, on the basis of no evidence, that members of a family could not be on opposing sides during a time of internal conflict in a country. The fact that, according to some cultural practices, a widow might be expected or forced to marry her husband's brother on his death is also not taken into account when it is found incredible that the claimant's mother would have married his uncle.[77]

> …it is not found credible that you were actively sought by your paternal uncle or Hezb-e-Wahdat forces in Afghanistan after the fall of the Taliban in 2001. In the first instance, it is doubted that your paternal uncle is a high level Hezb-e-Wahdat commander. You state that your father was a commander in the Najibullah government and that he was killed by Hezb-e-Wahdat forces. It is deemed unlikely that brothers would be on opposing sides of this dispute. Furthermore, it is found incredible that your mother, having been married to a commander in the Communist Najibullah government, would then marry a commander of Hezb-e-Wahdat. (You claim in your witness statement at paragraph 6 that your mother married your uncle a year an a half after your father died and that he and his son came to live in your family home.)

*Reasons for Refusal letter dated 26 March 2007, Asylum Team 5 Leeds*

## Conclusions

It is generally accepted that there is a need for Country of Origin Information (COI) in refugee status determination in order to inform decision makers about conditions in the countries of origin of asylum applicants and to assist them in establishing on objective criteria whether an asylum claim is "well-founded". The importance of COI has been endorsed by statements, reports and policy documents of the UNHCR, the international body of Immigration Judges (IARLJ), the EU and the UK Government (EU Qualification Directive) and by the Home Office Asylum Policy Unit itself.

However, concerns have been expressed in a number of reports about the quality of initial decision making in asylum claims in the UK, highlighting among other things persistent and serious shortcomings in relation to the use of COI by Home Office case owners. These concerns have been born out by the experience of the IAS Research Unit and have prompted the undertaking of this study, as part of a wider project examining the use of Country of Origin Information in the asylum process in the UK.

Specific concerns explored through a detailed study of a sample of refused decision letters (RFRLs) received by the IAS Research Unit between January and June 2007 were: consistency in the use of COI; adequacy of referencing of COI and transparency of sources; appropriate selection and application of COI to case related questions.

The findings of this study highlighted above all the high level of inconsistency in the way that COI is employed in initial decision making as evidenced by its citation and application in Reasons for Refusal Letters (RFRLs). Despite explicit instructions to case owners mandating the use of COI, in a significant number of cases in this sample, COI was not used or was not cited, was under-used or was misused to the evident detriment of the asylum applicant. Furthermore, despite Home Office case owners having been specifically criticised by the UNHCR and others for the use of speculative argumentation unsubstantiated by objective

[77] 'Levirate marriage' is a practise well known to anthropologists, described as follows: 'This practice specifies that a man's widow must marry his surviving brother in order to continue the relationship between their respective groups that was initiated in the original marriage…', http://www.umanitoba.ca/faculties/arts/anthropology/tutor/marriage/levirate.html, (accessed 04/04/07).

evidence in reaching their decisions on individual asylum claims, evidence from this study indicates that this practice persists.

On the basis of the findings of this study a number of recommendations have been made focusing on principles of good practise in the use of COI in decision making on asylum cases. These include the presumption of use of COI in all asylum cases to address all relevant aspects of each case; the proper and transparent citation of all COI used and the sanctioning of decision making based on subjective and uninformed speculation.

It is specifically recommended that the Home Office Quality Assurance, Processing and Improvement Unit should consider investigating the use of COI by case owners with a view to identifying training and support needs and implementing an effective monitoring process. It is furthermore recommended that good practice guidelines in the use of COI should be developed and incorporated into the Asylum Policy Instructions as well as the standard training and accreditation process for Home Office case owners and should be routinely monitored as past of the Home Office Quality Assurance programme.

## Appendix 1: Detailed description of data set

The data set included all the RFRLs received in the RIU, January – June 2007 for the following eight countries: Afghanistan (11), DRC (8), Iran (25), Somalia (4), Zimbabwe (24), Cote d'Ivoire (5), Guinea (3) and the Occupied Palestinian Territories (3), as described above. This came to a total of 83 RFRLs, of which 63 were asylum claims based on political opinion or imputed political opinion, the majority of these coming from Iran (20) and Zimbabwe (23). The remaining 20 claims represented by this sample of RFRLs were based on race and ethnicity (7), religion (6), particular social group (1) as well as Humanitarian Protection on a variety of grounds (6). (See Table 1 Sample – Country and Table 4 Sample - Basis of claim, by country)

The RFRLs represented decisions from a large number of different BIA decision centres, from both the Asylum Casework Directorate (44 in total) and the New Asylum Model (39 in total). The data set represents a fairly even split between pre-and post-NAM decisions. Fourteen different ACD centres were represented in total, although with the exception of Oakington, these are identified by number not location. A total of six NAM Centres were represented in the sample, which therefore includes all the NAM centres except Glasgow. Teams from the NAM centres represented in the sample are located in Cardiff, Leeds, Liverpool, Solihull, Central and West London.

**Table 1 Sample - country**

| **COUNTRY** | **Number of RFRLs** |
|---|---|
| **Countries for which the Home Office produce COIS reports** | |
| Afghanistan | **11** |
| DRC | **8** |
| Iran | **25** |
| Somalia | **4** |
| Zimbabwe | **24** |
| | **72** |
| **Countries for which the Home Office produce COI Bulletins** | |
| Cote d'Ivoire | **5** |
| Guinea | **3** |
| | **8** |
| **Countries for which there is no Home Office COI provision** | |
| OPTs | **3** |
| | **3** |
| **TOTAL** | **83** |

**Table 2 Sample - ACD/ NAM**

| **ACD/ NAM** | **Number of RFRLs** |
|---|---|

| | |
|---|---|
| **ACD** | **44** |
| **NAM** | **39** |
| | **83** |

*ACD – Asylum Casework Directorate, pre-NAM*
*NAM – New Asylum Model*

**Table 3 Sample - Decision Centre**

| **BIA Decision Centre** | **Number of RFRLs** |
|---|---|
| **ACD Case Management Units** | |
| ACD (CMU not specified) | **7** |
| CMU H3 | **5** |
| CMU H4 | **4** |
| CMU H5 | **2** |
| CMU H9 | **4** |
| CMU H10 | **3** |
| CMU H12 | **4** |
| CMU H15 | **3** |
| CMU Oakington | **2** |
| LCT 1 | **3** |
| LCT 4 | **3** |
| CRD | **1** |
| SDMU | **2** |
| ICD | **1** |
| **TOTAL** | **44** |
| | |
| **NAM Asylum Teams** | |
| Cardiff | **4** |
| Leeds | **10** |
| Liverpool | **17** |
| Solihull | **2** |
| Central London | **5** |
| West London | **1** |
| **TOTAL** | **39** |

**Table 4 Sample - Basis of claim, by country (primary issue)**

| **Basis of claim** | **Race** | **Religion** | **Nationality** | **PSG** | **Political opinion** | **HP Art 2&3** |
|---|---|---|---|---|---|---|
| **Afghanistan** | | **3** | | | **7** | **1** |
| **DRC** | **2** | **1** | | | **5** | |
| **Iran** | **1** | **2** | | | **20** | **2** |
| **Somalia** | **3** | | | | | **1** |
| **Zimbabwe** | | | | | **23** | |
| | | | | | | **1** |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Cote D'Ivoire** | | | | | **4** | **1** |
| **Guinea** | | | | **1** | **2** | |
| | | | | | | |
| **OPTs** | **1** | | | | **2** | |
| **TOTAL** | **7** | **6** | **0** | **1** | **63** | **6** |

## Appendix 2: No reference to COI in RFRLs

**Table 5 Use of COI in RFRLs - country**

| Country | Number of RFRLs | Number of RFRLs - no COI used | COI used – average no. of paragraphs | COI used – range of paragraphs |
|---|---|---|---|---|
| **Afghanistan** | 11 | 0 | 4 | 1-7 |
| **DRC** | 8 | 1 | 4 | 1-11 |
| **Iran** | 25 | 3 | 4 | 1-18 |
| **Somalia** | 4 | 1 | 6 | 2-9 |
| **Zimbabwe** | 24 | 7 | 3 | 1-6 |
| | **72** | **12** | | |
| **Cote d'Ivoire** | 5 | 2 | 2 | 1-4 |
| **Guinea** | 3 | 0 | 4 | 2-5 |
| | **8** | **2** | | |
| **OPTs** | 3 | 0 | 3 | 1-5 |
| | **3** | **0** | | |
| | **83** | **14** | **Overall Average 4** | |

**Table 6 Use of COI - ACD/ NAM**

| ACD/ NAM | Number of RFRLs | Number of RFRLs - no COI used |
|---|---|---|
| ACD (pre-NAM) | 34 | 5 |
| NAM | 39 | 5 |
| Other | 10 | 4 |

**Table 7 RFRLs with no COI**

| Country | Decision Centre | ACD, NAM. other | Basis for claim | Issues for COI |
|---|---|---|---|---|
| **DRC (1)** | SDMU | other | Race/ethnicity | Wabembe ethnic group; reach and power of Mai- Mai; participation of Mai-Mai in government; |
| **Iran (3)** | 1.ACD | ACD | Political opinion | 1. Power of Sepah, treatment of those perceived to be anti-regime, fair trial |
| | 2. ICD | other | Political opinion | 2. Imputed political opinion, satellite dishes, anti-regime programmes, freedom of expression, fair trial, torture, distribution of illegal material, association with MeK |
| | 3. CMU H9 | ACD | Political | |

| | | | | |
|---|---|---|---|---|
| | | | opinion | 3. Dissent, illicit material, treatment in detention, torture, detention practices, fair trial |
| **Somalia (1)** | LCT 1 | other | ethnicity | Bajuni tribe, risk on return |
| **Zimbabwe (7)** | 1.CMU H5<br><br>2. Asylum Team I, Leeds<br>3. Asylum Team 2 C London<br><br>4. CMU H5<br><br>5. Asylum Team 3 Solihull<br>6.Asylum Team 4 Liverpool<br>7. not known | ACD<br><br>NAM<br><br>NAM<br><br>ACD<br><br>NAM<br><br>NAM<br>NAM | Political opinion<br>Political opinion<br><br>Political opinion<br><br>Political opinion<br><br>Political opinion<br><br>Political opinion<br>Political opinion | 1.MDC family members, political violence, return failed asylum seeker<br>2. MDC family members, political violence, return failed asylum seeker<br>3. MDC family members, political violence, return failed asylum seeker<br>4. MDC family members, political violence, return failed asylum seeker<br>5. MDC family members, Sexual violence<br>6. Rape, impunity, protection, return issues<br><br>7. Imputed MDC, writing dissident articles, collaboration with UK press, return issues |
| **Cote d'Ivoire (2)** | 1.LCT 4<br><br>2. CMU H4 | Other<br><br>ACD | Political opinion<br>Victim of slavery | 1. Multiple case specific, Forces Nouvelles<br>2. Slavery, return issues, lone female |

## Appendix 3: What COI sources are used?

**Table 8 Citation of COI sources in the RFRL**

| Country | COIS country reports | COIS Key docs | COIS Bulletin | COIS Research Query | OGN as source of COI | Other sources* |
|---|---|---|---|---|---|---|
| **Afghanistan (11)** | 10 | 0 | 0 | 1 | 4 | 5 |
| **DRC (8)** | 4 | 0 | 0 | 5 | 2 | 5 |
| **Iran (25)** | 17 | 0 | 0 | 0 | 5 | 6 |
| **Somalia (4)** | 2 | 0 | 0 | 0 | 1 | 2 |
| **Zimbabwe (24)** | 11 | 0 | 0 | 1 | 3 | 9 |
| **72** | **44** | **0** | **0** | **7** | **15** | **27** |
| **Cote d'Ivoire (5)** | 0 | 0 | 0 | 0 | 2 | 2 |
| **Guinea (3)** | 0 | 1 | 0 | 0 | 0 | 2 |
| **8** | **0** | **1** | **0** | **0** | **2** | **4** |
| **OPTs (3)** | 0 | 0 | 0 | 0 | 0 | 3 |
| **3** | **0** | **0** | **0** | **0** | **0** | **3** |
| **TOTAL 83** | **44** | **1** | **0** | **7** | **17** | **34** |

* Not clear if sources are from the COIS reports/ COIS Bulletins or are independently sourced.

## Appendix 4: Referencing of COI

**Table 9 Referencing, Pre-NAM/NAM**

| **Country** Where COI has been used in the RFRL | **Complete reference** author, name of report, date | **COIS report not attributed** | **COIS report sources not dated** | **COIS report sources not stated** | **OGN sources not stated** | **Source origin not stated, incomplete information** | **Source not dated** |
|---|---|---|---|---|---|---|---|
| **ACD Pre-NAM** | 12 | 9 | 8 | 9 | 2 | 6 | 1 |
| **NAM** | 8 | 2 | 11 | 14 | 6 | 6 | 3 |
| **Total** | 20 | 11 | 19 | 23 | 8 | 12 | 4 |

## Appendix 5: Is sufficient and relevant COI used accurately in answering case related questions?

**Table 10 Accuracy and Sufficiency of COI**

| **AFGHANISTAN** | **Comments** |
|---|---|
| Temporal relevance | *Dated COI, 2004 (008)*<br>*COI dated 2005 re Taliban (011 p10)* |
| Sufficiency | *Insufficient or no COI to establish IFA to Kabul, protection (005 p33), all cases*<br>*Insufficient COI re treatment if Sikhs, Hisb-i-Islami, power and reach of commanders* |
| Accuracy | *Misuse of inaccurate/ selective COI, attack on shop during prayer time(005 p27)* |
| **DRC** | |
| Temporal relevance | *(013 p13) COI from 2003, no current information about current risk to Tutsis and protection* |
| Sufficiency | *Insufficient COI re significant issues; IFA Kinshasa, IFA single women, protection, risk to Tutsis, Banyamulenge, treatment of political opposition, medical facilities, case specifics (details of a rally)* |
| Accuracy | *(012) good use of COI research service to establish case specific facts (details of a demonstration, arrest of particular individual, detention facility, availability of treatment for hypertension),but p28 COI inaccurately represented in RFRL* |
| **Iran** | |
| Temporal relevance | *Sources about Kurds, generally old (023)*<br>*Sources undated; cannot assess temporal relevance (020)* |
| Sufficiency | *Insufficient/ no COI for: activities and treatment of KDPI, use of court summons, recruitment of Kurds by security services for missions in Iraq; actions of security forces; arbitrary arrest; detention without charge; release without charge; release and re-arrest of political detainees; penalties for 'insult to regime', those perceived as anti-regime; prison conditions; use of torture in detention; freedom of expression; distribution of anti-regime propaganda; adultery; fair trial; penalty for alcohol smuggling;*<br>*(043) location of village (disputed Iraq/Iran), language (Kurdish region); calendar* |
| Accuracy | *(022 p11) One source from COIS describes supporters of KDPI as urban, middle class; outdated source and inaccurate (may have described the party elite/ intellectual support); no other sources used on issue and relied on to dispute KDPI membership/ support of uneducated rural Kurds (majority of Kurdish clients).*<br>*(023) complete mis-reading and mis-application of COI re executions of political dissidents on false criminal charges. *See below.*<br>*(024) mis-application of COI, because security services have killed many people (according to COI) they would not give medical treatment in detention (no COI to support), therefore the claimant was not in detention.* |

| | |
|---|---|
| | *(032) mis-application of COI; because of gender segregation (COIS cited but not source or specific information) claimant could not have met a man in a doctor's surgery.*<br>*(043) poor use of COI to argue that because of poor treatment of juveniles in justice system, including execution of minors, the claimant's account of release from detention as a juvenile is not credible.* |
| **Somalia** | |
| Temporal relevance | *COI generally very dated; 2000, 2004,2005* |
| Sufficiency | *(047) Inadequate use of COI sources to claim that Bajuni cannot be of Yemeni origin; disputed meaning of word (I source used to contradict claimant).* |
| Accuracy | *(046 p28) COIS regarding availability of protection in Saudi Arabia for Somalis actually refers to Iraqi in SA.*<br>*(046) Inaccurately cited COI source (no author) states Benadiris all lost property to majority clan militias in Mogadishu, therefore it is not possible that claimant's property would be empty when they returned to it; reliance on one source which states that Benadiri have lost ALL property to militias. *see below* |
| **Zimbabwe** | |
| Relevance of COI | *(067) good use of COI to establish treatment of MDC; facts of Operation Murambatsvi* |
| Temporal relevance | *Sources are generally undated (cited to COIS no dates); some dated 2004, 2005* |
| Sufficiency | *Overall very limited COI used. Inadequate COI regarding; case specifics; return issues failed asylum seeker; humanitarian situation; levels of political violence; risk to family members of MDC; low level supporters of MDC; availability of treatment for HIV/AIDS; incidence of politically motivated , impunity, rape, freedom of expression writing dissident articles in UK press)* |
| Accuracy | *(064) government source cited regarding risk on return from the UK; also (050)*<br>*(050 p11) COI evidence does not support conclusion that if claimant was wanted by security forces he would have been detained/ prevented from leaving the country.*<br>*(050 p13) Contradictory information from sources about risk to white Zimbabwean on return; conclusion drawn from a government statement.*<br>*(066) Inaccurate use of IWPR report on drug availability; omits to say that drugs where available are unaffordable.* |
| **Cote d'Ivoire** | |
| Temporal relevance | *Where COI used, limited referencing, so difficult to assess* |
| Sufficiency | *Limited or no COI regarding: treatment of supporters of RDR, RJR; slavery and return, including protection, issues for lone female; case specific incidents* |
| Accuracy | |
| **Guinea** | |
| Temporal relevance | |
| Sufficiency | *Inadequate COI regarding: conditions in detention; FGM, protection medical issues.*<br>*(079) On the basis of one (UN) news report RFRL concludes that there is protection from FGM which is acknowledged to be a widespread practice.* |
| Accuracy | *(079 p12) CEDAW Committee can provide protection and redress for women in Guinea. **<br>*(079 p15) RFRL cites USSD report which states "prison conditions remain inhumane and life threatening…"etc, RFRL concludes "prison conditions is poor". USSD states "there were no politically motivated disappearances" during the reporting year; RFRL states this confirms that the authorities would have no interest in the claimant on the basis of political opinion or activities.* |
| **OPTs** | |
| Temporal relevance | *COI mostly dated; 2004- 2006* |
| Sufficiency | *Limited COI regarding: situation in Gaza; Hamas recruitment; level of suicide bombings; no COI regarding risk to family members of Hamas, surveillance of Hamas supporters; risk to family members of alleged spies; risk to single mother, lone woman no family support; rape and stigma; internal armed conflict in Gaza; return issues* |
| Accuracy | *(083 p18) COI relates to attacks on alleged collaborators by al-Aqsa Martyrs Brigade; used to draw conclusions regarding risk to daughter of Israeli* |

| | |
|---|---|
| | *collaborator (risk to family member) who fears Hamas (since they haven't taken more drastic action against you, you are not of adverse interest to them).* |

## Appendix 6: Does the RFRL contain speculative argument not substantiated by COI?

**Table 11 Use of speculative argument**

| Country | | Number | Issues decided on a speculative basis (summary, non-exhaustive) |
|---|---|---|---|
| Afghanistan | ACD<br>NAM | 0<br>5 | *Mother of claimant married husband's brother when husband died, despite political differences; division of family on political lines; powerful individuals who 'upheld law and order' also involved in assassinations; Pashtun would not be a Mujahidin commander because Taliban are Pashtun* |
| DRC | ACD<br>NAM | 0<br>3 | *Claimant would have fought with Mai Mai militia not run away, otherwise was in collaboration with them;* |
| Iran | ACD<br>NAM | 7<br>7 | *Claimant's could not have crossed the border to Iraqi Kurdistan at night and avoided checkpoints; if claimant's (executed) father was 'high profile' why was he not arrested and executed earlier, cannot have been 'high profile; if the authorities has been suspicious about the claimant they would have detained or charged him not just asked him to report regularly on visitors to the family house; security officials would not attempt to recruit a suspected KDPI supporter for a mission or ask him to undertake further missions when he failed to complete the first; when detained beaten and questioned the claimant would not have waited 20 days before confessing his fathers role in KDPI and execution; claimant could not have been released from detention by individuals known to him in the security services (from military service) and still claim to fear the security services; claimant would not have lent a politically sensitive video to a friend; because of gender segregation in society it is not possible for a man and a woman to have met and struck up a relationship in a public place; claimant (smuggler) could not have escaped a government ambush in the way described therefore it did not take place; claimant would not have got into a fight with a member of Basij at a demonstration and later gone to a Karate club with Basij members and been threatened with revenge by Basij members and got into a further fight because he could not control himself, therefore non of these incidents occurred* |
| Somalia | ACD<br>NAM | 1<br>1 | *Somalia was not safe in 2004 as applicant claims, therefore applicant would not have chosen to return (from Saudi Arabia), as did return claimant could not be a minority clan member, no one who is a minority clan member would have chosen to return in 2004; Saudi Arabia was a safe haven for Iraqi therefore protection would have been available to Somalis; minority clan members were attacked and victimised, since claimant was not attacked 1994-2000 could not be a minority clan member;* |
| Zimbabwe | ACD<br>NAM | 1<br>1 | *It is not considered plausible that ZANU-PF members could have pulled the claimant out of her truck as she went home therefore it is not accepted that she was attacked; it is not accepted that the police were able to detain the claimant while all others (MDC supporters she was driving in her truck) escaped, therefore they did not stop her; it is not believed that the claimant worked for x company, therefore she could not have helped MDC members, therefore she could not have come to the attention of the authorities; serious incidents of violence against MDC are usually* |

| | | | |
|---|---|---|---|
| | | | *reported, claimant has produced no evidence so there is no reason to accept authorities suspect her of being MDC supporter; claimant could nit have escaped detention if of interest to the authorities* |
| Cote d'Ivoire | ACD<br>NAM | 1<br>1 | *Claimant's account of involvement with FN not accepted – FN would not have set up a computer data base containing information about their operations, if they had they would not have recruited a student to work on it, a government spy would not have approached the claimant in public, claimant would not have continued to work for FN having given the government information, the FN would not have shot other IT technicians and not the claimant, the claimant would not have continued working for FN after this but would have fled immediately, it is not credible that claimant would have been arrested and tortured because his brother (army colonel) would have been able to secure his release, it is not accepted that a doctor would assist in the escape and fight of the claimant – entire account is considered fanciful; claimant was captured and kept as a sex slave with a rebel commander for 2 years but did not know the name of the rebel group, therefore it is not accepted that she was captured by them; it is not accepted that the claimant would not know more about the rebel commander than his name and that he would leave money in his house (which the claimant used to assist her escape) therefore the claimant was not captured by rebels and the entire account is not accepted* |
| Guinea | ACD<br>NAM | 1<br>1 | *If claimant was afraid for his security he would not have attended a demonstration, claimant would not have placed himself near government buildings for security; claimant was able to escape across the border of the country having escaped detention so authorities cannot have been interested in him; claimant's credibility rejected on basis of husband's rejected asylum claim (claimant was independently politically active) – it is not believed that the claimant is RPG, the IJ did not accept the claimant's husband asylum claim, the claimants account of escape from detention is not accepted or that the claimant would face persecutory treatment* |
| OPTs | ACD<br>NAM | 1 | *Since militants are known to kill suspected collaborators and since the claimant was not killed she is not of interest to militants.* |
| TOTAL | ACD<br>NAM | **12**<br>**19**<br>**31** | |

# *The Use of Country of Origin Information in Asylum Appeal Determinations*

*Laurel Townhead*[78]


## Summary

The advent of Country Guidance cases means that the Asylum and Immigration Tribunal's response to Country of Origin Information is publically available and detailed in a growing body of case law. However, the way in which Country of Origin Information (COI) is responded to in the vast majority of (unreported) asylum appeals is largely unknown. This study has systematically examined the use of COI in a sample of asylum determinations in order to learn more about what COI is used for and how it is used by Immigration Judges.

The study demonstrates that COI is not dealt with in a uniform manner by immigration judges. There is a lack of transparency in conveying both the information put before the Tribunal, and how the evidentiary value of this information is analysed and assessed. The study recommends the further dissemination and implementation of the International Association of Refugee Law Judges' Country of Origin Judicial Checklist and Explanatory Note, and the creation of new guidance on how to refer to COI and present COI assessments in AIT determinations.

The first part of this paper outlines the rationale and methodology. The main body elaborates on findings in 11 areas, outlining the results of the study and identifying and analysing any trends observed. The paper ends with recommendations for Immigration Judges and for parties to immigration appeals and highlights possible areas for further research.


## Key Findings

- There was some mention of COI in every one of the determinations in the sample, although this is merely a passing mention in some.
- There was a lack of transparency in conveying both what information was before the Tribunal and how this information was analysed and assessed.
- Within the sample COI can be observed to be a tool used by Immigration Judges for a range of purposes:
  - to locate places named by applicants
  - to corroborate the status and activities of named individuals
  - to assess future risk
  - to assess general credibility of story (i.e. does it fit with a pattern of violations)
  - to assess reliability of documents
  - to assess weight to be given to expert testimony
  - to assess weight to be given to non-expert testimony
- Home Office Country of Origin Information Service products followed by Country Guideline cases were most frequently cited sources of information.
- Immigration Judges have used Country of Origin Information from Operational Guidance Notes.

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## Key Recommendations

- For the purposes of transparency it would be useful to include a full list of Country of Origin Information sources submitted by each party to the Tribunal as is done increasingly in Country Guideline cases and as is done or done partially in some of the determinations examined.

- In the interests of transparency, any assessment of the different evidential value of different sources of COI should be made explicit.

- The distinction between Home Office Country of Origin Information products, such as the Country of Origin Information Service Reports, and Home Office policy documents, such as the Operational Guidance Notes should be understood by all parties to the proceedings. In light of their author and stated purpose, Immigration Judge should not rely on COI drawn from Operational Guidance Notes.

- Immigration Judges should be aware that a number of sources may be needed to build up a clear picture of the situation in a country and even then individual asylum seekers may well have experiences that are not covered in the reports on a country.

- It is essential that Immigration Judges have enough time in the hearing, whilst considering the case and in drafting the determination to fully engage with any relevant COI submitted to them and to record their assessment of it.

- Further dissemination of the International Association of Refugee Law Judges' *Country of Origin Information Judicial Checklist* and *Explanatory Note* would be useful. This should be coupled with a discussion on overcoming challenges posed to their implementation, including those resulting from a high caseload.

- Guidance on how to reflect Country of Origin Information and the assessment of COI in determinations could be beneficial in increasing transparency.

## Rationale

The rationale of this study was to examine how COI was used in determinations delivered by the Asylum and Immigration Tribunal (the Tribunal) in asylum appeals through a review of determinations. This study is part of a project[79] that has sought to examine the use of COI in the asylum process from end to end to gain a clearer picture of how it is currently used and assess whether there is an understanding of its role, purpose, scope and limits.[80] The role and importance of COI in judicial decision making in asylum appeals is spelt out clearly in *LP Sri Lanka [2007]*:

> Refugee and Protection law has developed over the last 30-40 years and, for entirely logical reasons, as noted, the rules of evidence that are applicable in other fields of civil law are not applicable here. Those reasons relate to the unique nature in which claims arise and the serious consequences that may occur if a wrong decision is reached. They also relate to the inherent difficulty that can arise in assessing whether an appellant has a well-founded fear of persecution (or other serious harm) on return to [usually] his home country. **That assessment must be made by considering the totality of the evidence, including hearsay evidence, from the appellant and an often vast array of other sources, of variable quality.** That much has been recognised in a number of cases, including *Sivakumaran* [1988] AC 958 and *Karanakaran* [2001] ImmAR 271.[81]

[79] The project incorporates the 3 studies in this publication.
[80] More information on the role, purpose, scope and limits of country of origin information in the refugee status determination process can be found in ACCORD & UNHCR: April 2006, *Researching Country of Origin Information: A Training Manual*.
[81] LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076, para. 21, emphasis added.

UNHCR, ACCORD[82] and the European Union have all produced standards on the use and scope of COI. These however, focus primarily on production/research and choice of sources rather than offering guidance as to how Immigration Judges should interpret or assess the sources presented before them.[83] Guidance on how this has been provided by the International Association of Refugee Law Judges, which has developed a *Country of Origin Information Judicial Checklist* with 9 questions for judges to consider when assessing COI:

*Relevance and adequacy of the information*

i) How relevant is the Country of Origin Information to the case in hand?
ii) Does the Country of Origin Information source adequately cover the relevant issues?
iii) How current or temporally relevant is the Country of Origin Information?

*Source of the Information*

iv) Is the material satisfactorily sourced?
v) Is the Country of Origin Information based on publicly available and accessible sources?
vi) Has the Country of Origin Information been prepared on an empirical basis using sound methodology?

*Nature/Type of Information*

vii) Does the Country of Origin Information exhibit impartiality and independence?
viii) Is the Country of Origin Information balanced and not overly selective?

*Prior Judicial Scrutiny*

ix) Has there been judicial scrutiny by other national courts of the Country of Origin Information in question?

These standards and those mentioned above differ in their comprehensiveness and perspective but not significantly in their substance. There is very little in the way of guidance for Immigration Judges on how they should present COI in their determinations nor of how they should record the assessment they make on the basis of the 9 questions above.

Since 2003 the Immigration Appeal Tribunal and now the Asylum and Immigration Tribunal has issued Country Guideline cases. Commenting on the establishment of the Country Guideline case system, the Court of Appeal stated that:

> …when [the Immigration Appeal Tribunal] determines to produce an authoritative ruling upon the state of affairs in any given territory, it must in our view take special care to see that its decision is effectively comprehensive. It should address all the issues in the case capable of having a real, as opposed to fanciful, bearing on the result and **explain what it makes of the substantial evidence going to each result**.[84]

These cases seek to make an assessment of the situation in a particular country, most commonly for individuals with a specific profile. The determinations of such cases are publically available and can be relied on in future cases as evidence of the Tribunal's understanding of the situation in question. This study does not consider the use of COI in Country Guideline cases as this was considered in a previous IAS report.[85]

This study examines the use of COI in unreported asylum appeal determinations, which make up the vast majority of asylum appeal decisions. Unlike Country Guideline cases they are not automatically available to the public. This study has sought to review cases in which the country situation has not been highlighted for special consideration, cases that constitute the day-to-day work of the Tribunal's various hearing centres across the country.

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[82] See explanatory notes on ACCORD at the front of this publication.
[83] The UNHCR and ACCORD standards are summarised in Gabor Gyulai (2007) *Country Information in Asylum Procedures: Quality as a Requirement in the EU* (Budapest, country of origin information Network III and Hungarian Helsinki Committee), pp.13-16. The Common EU Guidelines for processing Country of Origin Information (COI) where release in April 2008.
[84] S & Others [2002] INLR 416, para. 29, emphasis added.
[85] See, Natasha Carver 'An "effectively comprehensive" analysis?' in Colin Yeo (ed.) *Benign and Practical: Country Guideline Cases*, London, IAS, (2005).

## Methodology

In reviewing the determinations this study has not sought to assess the quality of the decision that has been made. The purpose is to focus on the use of COI in the determination by using the questionnaire (Contained in Annex II) for each of the determinations.

It was not possible to gain access to a sample of both allowed and refused appeals. The Tribunal does not hold a central catalogue of these decisions and was not in a position to release a sample for this study. Therefore, the sample was drawn from cases that IAS had open at the time of sample collection. The majority of those available were cases in which the appeal had been dismissed and therefore a decision was taken to focus only on determinations in unsuccessful appeals. This provides a parallel to the Reasons for Refusal Study, which examined the use of COI in first instance refusals of asylum claims.

The study's sample was drawn from the same countries as the sample in the Reason for Refusal Letter study. This includes 5 countries for which Home Office Country of Origin Information Service (Country of Origin Information Service) Reports are produced, 2 for which Home Office Country of Origin Information Service Key Documents are listed, and 1 for which no COI product has been produced by the Home Office, as follows:

**Table 12 – Distribution of Countries with Respect to Home Office Country of Origin Information Service Products**

| | |
|---|---|
| Countries for which there is a *Country of Origin Information Service report* | Afghanistan, DRC, Iran, Somalia, Zimbabwe |
| Countries for which there is a *Country of Origin Information Service Bulletin or Key Documents* | Cote d'Ivoire, Guinea |
| Countries for which there is *no Country of Origin Information Service product* | Israel and the Occupied Territories |

Although the structure of determinations varies from Immigration Judge to Immigration Judge there are core parts of the determinations that feature in most if not all determinations. Namely:

- Summary of the basis of the case
- Summary of submissions
- Consideration
- Findings

The focus of this part of the research project is to examine the use of COI by the Tribunal, therefore the data primarily relates to the use of COI by Immigration Judges in their considerations and findings. As such this study does not comment on the use of COI by the Home Office Presenting Officers/case owners nor by the appellant or their representatives. This remains an area for further possible research involving observation of the Tribunal and structured interviews with the key actors. Tables describing the data set are included in Annex I.

## Results

### i. Reference to Country of Origin Information

The first and most striking observation is that every single one of the determinations examined made some reference to COI in the Immigration Judge's considerations. Further, there is only 1 determination in which not a single source of COI was named. This indicates that even in those cases where COI was not seen as determinative or central it is still understood to be an essential part of the assessment made by the Tribunal.

The extent to which COI was engaged with varied greatly from only a passing mention to a discussion of several sources. It is clear that COI would be more important in some cases than in others and this may account for some of the difference in the levels of engagement. However, the variance in the sample is suggestive that whilst the importance of COI as a "crucial aid"[86] was understood there was a lack of consistency in the way in which Immigration Judges approached COI.

### ii. Use of Sources

**Table 13 – Incidence of Use of Selected Named Sources across the Sample[87]**

| Source | Number |
|---|---|
| Amnesty International | 2 |
| Country Guideline Cases | 18 |
| Home Office Country of Origin Information Service Bulletin/Key Documents | 3 |
| Home Office Country of Origin Information Service Report | 20 |
| Home Office Country Specific Asylum Policy Team Operational Guidance Note | 4 |
| Human Rights Watch | 4 |
| US Department of State | 8 |
| Other | 18 |

**Table 14 – Breakdown of 'Other' Sources and Incidence of Use**

| Other Sources | Number |
|---|---|
| BBC News | 1 |
| Canadian Immigration and Refugee Board Research Directorate | 3 |
| Crisis Group | 1 |
| Danish Immigration Service | 7 |
| Expert Report | 5 |
| IRIN News (administered by United Nations Office for the Coordination of Humanitarian Affairs) | 1 |
| Le Front (News) | 1 |
| Médecins Sans Frontières | 1 |
| National Press (unnamed) | 1 |
| Pacific News Service | 1 |
| UNAIDS (Joint United Nations Programme on HIV/AIDS) | 1 |
| United Nations High Commissioner for Refugees | 3 |
| United Nations Office for the Coordination of Humanitarian Affairs | 1 |
| Voice of America News | 1 |

[86] International Association of Refugee Law Judges, *Country of origin information Judicial Checklist – explanatory memorandum* (2006).

[87] The selection of which sources to include in the questionnaire as named sources in the questionnaire was based on a prior perception that these sources are the most frequently used as COI.

### Lack of Clarity Regarding Materials before the Tribunal

The most striking observation with respect to the use of sources is that rarely, if ever, was the full extent of COI sources before the Tribunal clear nor is it clear which party submitted what material. The data relates to named or listed sources. Whilst it cannot be assumed that these are the only sources that either party submitted an assessment can be made on the basis of the information available.

A number of determinations contained a section outlining documents served on the Tribunal. These were, however, neither complete nor exhaustive. In several instances these stated "the usual Home Office bundle" or "a bundle of x number of pages" rather than detailing the sources. In other determinations a seemingly full list was included but the Immigration Judge's considerations then referred to a source or sources that were not listed, indicating that the list was not complete. No indication was given as to why certain documents were listed in such a way and others not.

Greater transparency could be achieved through the inclusion of a list of COI materials submitted by each party to the case. Such lists are increasingly annexed to determinations in Country Guideline cases, the most transparent of which indicate which party submitted which material. This is essential in Country Guideline cases for future applicants to know what COI the case was decided upon. It would also be useful in unreported cases. The parties to the case would be well served by being able to clearly see what, of the material that was submitted, was relied upon and what was not. This may be superfluous in determinations where citations in the text make it clear what material has been relied upon. However, this was not the case in the majority of the determinations examined, as discussed below. Such a listing of material submitted would also be beneficial to parties to future cases who may seek permission to rely on the determination.

The issue of transparency in the determinations is twofold: firstly, there is a need for transparency as to the country of origin materials submitted to the Tribunal and, secondly, as to the assessment of the evidentiary value of those materials.

The lack of transparency with respect to the country evidence that has been considered makes it difficult to gain a clear understanding of the process by which Immigration Judges choose to accept the reports of one organisation over those of another. Without this information it is difficult for parties or their legal representatives to know which COI sources (e.g. US State Department Reports or Amnesty International Reports) or which types of COI (e.g. news articles, UN agency assessments, reports from non-governmental organisations reports) will be accepted by the Tribunal and assessed favourably and which are likely to be given little weight.

### Home Office Country of Origin Information Service Products

Home Office Country of Origin Information Service (or its predecessor the Country Information and Policy Unit) Reports are the most frequently cited source. They were named in Immigration Judges' considerations in 20 of the 33 determinations for countries for which a Home Office Country of Origin Information Service Report is available. If the Home Office Country of Origin Information Service Bulletins or Key Documents Lists are included, then 23 of 37 determinations explicitly named a Home Office-produced Country of Origin Information product in the considerations of the Immigration Judge.[88]

Reliance on the Country of Origin Information Service Report appears to vary according to country. The Country of Origin Information Service report was named by the Immigration Judge in all the 7 Iran cases and all but 1 of the 7 Afghanistan cases but only 3 of 7 Zimbabwe cases and 2 of 7 Somalia cases.

In 7 of the 33 determinations for countries for which a Country of Origin Information Service Report was available it is the only named source in the Immigration Judge's considerations.

[88] This is measured out of 37 determinations because 2 relate to the Israel and the Occupied Territories for which the Home Office Country of Origin Information Service has no country of origin information product.

In 3 of these determinations it is known that other COI was submitted and it is unclear why the other COI was not addressed by the Immigration Judge whilst the Country of Origin Information Service Report is. In 2 such cases the Research and Information Unit of IAS had prepared a COI bundle of thirty or so documents none of which were explicitly referred to other than the Country of Origin Information Service Report.

The Tribunal has stated in *LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka*:

> The COIRs [Home Office Country of Origin Information Reports], which are regularly used by all parties, are not a special case. The evidence on which they rely has been filtered, but is sourced. They should be treated in the same way as any other background evidence. That means they can be considered in the light of their reputation (and we bear in mind that they have in the past been criticised). Under the provisions of S142 of the Nationality, Immigration and Asylum Act 2002, they are overseen by the APCI (Advisory Panel on Country Information) but it is important to remember that that committee is there to oversee the process, and not to endorse the content of the reports.[89]

### Operational Guidance Notes

In 4 determinations the Immigration Judge used the Home Office's Operational Guidance Note (OGNs) as a source of Country of Origin Information in their considerations. As detailed in the study on OGNs, they were produced by the Home Office as policy documents and were not intended to be used as COI. OGNs may have an evidentiary role in asylum appeals, but only in so far as they are evidence of the policy or intention of the Home Office as regards individuals of a certain profile. They should not form part of the COI evidence, nor be relied upon in considering the country conditions.

In 2 of these instances it is clear that the OGN was submitted by the Home Office and in 2 it is not clear who submitted the OGN. Two of the instances of the use of the OGN are for countries for which the Home Office does not produce a Country of Origin Information Service report but 2 are not. The use of the OGN as COI, which is not in accordance with its stated purpose, could be indicative of a lack of understanding of the distinction between Home Office policy documents and Home Office COI products. This misunderstanding may occur on the part of the Home Office Presenting Officers who submit them and the Immigration Judges who refer to them in their considerations. In 1 determination the Immigration Judge quoted from the OGN and wrongly attributed the information to the "COIS Bulletin 2005". However, there is no Home Office Country of Origin Information Service Bulletin for 2005 and the language appeared in the Operational Guidance Note exactly as quoted in the determination. The OGN should not be used as an alternative to the Country of Origin Information Service Report where no Report exists.

In 2 of the cases the appellant was not represented and therefore cannot be expected to have known that this was an inappropriate use of the OGN. Where the appellants were represented it could be assumed that no objection was raised to the use of the OGN as COI (although this cannot be confirmed without reference to the Record of Proceedings). A lack of objection to the use of OGNs as COI is suggestive of a lack of understanding of this distinction on the part of some representatives as well.

### Country Guideline Cases

The findings of Country Guideline cases were used as a source of COI in 18 of the 39 determinations examined. They were the most commonly used source after the Country of Origin Information Service Report and they were the sole named source in 4 of the determinations examined. Where Country Guideline cases were referred to their findings were followed.

As with the Country of Origin Information Service report the use of Country Guideline cases appears to vary depending on the country in question. Country Guideline cases were referred to in 2 of 7 Afghanistan cases and 2 of 7 Iran cases but there was reference to at least 1 Country Guideline case in every Zimbabwe case examined. This may be have been due to the differing number and nature of Country Guideline cases issued for different countries. For

[89] LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076, para 43.

example a Country Guideline case on the risk on return for failed asylum seekers from Zimbabwe was promulgated prior to the date on which all these cases were heard. This Country Guideline case was therefore relevant in all asylum appeals and not dependent on other, more specific, aspects of the applicant's profile.

As with all sources of COI the intention and limitations of the country findings in Country Guideline cases need to be considered and understood. For example, in 1 case the Immigration Judge finds an individual not to be at risk because their profile was not one included in the risk categories listed in a Country Guideline case. However, whilst the case defines a list of risk categories it is not intended to be an exhaustive list. In another determination the Immigration Judge noted the change in circumstance from the time a Country Guideline case was heard to the date of the hearing on the basis of more recent COI.

### Other Sources of Country of Origin Information

The study counted the number of sources referred to by the Immigration Judge in their considerations based on the list of 6 named sources[90] and counting the category of "other" as 1 regardless of how many other sources were named. This shows that the highest number of sources (5) referred to were in the cases without Home Office COI products.

#### *Government Sources*

After Country of Origin Information Service products and Country Guideline cases the most frequently referenced source of COI was the US State Department Country Reports on Human Rights Practices (8 determinations) followed by the Danish Immigration Service (7 determinations). After OGNs and expert reports the next most frequently cited, with 3 references each were the Canadian Immigration and Refugee Board and the UN High Commissioner for Refugees. Without knowing what was put before the Tribunal and without an explicit discussion in the determination as to why a particular source was relied upon an inference can perhaps be drawn that the Tribunal has a preference for materials produced by governments.

The Danish Immigration Service's Joint Fact Finding Mission reports were referred to in the Immigration Judge's considerations in 5 out of 7 of the Somalia cases. In 1 case the report is referenced as "the well known report on minority groups in Somalia" and another refers to a "well known observation from [the report]". This indicates that a certain source can become authoritative for a certain country.

#### *National or Regional News Sources*

In the 2 cases in which national or regional news sources were named they are dismissed by the Immigration Judges as being self-serving. A third case refers to an unnamed national news source which does not appear to be challenged but is found not to support the applicant's case.

#### *Amnesty International*

Amnesty International is referred to explicitly by the Immigration Judge in 2 determinations. It is clear that material by Amnesty International was submitted by the appellant in these cases and that in 1 such case the Immigration Judge referred explicitly to Amnesty International and in the other they did not. In 1 of the determinations in which a reference is made the Immigration Judge notes that "recent reports of Amnesty International and other respected organisations" were placed before the Tribunal, in the other the Immigration Judge merely commented that the submission of material from Amnesty International was not challenged by the respondent.

#### *Sole Named Sources*

[90] Amnesty International, Country Guideline Cases, Home Office Country of Origin Information Service Bulletin/Key Documents, Home Office Country of Origin Information Service Report, Home Office Country Specific Asylum Policy Team Operational Guidance Note, Human Rights Watch, US Department of State.

**Table 15 – Incidence of Use of Sole Named Sources**

| Source | Number |
|---|---|
| Country of Origin Information Service Report | 7 |
| Operational Guidance Note | 1 |
| USSD | 1 |
| Country Guideline Case | 4 |
| Danish Immigration Service | 2 |

There were 15 determinations with a sole named source in the Immigration Judge's considerations. In 7 of these cases it is known that at least 1 other named source was before the Tribunal. It is not clear why the Immigration Judges have chosen not to make reference to these other sources that are known to have been submitted. It is possible that in the 8 where it was not known whether or not other sources of COI were submitted that no other sources were submitted. This would highlight the problem that Immigration Judges can only use the information that is submitted to them and therefore it is of great importance that the parties to the appeal and their legal representatives carefully prepare and submit high quality COI materials.

The use of Country Guideline cases as sole sources is different to the use of other sources in that they should reflect an "effectively comprehensive" analysis of the country information.[91] However, the extent to which they can be relied on will depend on changes in the situation in country and the continuing accuracy and currency of the information upon which the case was decided. As noted above there may be more recent information against which the Country Guideline determination needs to be assessed to find if it is still relevant.

### *Conclusions on Sources*

Several of the determinations examined contained statements such as:

> I have read and considered very carefully all the information and documentation to which I have been referred.

Others went on to state explicitly that they have considered all the evidence even if it is not referred to:

> I confirm that I have taken into account all the evidence placed before me, whether or not specific aspects are referred to hereafter.

It should be noted that the "evidence" or "information and documentation" referred to included not only the COI but also all other documentary and oral evidence given as part of the hearing. Whilst it was the stated case that material had been considered even if it had not been referred to there were questions as to why certain materials were picked over others to be referred to and whether the entirety of the COI in a bundle had been read, especially in light of the time constraints under which Immigration Judges may have been be working.

Even from this small sample, conclusions can be drawn as to the reliance on certain sources, in particular the Home Office-produced Country of Origin Information products, where available. With the level of reliance on the Country of Origin Information Service observed in this study it must be borne in mind that the Country of Origin Information Service Report is an amalgamation of other information which has been filtered by a department attached to one of the parties to an adversarial process. As noted by the Tribunal in *LP Sri Lanka [2007]* the Country of Origin Information Service Report must be assessed as all other sources are

[91] S & Others [2002] INLR 416, 29: "…when [the Immigration Appeal Tribunal] determines to produce an authoritative ruling upon the state of affairs in any given territory, it must in our view take special care to see that its decision is effectively comprehensive. It should address all the issues in the case capable of having a real, as opposed to fanciful, bearing on the result and explain what it makes of the substantial evidence going to each such issue." For a critique of the Country Guideline regime see Yeo, *ibid.*

assessed, and following the guidance of the International Association of Refugee Law Judges all sources should be assessed against the criteria they enumerate.

How problematic a heavy reliance on Home Office-produced Country of Origin Information products is depends entirely on the currency, accuracy and objectivity of these products and decisions and on their ability to answer all the relevant COI questions for the individual case before the Tribunal. It can be problematic when particular sources become the only "truth" and anything at odds with them and the conditions they portray is disbelieved. The Tribunal should be wary of perpetuating this situation.

Concerns about the use of sole-named sources are related to concerns about the creation of a hierarchy of sources (formal or otherwise). The *Common EU Guidelines for processing Country of Origin Information* state:

> A general hierarchy of sources cannot be established. At least not in the sense that this means that the sources with the highest rank in such a hierarchy always provide the most reliable information.[92]

This unpredictability highlights a major problem of overreliance on or over-confidence in the reliability of certain sources, which can cause the decision maker (or researcher) considering the source to skip the required objective assessment of the reliability of the source on the basis of its relevance, currency, accuracy and transparency.

The *Common EU Guidelines on Country of Origin Information* further note that:

> Different subjects (in the context of certain country of origin information) require different approaches for the starting point of research and thereafter the selection, validation (and use) of sources.[93]

Whilst the guidelines focus on how such material could and should be researched this point is also relevant to the assessment of sources placed before an Immigration Judge. This guidance should be borne in mind, for example, in relation to verification of the existence of named individuals. Other than individuals in very high-ranking positions, it is unlikely that they will be referred to in general reports such as the Country of Origin Information Service or the US State Department Report. As the *EU Common Guidelines* state:

> In short some sources (e.g. international organisations and NGOs) may be more valuable for information on the general human rights situation, whereas other sources (e.g. national or local news agencies or experts) may be more valuable for information on particular events. … A source that is generally accepted as being a reliable source, may appear less reliable where specific issues are concerned.[94]

## iii. Use of referencing, summaries and quotations

Consideration of the use of referencing, summaries and quotations forms the basis of an assessment of how transparent the use of COI is in the determinations in the sample. High standards of transparency are required in the production of quality COI research in the standards produced by UNHCR, ACCORD and the EU.[95] This is expressed in question (iv) of the International Association of Refugee Law Judges' C*ountry of Origin Information Judicial Checklist* as "[i]s the material satisfactorily sourced?" Similarly high standards of transparency should apply to the reporting of findings based on COI contained in appeal determinations. Transparency is essential to enable the parties to the appeal to understand the basis of the findings and to strengthen the determination.

### Referencing

[92] Common EU Guidelines for processing Country of Origin Information (April 2008), section 2.2.5.
[93] *Op cit*.
[94] *Op cit.*
[95] Gabor Gyulai, *ibid.*, (2007).

Of the determinations examined 36 contained some form of referencing for at least some of the sources. Of these, half were classified as accurate. There are a variety of reasons for which referencing was considered inaccurate in this study, namely:

- Author/institution not given
- Title or full title not given
- Date of publication not given
- Wrong author, publisher or date

There were significant differences in the extent and accuracy of referencing between determinations, again indicating a lack of consistency in the presentation of COI in determinations. Very few gave full publisher, name, date and section/page number in reference and even fewer did this for every source they refer to. For example, a reference may simply be "in the Country Assessment" with no indication of publisher, date or paragraph number making it difficult or impossible to assess whether the information was accurately summarised and used as a basis for decisions. In some determinations sources were untraceable from the reference given.

A number of determinations list the source or sources used in the Country of Origin Information Service Report rather than just citing it as "COIS". This demonstrates a clear understanding on the part of these Immigration Judges of what the Country of Origin Information Service Report is, i.e. a compilation of excerpts from other sources. In some determinations references were not just partial but were actually inaccurate in that the wrong name was given or they are attributed to the wrong source.

In 1 carefully referenced determination the Immigration Judge has used footnotes to include relevant paragraphs of the source material relied on in their consideration, thus making the context from which the text quoted in the body of the determination has been taken clearer.

There were also a number of determinations that contain statements about the country situation for which there are no references given at all. Some of these statements appeared to rely on information previously quoted or summarised, in others it is unclear whether these statements are founded upon materials before the Tribunal or founded upon the Immigration Judge's prior knowledge of the country. Whilst it is to be expected that Immigration Judges will have some prior knowledge of situations in asylum seekers' countries of origin, engagement with the COI submitted by the parties is necessary to ensure that the Immigration Judge has up-to-date, balanced and accurate information that is applicable to the applicant before them.

In 1 example the determination contained summaries/quotations from at least 3 different Home Office Country Information and Policy Unit Reports but did not acknowledge that this was more than 1 document. This is problematic in relation to assessments of currency of the material provided as it is suggestive that a clear distinction was not being drawn between COI materials of different ages. The International Association of Refugee Law Judges' *Country of Origin Information Judicial Checklist* asks "How current or temporally relevant is the Country of Origin Information?" This, evidentially, is 1 of the core questions to be addressed when assessing the quality or evidentiary value of COI.

### Summaries

Summaries of country of origin information material were used in 35 of the 39 determinations and can be described as accurate in 28 of those. Inaccuracies in summaries included the omission of apparently relevant information (selective summarising).

In the 22 determinations in which only summaries or only quotations were used, 20 relied on summaries alone. Thus from a sample of 39 determinations 20 did not contain any direct quotations from a source of Country of Origin Information.

In a significant number of determinations in which the summaries were direct quotations from the source or sources, they were not presented as such. This may be suggestive of a lack of analytical reading of a variety of sources.

### Quotations

Quotations, that were explicitly presented as such, unlike those mentioned above, were used in 16 of the determinations and were accurate in 11. Inaccuracies included incorrect attribution or misquotations. In many quotations text was left out without ellipses being used to indicate that text was missing, although the meaning of the text was not significantly altered.

In terms of good practice a high degree of transparency in regard to the content of the sources before the Tribunal is available in *GG Ivory Coast [2007]* which contained a series of short summaries of the Country of Origin Information material from the larger reports source by source.[96]

## iv. Discussion of Contradictory COI

Contradictory COI was discussed in 4 of the determinations examined. In 2 determinations this discussion covered the submission of materials that contradicted each other, in 1 determination it covered contradictory interpretations of the same material and in the final 1 it covered internal inconsistencies within a report.

### Contradictory COI Presented by Opposing Parties

In 1 determination the Immigration Judge rebutted the Country of Origin Information Service's reply to an information request that it "had not been able to find authoritative and up-to-date sources to confirm [the treatment of individuals with a particular profile]" with a number of reports that cover this issue. The Immigration Judge then concludes that "[i]t would appear too early to tell" if the situation has improved in a lasting manner. In the other determination in which contradictory materials are presented the respondent's material is favoured due to issues with the methodology of one of the appellant's sources and the age of another (2005 for a hearing in March 2007). The name and age of the respondent's sources was not listed. Furthermore, the respondent's source did not explicitly state what the Immigration Judge appeared to deduce from it.

### Internal Inconsistencies within a Source

One Immigration Judge identifies internal inconsistencies within the US State Department report but still chooses to rely on the information therein notwithstanding this weakness.

### Contradictory Interpretations of the Same Material

In 1 determination the appellant and the respondent sought to rely on different interpretations of the same material (sourced from the Country of Origin Information Service Report and a Canadian Immigration and Refugee Board report). The Immigration Judge decided in favour of the respondent on the grounds that "on the whole neither the COIS report... or the Canadian Report… give any real evidence of persecution against [this group]."

It seems a safe assumption that in other determinations contradictory COI was presented to the Tribunal or that a contradictory interpretation of the same or similar COI was made. However, without explicit reference to this it cannot be known how Immigration Judges deal with such material. A clearer discussion of this in the determination might prove useful to representatives and COI researchers in preparing for future cases if they can better understand the basis upon which decisions about the weight to be accorded to certain materials are made. Further research in this area, on the basis of structured interviews with Immigration Judges would be useful.

## v. What Country of Origin Information is used for

**Table 16 – Breakdown of What COI is Used For**

| | |
|---|---|
| Context: | 34 |
| Case specific: | 11 |

[96] GG (political oppositionists) Ivory Coast CG [2007] UKAIT 00086, paras. 31-72.

| | |
|---|---|
| Just context: | 28 |
| Just case specific: | 5 |
| Both: | 6 |

In 34 of the determinations COI was used by the Immigration Judge to assess the general context and in 11 it was used to assess case-specific issues of credibility. In distinguishing between context and case-specific credibility assessments it may be useful to give examples. For example, use of COI for context assessments includes general information on the level of political violence and information on the treatment of certain groups or individuals with certain profiles. Whilst, for case-specific credibility assessments COI is used, for example, to assess the power of named individuals who are claimed to be agents of persecution or are used to assess the credibility of having obtained a particular document.

In a substantial majority of determinations (34 of 39) COI was used for context and in 28 of those COI was used for context alone, which suggests that this is seen as the major role of COI in the Tribunal. Those in which COI was used for case-specific issues of credibility show that COI can be useful in these assessments also. The 5 cases where COI was just used for case-specific credibility indicate that it does sometimes only go to case specifics. It is not clear if the majority use of COI for context was because of the issues at stake in the case, the COI that was presented and the way it was presented or if it is due to a preference on the part of some Immigration Judges for this type of information. Without access to the full materials that were submitted or to the record of proceedings this could not be assessed.

Of the 11 determinations in which COI was used to make assessments of case-specific issues of credibility 7 have a sole-named source. Five of these are determinations in which COI was only used to make case-specific credibility assessments.

In 1 of the determinations examined COI was used to weigh up the reliability of a supporting document. In this example the Immigration Judge found that the registration of a marriage was not impossible but was implausible. The Country of Origin Information Service was the only named source and this states that "outside [the capital] only ten per cent of married couples have [a marriage certificate]."

What cannot be surmised from this study is why the use of COI for case-specific credibility issues was not higher. Possible reasons for this include:

- there were no case-specific credibility issues in the case that lent themselves to support from COI
- the representatives did not submit COI on case-specific issues of credibility
- issues of credibility were not at stake.

Further useful research could be undertaken into the impact of the inclusion of case-specific credibility related COI.

In the sample, COI was used to fulfil a number of functions for Immigration Judges:

- to locate places named by applicants
- to corroborate the status and activities of named individuals
- to assess future risk
- to assess general credibility of story (i.e. does it fit with a pattern of violations)
- to assess reliability of documents
- to assess weight to be given to expert testimony
- to assess weight to be given to non-expert testimony

### vi. Lack of Information as Determinative

In 9 of the determinations the Immigration Judge found a lack of information to be evidence in itself that something was or was not happening. For example, in 1 determination the Immigration Judge stated "[t]here is no objective evidence before me to satisfy me that [MA] is

a man of power and influence in Kabul or elsewhere" and thus finds that the applicant is not at risk from this individual.

In another example, the appellant's veracity was doubted because a map showing places they mentioned was not produced as evidence. It is unclear if the Immigration Judge requested these places to be shown on a map during the hearing. It is also unclear if it is simply a case that a map was not submitted or if it is the case that the places could not be found on a map or if the places do not exist.

It may be that in some instances a lack of evidence is evidence in itself but these circumstances will be limited and will require thorough research to have taken place which has found no relevant information. It cannot be assumed that COI will provide evidence of all individual persecutors, even where they are stated to be in positions of power, or that all places can be located on maps available to applicants or their legal representatives.

Without knowing the extent of the COI before the Immigration Judge or the breadth and depth of COI research done to try and ascertain the relevant information it was not possible to state whether the information did not exist, was not easily obtainable or simply not been placed before the Immigration Judge. If lack of information on a subject is seen as determinative then concern about the use of sole-named sources is greater. If reliance is placed on a narrow list of sources, or just a single source, it is unlikely that case-specific questions will be answered. The Country of Origin Information Service Reports, the US State Department Reports and previous Country Guideline cases are unlikely to contain details of named individuals, dates of demonstrations and arrests and so on as noted in the EU's *Common Guidelines on Processing Country of Origin Information*.

The most striking example of this in the sample was a determination in which the Immigration Judge when assessing the credibility of the "extraordinary number of rapes and sexual assaults" which the applicant states she has experienced states that they "do not for a moment believe that such episodes of appalling ill-treatment would not have gone unreported. There would have been numerous witnesses and something like that, particularly if repeated on many occasions would surely have been the subject of comment and report." Whilst one would hope that all incidents of sexual violence were cause for comment and report it is simply not the case that all incidents are. To deny the credibility of a survivor of serious sexual violence on the basis that the type of abuse she experienced is not mentioned in the international reports before the Tribunal is a gross misunderstanding of the scope and limits of COI.

As stated in the *EU Common Guidelines for processing COI*:

> If no information has been found (e.g. as to the question of whether a certain event took place), this does not necessarily mean that the event did not occur. The lack of information should be dealt with and placed in context.[97]

Immigration Judges can place a lack of information in context by asking if there are reasons for which events might not be reported (or not reported in English) or other reasons for which information has not been found, e.g. an individual agent of persecution has a very common name or a place name has been misspelt. An additional context for a lack of information that it may be appropriate for an Immigration Judge to consider is that the information may exist but it has simply not been placed before them because the applicant or their representative has not looked for it or has not found it.

### vii. Speculative Arguments

As detailed in the Reasons for Refusal Letters study the Home Office have come under considerable criticism for the use of speculative arguments in their decisions on asylum claims. UNHCR's Quality Initiative has described speculative argument as "attempting to guess the thought process of a third party" and making credibility or plausibility findings on the

[97] Common EU Guidelines for processing Country of Origin Information (April 2008), section 3.2.2.

basis of little or no evidence.[98] As noted in the Reasons for Refusal Letters study this is a practice that persists in the Home Office decision-making process. What the research in this study shows is that a significant number of determinations also contain speculative arguments of the type criticised.

Of the 39 determinations examined 14 contained speculative arguments. Examples include a finding that it was not credible that the applicant would have waited until after a second attack on their house to flee. This behaviour was attributed in the applicant's explanation to a hope that it would not happen again. Similarly, it was found not credible in one case that the applicant's family would return to the area they previously lived in 5 years after they had been attacked there. In *AL Armenia [2005]* the Tribunal found that an Adjudicator erred in law in making a statement that was "speculative and no substitute for a careful assessment of up-to-date country material."[99]

Whilst some of the actions found not to be credible on the basis of speculative argument may indeed seem implausible it is not appropriate for an Immigration Judge to second guess the likely actions of an individual possibly acting under extreme duress or stress or living in a cultural and security situation far removed from that in the UK. In one noteworthy example the Immigration Judge stated:

> I do not believe her story of being raped in her house by one of the so-call Death Squad police. Her account is simply not credible: one of the 10 policemen, she says, spends time gratifying himself when her mother was in the house and there was absolute chaos reining outside in the compound, raping her while at the same time holding a gun to her temple.

This reflects a lack of understanding that rape is used as a weapon to demonstrate power and spread fear, understanding it as such rather than "gratification" makes the account seem more plausible.

### viii. Findings favourable to the client based on COI

Of the determinations examined, 18 contained findings favourable to the client based on COI (despite all the determinations resulting in dismissals of the appeals). In 7 of these determinations there was a sole-named source of COI, in 4 this was a Country Guideline case, in 2 the Country of Origin Information Service Report and in 1 a Joint Fact Finding Mission Report.

### ix. Treatment of Country of Origin Information (relationship between sources and discussion of methodology)

Discussion of or comments on the Country of Origin Information sources were made in just 7 determinations and in only 3 was any reference made to the methodology of the sources used.

#### Expert Reports

All 5 of the determinations where there was a reference to an expert report commented on the merit of an expert's report. These comments highlight a diversity of opinions on the reports submitted by the respective experts.

For example in 1 determination the Immigration Judge stated:

> I am further assisted by the report of [the expert witness] which was placed before me by the appellant's representatives. It was not made available until the morning of the hearing and that might well have detracted from the weight to be placed upon it. The respondent's representative did not object to the report being filed late, however, and it is only right that I should give some weight to this report from a well-known country expert particularly as he has drawn on the findings of the Tribunal in AB and DM and MK to which I have already referred.

[98] UNHCR (QI) Quality Initiative Project, *Second Report to the Minister* (2006) Paragraph 2.2.9.
[99] AL [Azeris and Mixed Marriages] Armenia [2005] UKIAT 00087, para. 29.

In this case weight was given on the basis of methodology (the use of existing Country Guideline case law) and on the basis of the prior reputation of the expert in question. Another determination stated that "particular attention" has been given to the expert report. Other determinations were not so favourable towards the reports placed before them. In 1 the Immigration Judge stated:

> Clearly the findings which I have made do not accord with the views of [the expert witness]… However, I have reached my findings taking into account not only such evidence put forward on behalf of the Appellant, but also making my own assessment of his position by taking into account the wider objective evidence which was placed before me.

In this case Country of Origin Information Service was the only source the Immigration Judge named in their consideration, although the determination did list other sources as being before the Tribunal. It is not clear on what basis the Immigration Judge chose to make a finding contrary to the expert report. In other cases the reasoning for this was clearer. For example in respect of one report the following is stated:

> [The expert witness] states "Regarding the availability of antiretroviral drugs in Zimbabwe, my information is sourced from patients themselves who are from Zimbabwe and the organisation UNAIDS. ..."Not only is it not made clear in what way/on what basis exactly she relies on "patients themselves" as a sources (leading me to question this "source") but I also note that the copy of the UNAIDS report enclosed with her letter is stated at the top to have been last updated in October 2005.

This raises questions about the expert's methodology i.e. by questioning their sources but also raises the issue of currency of the COI, an issue not raised in respect of any other source referred to in this or any other determination looked at in this study. In another example the Immigration Judge stated:

> I appreciate the constraints on the Appellant's representatives imposed by the Legal Service Commission; but it cannot be assumed that because solicitors regard a person as expert, s/he will necessarily be accepted by the court as such.

The value of this expert report was challenged for a number of reasons, including

- the non-submission of the expert's CV
- the non-inclusion of original notes taken by the expert in her interview with the appellant
- expert not being present at the hearing for cross-examination

All of which resulted in the Immigration Judge's conclusion that he "should not rely on this untested report as determinative of the Appellant's clan membership."

It is noteworthy that questions of methodology and currency were raised in respect of experts but were not explicitly raised in respect of other forms/sources of COI before the Tribunal. It is not clear why this may be and why such questions were not openly asked of the other Country of Origin Information material before the Tribunal. In respect of the expert reports the discussion of merit and weight, that it would be useful to see in relation all sources of COI is more explicit.

### Weight given to national news source

In 1 determination the Immigration Judge found an article from an internet newspaper to be self servicing and decided to "give very little weight to the article." The late submission of the article contributed to this decision (see below on presentation of materials to the Tribunal). Despite a critical assessment of this piece of evidence no comment was made on the fact that this article was in French and was submitted through the translator in court.

### Comments on the Treatment of COI

The comments on the treatment of COI in the determinations suggest an awareness on the part of Immigration Judges as to the principles underpinning the questions in the *Country of Origin Information Judicial Checklist* produced by the International Association of Refugee

Law Judges (quoted in full above). However, there was surprisingly little in the way of written record of these considerations and as such it was not possible to know the extent to which this checklist or the general principles behind it were being consciously considered by the Immigration Judges.

In *LP Sri Lanka [2007]* the head note stated:

> The weight to be given to expert evidence (individual or country) and country background evidence is dependent upon the quality of the raw data from which it is drawn and the quality of the filtering process to which that data has been subjected. Sources should be given whenever possible.[100]

The main body of the determination further stated:

> Immigration judges should be slow to find bad faith on either side, even though they must approach the evidence with an open and enquiring mind as to the appropriate weight to be put upon it.[101]

### Conclusions on the Treatment of Country of Origin Information

Without knowing fully what materials were in front of the Immigration Judge it is impossible to identify if there is a pattern as to which sources are routinely ignored. Without an explicit discussion of this it cannot be known why an Immigration Judge chose to quote 1 source over another or the extent to which the totality of the material is engaged with prior to the determination being written. A useful further area of study would be to interview Immigration Judges about their use of COI to fill in that blank in our understanding of how the information is processed and how any interplay between different sources is viewed.

There was little or no consideration of the relative merits of various sources recorded in the determinations. It is, therefore, difficult to know if the reliance on Home Office-produced COI instead of other sources was due to a thorough reflection on the evidential value of the sources submitted or because of some other reason such as familiarity. Determinations would be strengthened if any assessment of the different evidential value of different sources of COI was made explicit in the interests of transparency.

## x. Comments on the role and purpose of COI

Very few of the determinations (just 2 in this sample) contained any explicit statements on the role and purpose of COI in the process of deciding asylum appeals. One of these comments was general:

> I must look at the overall context of what the appellant tells me about the circumstances of his case in the light of what one knows about the objective situation and evidence emerging from [the country].

The other related to the special role of COI in cases where the applicant is a child:

> Where a child has not been told, or is unable to fully articulate the reasons for leaving his country of origin, it is necessary to have greater regard to information from other sources, including the objective information, in order to assess whether a child qualifies as a refugee.

However, in this case the appellant was not represented and only one COI source was explicitly referred to in the determination by the Immigration Judge.

Such comments are by no means essential in determinations but do indicate a clearer understanding of the role and purpose of COI, statements about which are included in some Country Guideline cases such as *LP Sri Lanka [2207]* (see above).[102]

[100] LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076, Headnote para. 7.
[101] LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076, para 45.
[102] LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076.

## xi. Other observations

### Well-Reported Situations

The difference between cases relating to country situations that are widely reported and those that are not was highlighted by the following comment drawn from a determination in the sample: 'the current situation in Zimbabwe is well documented and would need little introduction.' The deteriorating nature of day to day life is apparent from regular news reports'. Regardless of how well reported a situation may be it is still important for COI to be submitted, both to show how the general situation will affect the individual applicant and to ensure that a range of material is before the Tribunal to demonstrate whether or not the "regular news reports" are supported by more analytical material where it is available.

### Failure to Consider Objective Evidence at First Instance

One of the determinations stated that the grounds of appeal explicitly included the failure by the Home Office to properly consider the objective evidence at the first instance. However, the determination in this case only referred to the OGN. Whether this was the result of no country of origin evidence being submitted or of the Immigration Judge holding that this should be given the most weight is unclear. What is clear is that despite the appeal ground a full consideration of objective evidence was not included in the decision on this case.

### Presentation of materials

The lack of index and lack of pagination of a Bundle of objective evidence was noted in 1 determination, although it is not clear if this impacted on Immigration Judge's assessment of the material therein.

With respect to the use of key passages[103] one Immigration Judge commented:

> Where we have been guided to certain passages in the objective material, we have read those passages with especial care. However, we read them in the context of the entire document. The whole documentation set before us has assisted us in arriving at our conclusions.

There were 2 references to IAS Research Analysis in the sample but no substantive comment was made on the presentation of information in this format.[104]

### Quantity of Material

There were no references to quantity of material in the determinations in this sample. It is interesting to note that in *RB Uganda [2004]* the Tribunal stated:

> We deplore the practice of filing enormous bundles of irrelevant documents especially in publically funded cases and there is no authority for requiring the Adjudicator to read the whole of such bundles unless his attention is drawn to them.[105]

### Timeliness of Submission

The late submission of COI material was commented on in 2 determinations in the sample. In 1 instance the late submission of a news article contributed to the Immigration Judge's decision to give little weight to the information. In the other instance the Immigration Judge stated that the submission on the day of an expert report "might well have detracted from the weight to be placed upon it." However, in light of the lack of objection from the respondent and the reputation of the expert the Immigration Judges did give it weight.

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[103] Key passages refers to the inclusion within the Bundle of a separate section containing just the most pertinent excerpts from longer reports contained in full in the Bundle.

[104] The IAS Research Analysis produced by the Research and Information Unit is a fully referenced synopsis of the country of origin information contained in the Bundle. Examples of this work can be view on the IAS website at: www.iasuk.org It is not known in how many of the cases the appellant's legal representative was from IAS.

[105] RB (Credibility – Objective Evidence) Uganda [2004] UKIAT 00339, para. 13.

## Conclusions

Failure on the part of Immigration Judges to engage with COI where submitted and relevant is an error of law. The aim of this study has not been to identify errors of law in the determinations examined but to identify trends in how COI is approached. Whilst those determinations that contain errors of law can be appealed it is preferable that the initial decisions be robust and of the highest standard. The following recommendations are made with this aim in mind.

This study has shown that COI is not dealt with in a uniform manner by Immigration Judges. There are, however, some noticeable trends. The clearest is that there was some mention of COI in every one of the determinations in the sample, although as noted this was merely a passing mention in some. This indicates that **COI plays a role in all asylum cases** but that the degree of influence that it will have on a case will vary.

The study has identified that **the purpose for which COI is used also varies**. Within the sample COI can be observed to be a tool used by Immigration Judges for a number of things, including:

a. to locate places named by applicants
b. to corroborate the status and activities of named individuals
c. to assess future risk
d. to assess general credibility of story (i.e. does it fit with a pattern of violations)
e. to assess reliability of documents
f. to assess weight to be given to expert testimony
g. to assess weight to be given to non-expert testimony

This study has noted that certain **sources** appear frequently amongst those cited in the considerations of Immigration Judges, most noticeably Home Office COI Service products and Country Guideline cases. As the Home Office Country of Origin Information Reports continue to be central to the COI considered at the appeal level of the refugee status determination process such reports must be of the highest standard and must be independently verified against the accepted standards of quality COI research such as those outlined by ACCORD, namely:

- Relevance
- Reliability and Balance
- Accuracy and Currency
- Transparency

In short they must be treated the same as any other source of COI and assessed using the International Association of Refugee Law Judges' *Country of Origin Information Judicial Checklist*. Moreover, the distinction between Home Office COI products, namely Country of Origin Information Service reports, and Home Office policy documents such as **Operational Guidance Notes** appears not to be clearly understood by all.[106]

A further trend observed by this study was a lack of **transparency** in conveying both what information was before the Tribunal and how this information was analysed and assessed. A number of lessons in the transparent assessment of COI can be learnt from Country Guideline cases, as noted. However, the concerns raised previously by IAS in *Country Guideline Cases: Benign and Practical?* should continue to be borne in mind. More explicit reference to this process, as enumerated in the International Association of Refugee Law Judges' *Country of Origin Information Judicial Checklist* would greatly increase transparency thus assisting parties to asylum appeals in preparing the most relevant and appropriate country information possible.

[106] For a full explanation of the difference and the importance of this difference see the Operational Guidance Note study contained within this publication.

## Recommendations for Immigration Judges

1. For the purposes of transparency it would be useful to include a full list of COI sources submitted by each party to the Tribunal as is done increasingly in Country Guideline cases and as is done or done partially in some of the determinations examined.

2. In the interests of transparency, any assessment of the different evidential value of different sources of COI should be made explicit.

3. The distinction between Home Office Country of Origin Information products, such as the Country of Origin Information Service Reports, and Home Office policy documents, such as the Operational Guidance Notes should be understood by all parties to the proceedings. In light of their author and stated purpose. Immigration Judge should not rely on COI drawn from Operational Guidance Notes.

4. Immigration Judges should be aware that a number of sources may be needed to build up a clear picture of the situation in a country and even then individual asylum seekers may well have experiences that are not covered in the reports on a country.

5. It is essential that Immigration Judges have enough time in the hearing, whilst considering the case and in drafting the determination to fully engage with any relevant COI submitted to them and to record their assessment of it.

6. Further dissemination of the International Association of Refugee Law Judges' *Country of Origin Information Judicial Checklist* and *Explanatory Note* would be useful. This should be coupled with a discussion on overcoming challenges posed to their implementation, including those resulting from a high caseload.

7. Guidance on how to reflect COI and the assessment of COI in determinations could be beneficial in increasing transparency.

## Recommendations for Parties to Asylum Appeals

In recognition of the impact that the quality of COI submitted to the Tribunal and its presentation will have on the extent to which it is used by the Immigration Judge to underpin their findings the following suggestions can be made.

Parties should ensure that they comply with the Practice Directions for the Tribunal, which state:

> The best practice for the preparation of bundles is as follows:
>
> i.. all documents must be relevant, be presented in logical order and be legible;
> where the document is not in the English language, a typed translation of the document signed by the translator in accordance with rule 52 (language of documents) to certify that the translation is accurate, must be inserted in the bundle next to the copy of the original document, together with details of the identity and qualifications of the translator;
> ii. if it is necessary to include a lengthy document, that part of the document on which reliance is placed should, unless the passages are outlined in any skeleton argument, be highlighted or clearly identified by reference to page and/or paragraph number;
> iii. bundles submitted must have an index showing the page numbers of each document in the bundle;
> iv. the skeleton argument or written submission should define and confine the areas at issue in a numbered list of brief points and each point should refer to any documentation in the bundle on which the appellant proposes to rely (together with its page number);
> v. where reliance is placed on a particular case or text, photocopies of the case or text must be provided in full for the Tribunal and the other party; and

> vi. large bundles should be contained in a ring binder or lever arch file, capable of lying flat when opened.[107]

The Practice Directions further state:

> The parties cannot rely on the Tribunal having judicial notice of any country information or background reports in relation to the case in question. If either party wishes to rely on such country or background information, copies of the relevant documentation must be provided. [108]

COI on which a party seeks to rely should be selected with reference to the standards of quality COI research:

- Relevance
- Reliability and Balance
- Accuracy and Currency
- Transparency[109]

## Further Issues for Research

A clear finding of this study is the identification of further issues for research, some of which are noted throughout the report:

- To what extent are Country Guideline cases followed by Immigration Judges? If not why not? What COI is sufficient to challenge a Country Guideline case and win without the Tribunal identifying that it wishes to hear a new Country Guideline case on the issue due to a significant change in circumstances?
- To what extent are materials that are not explicitly named in determinations considered (interviews with Immigration Judges)?
- Repeat the survey with a wider sample that also includes determinations in which status or humanitarian protection is granted.
- Examine the use of COI by the Home Office Presenting Officers/case owners and by the appellant or their representatives (observation of the Tribunal and structured interviews with the key actors).

[107] Asylum and Immigration Tribunal Practice Directions (consolidated version as at 30 April 2007), 8.2.
[108] *Op cit.*
[109] ACCORD & UNHCR, *ibid,* (2006).

## Annex I - Description of the Data Set

A sample of 39 determinations was drawn from 8 countries as follows:

**Table 17 – Distribution by Country**

| Country | Number |
|---|---|
| Afghanistan | 7 |
| Cote d'Ivoire | 2 |
| DRC | 4 |
| Guinea | 2 |
| Iran | 7 |
| Palestinian Territories | 2 |
| Somalia | 7 |
| Zimbabwe | 8 |

The sample was collected in April 2008 and the most recent of the available determinations were selected.

**Table 18 – Distribution by Year**

| Year | Number |
|---|---|
| 2007 | 19 |
| 2006 | 5 |
| 2005 | 8 |
| 2004 | 3 |
| 2003 | 3 |
| 2002 | 1 |

The sample draws on a range of hearing centres.

**Table 19 – Distribution by Hearing Centre**

| Hearing Centre | Number |
|---|---|
| Bennett House (Stoke) | 2 |
| Birmingham | 4 |
| Columbus House (Newport) | 4 |
| Hatton Cross | 8 |
| Manchester | 4 |
| Phoenix House (Bradford) | 3 |
| Surbiton | 1 |
| Taylor House (London) | 11 |
| Walsall | 2 |

The sample reflects a mix of male and female applicants.

**Table 20 – Distribution by Gender of Applicant**

| Applicant Gender | Number |
|---|---|
| Male | 26 |
| Female | 13 |

## Annex II - Questionnaire

**Name of Country**
**Gender**
**Basis of Case**
**Hearing Centre**
**Adjudicator**
**Result** **Dismissed/Allowed**
**AIT Reference Number**
**Date of Hearing**
**Date of Promulgation of Determination**
**Document Identifier**

| **Question** | | **Answer** |
|---|---|---|
| **Is COI referred to?** | | yes/no |
| **Is it clear what COI was before the tribunal?**<br><br>- how is this laid out | | yes/no |
| **What COI is referred to?**<br>- case law<br>- expert testimony<br>- reports<br>- other | **- in reference to the Home Office's case** | |
| | **- in reference to the claimant's case** | |
| | **- in the adjudicator's considerations** | |
| **Is contradictory COI presented?**<br><br>**How are decisions on contradictory COI made?** | | yes/no |
| **Is COI referenced?**<br>- accuracy of referencing | | yes/no |

| | |
|---|---|
| | |
| **Are direct quotations used?**<br>- accuracy of quotations | yes/no |
| **Is COI summarised?**<br>- accuracy of summaries | yes/no |
| **What is COI used for by the IJ?**<br>- context<br>- case-specific issues of credibility | ***Context***<br><br>***Case-specific issues of credibility*** |
| **Does the IJ refer to a lack of information regarding certain points?**<br><br>- are findings made based on a lack of information | yes/no |
| **Does the determination contain credibility findings and findings of fact not substantiated by reference to COI?**<br>**(Use of speculative argument)** | yes/no |

| | |
|---|---|
| **Does the determination findings of credibility or fact based on COI that are favourable to the applicant?** | yes/no |
| **How is COI treated?**<br>**-** is credibility of sources accepted<br>- is this an explicit consideration<br>- what reasoning is used to explain this | |
| **Is the methodology of sources referred to?**<br>- does this impact on the weight given | yes/no |
| **Are comments made on the role and purpose COI?** | yes/no |
| **Any other observations?** | |

# The Use of Country of Origin Information in Operational Guidance Notes

*Stephanie Huber*[110]


## Summary

The purpose of this study — part of a wider project analyzing the use of Country of Origin Information (COI) in the Refugee Status Determination process in the UK — is to examine the way in which COI is being used in Operational Guidance Notes (OGNs) and to challenge its lack of objectivity, accuracy and transparency. Because OGNs are Home Office policy documents providing guidance to their case owners on specific groups of asylum claims, the COI they contain has been a key focus of the Advisory Panel on Country Information (APCI). The APCI has been concerned that the COI used in Home Office OGNs required monitoring because it is likely to have been selected on the basis of policy considerations. The potential for problems of subjectivity was viewed as particularly important given that case owners rely, sometimes solely, on the COI contained in OGNs.[111]

The study examined 6 OGNs amongst the existing 52 OGNs and provides a representative sample.[112] The OGNs were analyzed in relation to the following questions: (i) Was COI used? (ii) What COI sources were used and how often? (iii) Was COI referenced? (iv) Did the OGN contain findings not substantiated by referenced sources? and v) Did the selected COI lead to inconsistent policy conclusions?

The key observations of this study highlight problems with the use of COI in Home Office OGNs including inaccuracy, underuse, misuse, and misinterpretation. On the basis of these findings three main recommendations emerge. Firstly, the COI content in OGNs needs to be drawn from a wider and more accurate selection of sources, whilst at the same time presenting the selected COI in the most transparent way possible. Secondly, no participants in the Refugee Status Determination process should use any of the COI contained in OGNs as they are selected for a specific policy purpose and do not as such fulfil the aims of objectivity and accuracy. Lastly, the COI content in OGNs should be monitored by an independent monitoring body, such as the recently defunct APCI.[113] Whilst OGNs may have an evidentiary role in the Refugee Status Determination process, they should not form part of the COI evidence, nor be relied upon in considering country conditions.


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[111] This point has been established in a Home Office study, discussions at the Advisory Panel on Country Information and through the experience of the Research and Information Unit team at the Immigration Advisory Service.

[112] For example, in that some of the OGNs are complemented by or draw their COI from country of origin information products produced by the Home Office Country of Origin Information Service, whilst others do not.

[113] In July 2008 the current functions and workings of the Advisory Panel on Country Information were halted through the appointment of a Chief Inspector of the UK Border Agency with the mandate to establish an independent inspectorate to oversee the UK Border Agency. The new inspectorate will subsume five currently separate independent monitoring posts, of which the Advisory Panel on Country Information is one. A working group within the new inspectorate is currently reviewing how this will be done in practice since the Chief Inspector will have to review country information as part of his annual report to Parliament.

## Key Findings

- The COI in Home Office's OGNs is not properly sourced or referenced.
- The selection of COI is over-reliant on the respective Home Office Country of Origin Information Service Report.
- The selected COI fails to reflect the availability of additional sources in the public domain.
- The selection and interpretation of COI may distort the reality of country situation.
- The selected COI does not consistently support the policy conclusions that are drawn from it.

## Recommendations

- The COI contained in OGNs needs to be drawn from a wider range and variety of sources to address the current lack of transparency, currency, relevance and accuracy.
- When reference is made to sources contained in one of the Home Office Country of Origin Information Service products adequate reference to the original source contained in these products should be made.
- All COI material relied upon for the policy conclusions of OGNs should be included.
- Policy conclusions should not be based on the inaccurate representation or misinterpretation of the COI.
- Case owners, legal representatives and Immigration Judges should not rely on the COI contained in OGNs in any circumstances since they are only selected for a specific policy purpose. Instead, further research on specific country conditions and situations should be undertaken pertinent to the specific asylum application.
- An independent monitoring body should be instructed to oversee the inclusion of COI in OGNs and monitor its use throughout the Refugee Status Determination process.

## Introduction

The Research and Information Unit of the Immigration Advisory Service conducts Country of Origin Information (COI) research for use in asylum hearings and as such is concerned with the way in which COI is used in the UK Refugee Status Determination process. As an observer of the Advisory Panel on Country Information the Research and Information Unit was party to ongoing discussions regarding the need for oversight of the country information components of Operational Guidance Notes (OGNs), which are Home Office policy documents. Specifically, these discussions addressed the issue of whether the Advisory Panel on Country Information's remit allowed it to examine OGNs.[114] The Home Office was clearly against this emphasizing that OGNs are policy documents in which COI is cited only to give context to the policy statements and are therefore outside the Advisory Panel on Country Information's terms of reference.[115] This OGN study, has sought to examine this particular claim. Additionally, the OGN study was also influenced by the fact that COI contained in OGNs is seen and used as consultation and even first-instance decision making tools by Home Office case owners. A study commissioned by the Home Office in 2003[116] and discussions within the Advisory Panel on Country Information[117] suggested that the strict time limits for claim assessment may prompt Home Office case owners to rely on the minimum amount of COI possible, with some only referring to the COI included in the OGN.

[114] A discussion on OGNs was a specific agenda item at the 8th meeting of the Advisory Panel on Country Information. Advisory Panel on Country Information, Minutes of 8th Meeting, 06/03/07, para. 3.5, http://www.apci.org.uk/PDF/APCI.8.M%20Minutes.pdf (Accessed: 04/07/08).
[115] Advisory Panel on Country Information, Eighth Meeting 06 March 2007: APCI.8.3 Operational Guidance Notes, 06/03/2007, http://www.apci.org.uk/PDF/APCI.8.3%20OGNs.pdf (Accessed: 20/06/08).
[116] UK Home Office Research Study 271, Country of origin information: a user and content evaluation, September 2003, http://www.homeoffice.gov.uk/rds/pdfs2/hors271.pdf (Accessed: 20/06/08).
[117] Advisory Panel on Country Information, Minutes of 7th Meeting, 31/10/2006, para. 4.10, http://www.apci.org.uk/PDF/APCI_7_minutes.pdf (Accessed: 04/07/08) and Advisory Panel on Country Information, Minutes of 9th Meeting, 02/10/2007, para. 4.7 and 4.8, http://www.apci.org.uk/PDF/APCI.9.M%20minutes.pdf (Accessed: 04/07/08).

At the outset the main concern of this study was with the COI component of the OGN on which policy decisions are based and not to contest the policy conclusions that the Home Office has drawn. However, throughout the study this became almost inevitable and some examples have been used to highlight the inconsistency between selected COI and policy conclusions reached.

This paper will start by briefly laying out the methodology and data set of this study before considering the aim, definition and use of OGNs. The five findings will then be presented before discussing observed instances of the misuse of COI contained in OGNs in the Refugee Status Determination process. The paper will conclude with recommendations to both the Home Office and COI users.

## Methodology & Data Set

In July 2007 6 OGNs were selected for this study amongst the existing 52 OGNs, covering the following countries:

- Afghanistan
- Israel, Gaza and the West Bank
- Kenya
- Nigeria
- Uganda
- Zimbabwe.

The cases included in this sample produced comparable observations allowing issues of concern to be raised. The data set, similar to the other studies in this publication, is a representative sample in that some of the OGNs are complemented by or draw their COI from Country of Origin Information products produced by the Home Office Country of Origin Information Service, whilst others do not. The following table illustrates what types of Country of Origin Information products were available at the time of selection and analysis.

| **Country** | **Date of OGN** | **Most recent Home Office Country of Origin Information product available at time of selection and analysis** |
|---|---|---|
| Afghanistan | 20th April 2007 | Country of Origin Information Report: 23rd April 2007 (previous: October 2006)<br><br>Country of Origin Information Bulletin: December 2005 |
| Israel, Gaza and the West Bank | 6th June 2007 | N.A. |
| Kenya | 3rd September 2007 | Country of Origin Information Key Documents: 15th January 2007 |
| Nigeria | 26th November 2007 | Country of Origin Information Report: 13th November 2007 (previous: May 2007) |
| Uganda | 15th January 2007 | Country of Origin Information Report: April 2006 |

| | | |
|---|---|---|
| Zimbabwe | 16th July 2007 | Country of Origin Information Report: June 2007 (previous: May 2007)<br><br>Country of Origin Information Bulletin: November 2005 |

In order to compile a suitable questionnaire that would guide the analysis of these six OGNs, the following questions were considered: What are OGNs? Who produces them and with what aim? Who uses OGNs and how? How is COI used in OGNs? Which sources are being used? How often are non-Home Office sources used? What decision-making process supports the updating of an OGN?
The final questionnaire focused on the following 7 questions:[118]

i) Is COI used?
ii) What COI sources are used and how often?
iii) Is COI referenced?
iv) Are the sources listed at the end of the document compatible with sources referenced in footnotes?
v) Does the OGN contain 'facts/findings' not substantiated by referenced sources?
vi) Does COI lead to inconsistent policy conclusions?
vii) Further observations?

## Definition, aim and use of OGNs

According to the UK Border Agency's website OGNs provide a 'brief summary of the general, political and human rights situation in the country [of origin]'.[119] Their primary purpose is to give 'clear guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave'.[120] The COI contained in OGNs is 'sourced to the most recent COI' produced by the Home Office Country of Origin Information Service, part of the Research Development and Statistics branch of the Home Office, which is removed from the asylum policy and decision-making process.[121] The OGNs are produced by the Country Specific Asylum Policy Team, which is part of another branch of the Home Office, the Asylum and Appeals Policy Directorate.[122] In August 2007 the website of the then Border and Immigration Agency[123] also contained the following information regarding consultations with other stakeholders when producing OGNs:

[118] The questionnaire can be found in Annex A at the end of this paper.
[119] UK Border Agency, Policy and Law: Guidance and Instructions, http://www.ind.homeoffice.gov.uk/policyandlaw/guidance/ (Accessed: 23/04/08).
[120] UK Border Agency, Policy and Law: Guidance and Instructions: Country Specific Asylum Policy, http://www.ind.homeoffice.gov.uk/policyandlaw/guidance/csap/ (Accessed: 23/04/08).
[121] *Op cit*. At the last meeting of the Advisory Panel on Country Information in October 2008 a representative of the UK Border Agency informed the members and observers that the Home Office Country of Origin Information Service will be returned under the auspices of the Asylum and Appeals Policy Directorate. So far there has not been a public announcement about this change, which will, if implemented, impact on the objectivity and transparency of the workings of the Home Office Country of Origin Information Service as previously criticised in 2004. Please see the following footnote for more information on these criticisms which actually resulted in the separation of the COI and policy function.
[122] Until 1st June 2005 the country information and policy functions were carried out by one department within the Home Office, the Country Information and Policy Unit. After criticism from within the refugee sector these two functions were internally separated in December 2004. The criticism mainly related to the fact that one department should not be responsible for both: providing (objective) COI material and policy. In June 2005 the country information function was formally transferred to the Research, Development, and Statistics Directorate, while the policy function was transferred to the Country Specific Asylum Policy Team. See Advisory Panel on Country Information, Home Office Organisation Changes, September 2005, http://www.apci.org.uk/PDF/apci51.pdf (Accessed: 20/06/08).
[123] On 3rd April 2008 the Home Office announced that "Border, immigration, customs and visa checks will be united […] in the country's new UK Border Agency", which is established as a "shadow agency" of the Home Office and replaces the Border and Immigration Agency. See UK Border Agency, News and Media: 'Latest News: Launch of Britain's new unified Border Agency', 03/04/08,

> The Country Specific Asylum Policy Team produces Operational Guidance Notes (OGNs) in consultation with senior Caseworkers, Appeals Group, and Asylum Policy Unit, Legal Advisors Branch and Foreign and Commonwealth Office.[124]

This information cannot be found anymore on UK Border Agency's restructured website.

Consequently, OGNs can be summarized as follows:

- OGNs are *policy* documents
- OGNs *do* contain COI, and
- The COI is *selected* for a specific application.[125]

The latter point was confirmed by the Home Office in a response to the Advisory Panel on Country Information in February 2007. The note was written as a reply to the Chair of the Advisory Panel on Country Information's suggestion that COI material could be extracted from OGNs and reviewed by the APCI.[126] However, the Home Office concluded that the COI material in OGNs should not be evaluated in the same way as Home Office Country of Origin Information Service Reports, and especially not by the APCI since it would not be 'within the terms of its statutory function'.[127] In the same note, the Home Office explained that the 'OGNs are policy guidance documents rather than COI documents; and the country material within them is specifically selected to support that policy function'.[128] It further explained that

> The country material cited in OGNs is selected and summarised specifically in order to provide sufficient explanation – alongside wider policy considerations and case law – of the guidance given on particular categories of claims. This country material does not seek to provide detailed information on all aspects of an issue and is not a substitute for the COI provided in COIS products. OGNs explicitly instruct decision makers to refer to the relevant COIS product/original sources for the full picture.[129]

However, as mentioned in the introduction, a Home Office study and Advisory Panel on Country Information discussions have demonstrated that due to time constraints some case owners do rely on and refer only to the COI material provided in OGNs.[130] Moreover, some

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http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/ukborderagencylaunch (Accessed: 16/07/08).

[124] UK Border Agency, Law and policy: Country Specific Asylum Policy, http://www.bia.homeoffice.gov.uk/policyandlaw/guidance/csap/ (Accessed: 03/08/2007). The same information can also be found by visiting: http://www.eisil.org/index.php?sid=133038826&id=2119&t=link_details&cat=205&start=30 (Accessed: 27/06/08).

[125] For a similar summary see Paul Daly, UK Home Office Operational Guidance Notes – Should they be used as COI in the Irish Refugee Status Determination?, in The Researcher, Vol. 3, Issue 1, February 2008, http://www.legalaidboard.ie/lab/publishing.nsf/Content/The_Researcher_February_2008_Article_9 (Accessed: 08/07/08).

[126] Advisory Panel on Country Information, Eighth Meeting 06 March 2007: APCI.8.3 Operational Guidance Notes, 06/03/2007, http://www.apci.org.uk/PDF/APCI.8.3%20OGNs.pdf (Accessed: 20/06/08).

[127] Advisory Panel on Country Information, Eighth Meeting 06 March 2007: APCI.8.3 Operational Guidance Notes, 06/03/2007, Home Office response & Conclusion, http://www.apci.org.uk/PDF/APCI.8.3%20OGNs.pdf (Accessed: 20/06/08).

[128] Advisory Panel on Country Information, Eighth Meeting 06 March 2007: APCI.8.3 Operational Guidance Notes, 06/03/2007, Home Office response & Conclusion, http://www.apci.org.uk/PDF/APCI.8.3%20OGNs.pdf (Accessed: 20/06/08).

[129] Advisory Panel on Country Information, Eighth Meeting 06 March 2007: APCI.8.3 Operational Guidance Notes, 06/03/2007, http://www.apci.org.uk/PDF/APCI.8.3%20OGNs.pdf (Accessed: 20/06/08).

[130] The study was carried out in 2001 by the Immigration Research and Statistics Service to conduct a user and content evaluation of COI in the Refugee Status Determination process. Its aim was to provide a review of alternative approaches to the provision of COI in different countries and to assess how information produced within the Home Office related to that produced by external stakeholders. The study used a combination of qualitative and quantitative methods, including in-depth interviews, a questionnaire survey and a desk-based review of current approaches to the provision and use of COI in the asylum and appeals systems of other countries. See Home Office Research Study 271, Country of origin information: a user and content evaluation, September 2003,

respondents of the Home Office study suggested that the actual use of OGNs may result in case owners '[s]tereotyping claims from particular nationalities, and may lead to other sources of more detailed country information, such as country assessments and the source documentation in caseworkers libraries, being under-utilised'.[131] This contravenes the generalised advice provided in OGNs that 'claims should be considered on an individual basis, but taking full account of the guidance contained in this document [OGN].[132]

OGNs further state that 'this guidance must also be read in conjunction with any COI Service [X country] Country of Origin Information at […].[133] Thus, whilst the guidance states that other COI materials should be consulted, especially the Home Office Country of Origin Information Service products, the use of selected COI material contained in OGNs is problematic and therefore constitutes the main focus of this paper.

In general OGNs are structured under the following headings:

i) *Introduction* – explaining the nature of the document and instructs case owners to read the OGN in conjunction with any other relevant COI product on the particular country.
ii) *Country assessment* – providing a very condensed and brief summary of the political history of the country in question.
iii) *Main categories of claims* – setting out the 'main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in [X country]'.[134]
iv) *Discretionary Leave* – setting out the 'types of claim which may raise the issue of whether or not it will be appropriate to grant DL'.[135] Usually these claims cover the situation for minors and those seeking medical treatment in the UK.
v) *Returns* – providing information about the Voluntary Assisted Return and Reintegration Programme, as implemented on behalf of the UK Border Agency by the International Organization for Migration, and occasionally also about any entry clearance facilities available in the country of origin as applicable.
vi) *List of source documents* – all source documents as cited in the footnotes.

For the purpose of this study the main focus was on any section where reference to COI was made. This was usually in section ii) Country assessment, iii) Main categories of claims, and iv) Discretionary leave, especially with regards to availability of medical treatment.

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http://www.homeoffice.gov.uk/rds/pdfs2/hors271.pdf (Accessed: 20/06/08). See also Advisory Panel on Country Information, Minutes of 7th Meeting, 31/10/2006, para. 4.10, http://www.apci.org.uk/PDF/APCI_7_minutes.pdf (Accessed: 04/07/2008) and Advisory Panel on Country Information, Minutes of 9th Meeting, 02/10/2007, para. 4.7 and 4.8, http://www.apci.org.uk/PDF/APCI.9.M%20minutes.pdf (Accessed: 04/07/08).

[131] Home Office, *ibid*, 2003, p.71, http://www.homeoffice.gov.uk/rds/pdfs2/hors271.pdf (Accessed: 20/06/08).

[132] General statement made in every OGN, usually in paragraph 1.3. See for an example the Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 08/07/08).

[133] General statement made in every OGN, usually in paragraph 1.2. See for an example the Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 08/07/08).

[134] General statement made in every OGN, usually in paragraph 3.1. See for an example the Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 08/07/08).

[135] General statement made in every OGN, usually in paragraph 4.2. See for an example the Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 08/07/08).

## Main findings

The sample OGNs enabled the following five observations:

1. The selected COI was not properly sourced or referenced;
2. The selected COI was over-reliant on the respective Home Office Country of Origin Information Service Report;
3. The selected COI failed to reflect the availability of additional sources in the public domain;
4. The selection and interpretation of COI may have distorted the country situation;
5. The selected COI did not consistently support the policy conclusions.

These findings are explored in full below and illustrated with examples.

## 1. The selected COI is not properly sourced or referenced

An assessment of the transparency of the use of COI in OGNs requires consideration of the use of referencing, summaries and quotations. Lack of transparency not only makes it difficult to assess whether the information is accurately summarised and used as a basis for policy guidance, but also misleads the case owner on the availability of further and more specific COI that might be more relevant for an informed decision on a particular case.

There were significant differences in the extent and accuracy of referencing between the OGNs. Several exhibit poor, unclear and incorrect footnoting and referencing whilst others failed to reference at all.[136] These failures indicate a lack of transparency, currency, relevance and accuracy in the presentation of COI in OGNs.[137]

The following problems were observed in most OGNs examined. Firstly, all 6 OGNs examined quoted from the footnoted source, often directly, without naming the source in the actual text or using quotation marks. Moreover, footnotes that reference the different sources used in a particular paragraph were almost always placed at the end of the paragraph even if different sources were used throughout it. For the purpose of transparency it would be good practice to include in the text the source name and date from where the information was taken from and complement it with a footnote, clearly referencing the material.

Secondly, all 6 OGNs examined[138] used unclear, misleading and inconsistent footnoting at the bottom of the page and referencing in the 'List of source documents' section. This includes omitting or misspelling the author/publisher, title, date of publication, and/or web link, as well as listing several sources in the footnote although the COI in question was only found in one of them. This problem was particularly evident in the June 2007 OGN on *Israel, Gaza and the West Bank*.[139] Since no Home Office Country of Origin Information Service product exists for this country it is crucial that the COI provided in the OGN is clearly referenced, both in the footnotes and at the end of the document under the 'List of source documents'. Otherwise it becomes a very laborious and time consuming exercise to verify the accuracy of the extracted COI. In many instances clear reference to the section and/or paragraph of the source needed to be included.

[136] The latter point is explored further in finding 5.

[137] For more information see the explanatory notes of this publication on the Austrian Centre for Country of Origin and Asylum Research and Documentation Network (ACCORD), which has formulated a COI research methodology that is based on the following four pillars: Transparency, Relevance, Reliability & Balance, and Accuracy & Currency.

[138] The OGNs on Nigeria and Zimbabwe are much better, in this regard, than the other four OGN's.

[139] From now on referred to as *Israel, Gaza and the West Bank* OGN. Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

Thirdly, acronyms are used without explaining or spelling out their meaning and incomplete and inaccurate information was included for no apparent reason. In the September 2007 OGN on *Kenya*[140] the following sentence has been included in the section on 'Medical treatment':

> Widespread HIV co-infection may explain part of the growing case-load, but it is also possible that the NTP is detecting a higher proportion of cases. With increased funding for planned activities – including mechanisms to improve treatment outcomes, TB/HIV management, community-based care.[141]

In this instance the meaning of 'NTP' was not explained, the last sentence has not been copied correctly and the end of the sentence is missing.[142] In such cases it is hard to see what the added value is gained by including material that does not explain its terminology or include the full information provided in the original source. Similarly, the *Israel, Gaza and the West Bank* OGN is consistently poor on terminology, referring to 'IDF; IPS and IBA' without explanation.[143]

Fourthly, all 6 OGNs examined contain paragraphs in the 'Country assessment' section of the OGN which are duplicated in the 'Main categories of claims' section, mostly under the sub-heading 'Treatment' – referring to the treatment of the claimants in the particular category. This practice might increase the omission of more relevant and specific COI with regards to the particular group of claimants. Instead, additional COI should be used and if necessary and relevant cross-references to previous paragraphs should be made.

Fifthly, 3 OGNs make use of sources that are regularly updated online (e.g. country profile pages). However, it was noted that these sources were accessed a long time before the actual publication of the OGN. For example, the *Kenya* OGN noted that the Foreign & Commonwealth Office Kenya Country Profile page was accessed on 15th October 2006,[144] but the OGN was not published till September 2007.

Lastly, there were cases in which referenced COI could not be found once the particular referenced source was consulted, and others where statements were made about a particular country situation for which there are no references given at all. This was particularly noticed in the January 2007 OGN on Uganda.[145] Similar patterns were observed in the *Israel, Gaza and the West Bank* OGN, the July 2007 OGN on *Zimbabwe*[146], and the April 2007 OGN on *Afghanistan*[147].[148] In addition, the *Kenya* OGN quotes the original source incorrectly several

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[140] From now on referred to as the *Kenya* OGN

[141] UK Border & Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, para. 4.4.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[142] Since the footnote to this sentence refers to the Kenyan Home Office Country of Origin Information Service Key Documents of November 2006, which is not listed in the 'List of source documents' of the Kenya OGN nor any longer available in the public domain, reference to the original source had to be located by using the Kenyan Home Office Country of Origin Information Service Key Documents of January 2007, which is however listed in the 'List of source documents'. The original source uses that exact sentence but does not explain 'NTP' further either. See for the original source WHO, Country Profile: Kenya, 2006, http://www.afro.who.int/tb/country-profiles/ken.pdf (Accessed: 15/07/08).

[143] Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, paras. 3.13.4 and 3.13.6, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

[144] UK Border & Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, s. 6, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[145] From now on referred to as the *Uganda* OGN. Home Office, Operational Guidance Note Uganda, 15/01/2007, paras. 3.6.9, 3.6.13, 3.7.4-3.7.6, 4.4.3 & 4.4.4 and footnotes 21, 25 – 27, 39 and 40, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08).

[146] From now on referred to as the *Zimbabwe OGN*.

[147] From now on referred to as the *Afghanistan* OGN.

[148] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/

times. In one instance it states: '[a]ccording to the government's August 2004 Demographic and Health Survey, 32% of women had undergone FGM',[149] while the U.S. Department of State mentions that 'According to the UN Children's Fund (UNICEF), 32 percent of women had undergone FGM'.[150] Similarly, the *Israel, Gaza and the West Bank* OGN stated that the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA) is the main provider of basic services to over '4.3 million registered Palestinian refugees. Its five fields of operation are Jordan, Lebanon, Syria, West Bank and Jordan'.[151] The original source, UNWRA, however referred to the following 'UNWRA provides [basic services] to eligible refugees among the 4.4 million registered Palestine refugees in its five fields of operations: Jordan, Lebanon, the Syrian Arab Republic, the West Bank and Gaza Strip. Some 1.3 million refugees, around one third of the total, live in 58 recognized camps [...]'.[152] The same OGN further referred to the wrong Article in the 1954 *Convention relating to the Status of Stateless Persons*.[153]

## 2. The COI selection relies mainly on the respective Home Office Country of Origin Information Service Report

The problem with over-reliance on one source depends on its currency, accuracy and objectivity, as well as on its ability to answer all relevant COI questions for the relevant country. With regards to the Home Office Country of Origin Information Service Reports it needs to be borne in mind that they are an amalgamation of other information, which has been filtered by a department attached to one of the parties in an adversarial Refugee Status Determination process. These reports have in the past been criticised by various actors in the Refugee Status Determination process for being nothing more than a collation or summary of COI material published by others, as well as for relying on inaccurate sources and selective COI material.[154]

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98820?view=Binary (Accessed: 15/07/08), Border & Immigration Agency, Operational Guidance Note Zimbabwe, 16/07/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/zimbabweogn?view=Binary (Accessed: 15/07/08) and Border & Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/08) .

[149] UK Border & Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, para. 2.10, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[150] U.S. Department of State, Country Reports on Human Rights Practices – 2006: Kenya, 06/03/2007, s. 5, http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm (Accessed: 15/07/08).

[151] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, para. 3.10.1, June 2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

[152] United Nations Relief and Works Agency for Palestine Refugees in the Near East, *Overview: UNRWA Services to Palestinian Refugees, Undated*, http://www.un.org/unrwa/overview/p02.html (Accessed: 15/07/08).

[153] The OGN refers in paragraph 3.11.8 to 'Article 1(2)(ii)', while the actual information it refers to is found in Article 1 (2) (i) of the 1954 Convention relating to the Status of Stateless Persons. See Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, para. 3.11.8, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/2008) and the 1954 Convention relating to the Status of Stateless Persons, http://www.unhchr.ch/html/menu3/b/o_c_sp.htm (Accessed: 26/10/08).

[154] See for example Medical Foundation for the Care of Victims of Torture, 'Right First Time? Home Office Asylum Interviewing and Reasons for Refusal Letters', February 2004, Amnesty International, Get it Right: How Home Office Decision Making Fails Refugees, February 2004, IAS, Home Office Country Assessments: An Analysis, April 2003 & April 2004, Independent Asylum Commission, Saving sanctuary, The Independent Asylum Commission's first report of conclusions and recommendations: How we restore public support for sanctuary and improve the way we decide who needs sanctuary, 20/05/2008, and Poppy Project & Refugee Women's Resource Project at Asylum Aid , Good Intentions: A review of the New Asylum Model and its impact on trafficked women claiming asylum, June 2008.

This study observed that OGNs provided COI which was often identical to that found in the respective Home Office Country of Origin Information Service Report. Since OGNs rely greatly on these direct quotations from 'secondary' sources contained in the Home Office Country of Origin Information Service Reports they both present a distillation of sources and a filtering of information. It is therefore recommended to use a larger variety or types of sources[155] and if reference is made to the relevant Home Office Country of Origin Information Service Report that the original source contained in the Home Office Country of Origin Information Service Report is adequately mentioned and footnoted.

The following examples illustrate the problem with the current practice of over-relying on Home Office Country of Origin Information Service Reports in OGNs:

Out of the 6 examined OGNs, those for Zimbabwe, Nigeria (November, 2007)[156], and Afghanistan relied heavily on their respective Home Office Country of Origin Information Service Reports.[157] Despite its heavy reliance on the relevant Home Office Country of Origin Information Service Report, the *Zimbabwe* OGN was short compared with the other examined OGNs and contained far less COI to substantiate the policy conclusions. In comparison, the *Nigeria* and *Afghanistan* OGNs incorporated some COI from sources other than the respective Home Office Country of Origin Information Service Reports, including news articles, NGO and government reports. What was striking, though, was the fact that the *Afghanistan* OGN did not rely on the Home Office Country of Origin Information Service Report that was published three days after, but instead incorporated country information from the October 2006 Home Office Country of Origin Information Service Report on Afghanistan.[158] As mentioned above this raises the question of the currency and accuracy of the COI contained in the *Afghanistan* OGN. Using a wider variety of sources and more up-to-date COI would have constituted better practice.

This lack of currency was also evident in the *Uganda OGN*, which did not make use of the latest available April 2006 Home Office Country of Origin Information Service Report on Uganda.[159] Instead its country information is taken from a range of sources including the U.S. Department of State reports covering 2004 and 2005, BBC news articles, Human Rights Watch reports, and information provided by the Ugandan Ministry of Health, the UK Foreign and Commonwealth Office, the UK Department for International Development and the World Health Organisation. Similarly, the *Israel, Gaza and the West Bank OGN,* for which no Home Office Country of Origin Information Service products are available, used a variety of sources, both relatively recent and older ones.[160] The *Kenya OGN* instead relied heavily on the U.S.

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[155] These could be reports from other international and national governmental sources, human rights organisations, news reports etc.

[156] From now on referred to as the *Nigeria* OGN

[157] See Border and Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/08) and Home Office, Country of Origin Information Report Afghanistan, 16/10/2006, http://www.homeoffice.gov.uk/rds/country_reports_afghanistan.html (Accessed: 16/07/08), Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 08/07/08) and Border and Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08), and Border & Immigration Agency, Country of Origin Information Report Zimbabwe, 18/06/2007, http://www.homeoffice.gov.uk/rds/country_reports_zimbabwe.html (Accessed: 15/07/08) and Border & Immigration Agency, Operational Guidance Note Zimbabwe, 16/07/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/zimbabweogn?view=Binary (Accessed: 15/07/08).

[158] The most likely explanation might be that the April 2007 Home Office Country of Origin Information Report was published by a different department than the April 2007 OGN on Afghanistan. Yet, more co-ordination amongst departments might result in more up-to-date COI being made available in OGNs to support policy conclusions.

[159] UK Home Office, Operational Guidance Note Uganda, 15/01/2007. http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08).

[160] Border and Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007,

Department of State report covering 2006 and the following Home Office Country of Origin Service Key Documents: November 2007, January 2007 and November 2006.[161]

Amongst the six studied OGNs, there are 29 references to COI sources, 10 referring to one of the Home Office Country of Origin Service Key Documents, while 16 mention the U.S. Department of State report.[162] This suggests that they have been consulted in order to find references to relevant COI material. However, Home Office Country of Origin Information Service Key Documents do nothing more than list main source documents together with their respective web links adding, at the most, a brief country profile and index rather than an actual report. Thus, listing Home Office Country of Origin Information Service Key Documents as source material via footnotes in OGNs is misleading since they do not fulfil the same role as other COI material. Instead, OGNs should refer to the original source consulted and footnote the relevant section/paragraph used. The following footnotes in the *Kenya* OGN exemplify the complex and confusing referencing produced by using Home Office Country of Origin Information Service Key Documents: '5. COI Kenya Key Documents November 2006 (Key facts, Political system) [FCO profile & BBC]' and '8. COI Kenya Key Documents November 2006 (Freedom of speech)'.[163] Both are confusing and misleading. The first footnote suggests that the Foreign & Commonwealth Office and BBC link provided under the relevant sub-headings in the Kenyan Home Office Country of Origin Information Key Documents was consulted – in this case 'Key facts and Political system', while in the second footnote none such was provided, only the sub-heading. By referencing the original source such complicated and time-consuming footnoting could be avoided and more transparency added to OGNs.

## 3. The selected COI fails to reflect the availability of additional sources in the public domain[164]

The previous observation highlighted the selectivity of sources and the frequent over-reliance on one source. This finding highlights an insufficient use of a full range of COI materials and the lack of any COI in OGNs on relevant issues. Despite the Home Office arguments that OGNs are only intended to be seen as guidance documents, the reality is that some case owners might only refer to OGNs and hence have only access to COI that is provided in them.[165] Consequently, the COI that a decision-maker might refer to is from a limited array of sources. Moreover, this becomes more pertinent for a country where no Home Office Country of Origin Information Service Report exists and the OGN might be the only Home Office document containing some COI.

With regards to the lack of any COI on a relevant issue all 6 examined OGNs, with the exception of the *Afghanistan* OGN, have no information on the reception conditions or general situation for minors in their respective countries of origin. Yet, all examined OGNs use the same standardised paragraph acknowledging the protection needs of minors: '[a]t the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place'.[166] While it is a recommendable policy

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http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

[161] Please note that the latter is no longer available in the public domain.

[162] Border and Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[163] Border and Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, footnotes 5 and 8, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[164] Further research in analysing which publicly available COI material should be included in order to provide as full and complete a picture as possible in the country of origin on particular issues would be useful to explore in more depth.

[165] See reference made earlier about studies on the use of OGNs by case owners.

[166] General statement made in every OGN, usually in paragraph 4.3.1. See for an example the Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para.4.3.1, http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 08/07/08).

conclusion, from a COI perspective it can be noted that for most countries a wide range of sources exist in the public domain that deal with children's needs, rights and violations. As just mentioned, only the *Afghanistan* OGN added a paragraph citing the U.S. Department of State Report on Human Rights Practices in 2005 as found in the October 2006 Home Office Country of Origin Information Service Report, which mentioned Afghanistan's ratification of the Convention on the Rights of the Child, but also ongoing risks to children, such as child trafficking, child labour, forced recruitment, and general child abuse.[167] This practice could be extended to all 'Minor' sections in OGNs, including consultation of a vast array of sources dealing with children's issues.

Such instances of non-inclusion, insufficient or outdated COI was particularly noted in the section 'Medical treatment'. For example, the *Israel, Gaza and the West Bank* OGN only refers to a presumable outdated 2003 report by the European Observatory on Health Care Systems, instead of profiting from more recent sources available in the public domain.[168] The *Kenya OGN*, instead, did not include any information on the availability of HIV/AIDS treatment but in its place only refers to the availability of treating Tuberculosis.[169] This is surprising since in one of the footnotes two sources are listed which are taken from the Kenyan Home Office Country of Origin Information Service Key Documents that actually mention the HIV/AIDS epidemic in Kenya.[170] Similarly, the *Nigeria* OGN did not include the available statistics in the footnoted reference comparing how many people are on antiretroviral therapy and how many more need it.[171] Moreover, despite the fact that the Home Office Country of Origin Information Service Report states that 'sickle cell anaemia is an inherited disease especially common in West and Central Africa, including Nigeria'[172] there is no mention on its availability of treatment in the *Nigeria* OGN despite the Nigerian Home Office Country of Origin Information Service Report being extensively referenced throughout the OGN and specifically in the 'Medical treatment' section.[173] The same *Nigeria* OGN further fails to incorporate more specific information about the internal relocation difficulties a person might face (e.g. claims based on FGM or victims of trafficking) moving between the predominately Muslim north of the country to the majority Christian south.[174] The only potential reference point is made under the section 'Religious persecution', where it is noted that the Shari'a legislation is almost identical in each of the 12 northern states but no 'inter-state co-operation or co-ordination

[167] UK Border and Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, para.4.3.2, http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 08/07/08).

[168] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, footnotes 90-92, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

[169] UK Border and Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, s. 4.4 and particularly para. 4.4.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[170] UK Border and Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, footnote 29, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[171] Compare Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 4.4.4, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08) with Border and Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, paras. 32.08 and 32.09, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

[172] UK Border and Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 32.14, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

[173] See Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/2008) and Border and Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 32.14, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

[174] UK Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

between the justice systems' has been reported.[175] This, however, leaves the question open as to whether, for example, a woman of a particular religious background and without any family ties could easily relocate to any part of the country or only the southern/northern part respectively.

## 4. The selective use of COI and the interpretation of COI used for policy purposes may distort the country situation

Our review of the Home Office OGNs shows that the language used painted a better situation in the country of origin than the original sources or even the Home Office Country of Origin Information Service Reports suggest. Moreover, it seems that certain information is omitted in order to fit the sought policy conclusion.

Whilst acknowledging that in the production of OGNs, COI contained in Home Office Country of Origin Information Service Reports is assessed, evaluated and sometimes summarised, some case owners might only refer to OGNs and therefore miss the accurate and wide range of available COI on a specific country issue.

The November *Nigeria* OGN is the most striking example in this regard. Throughout this OGN important country information found in the referenced sources was not included or other information, maybe of lesser importance, misinterpreted. Despite the fact that the misinterpretation or misrepresentation could be interpreted as minor it still raises the question of whether other country information in OGNs can be trusted if such mistakes occur. For example, the *Nigeria* OGN describes the imprisonment of eighteen men for 'alleged sodomy though the charges were subsequently reduced to vagrancy'.[176] However, the referenced Home Office Country of Origin Information Service Report quotes an IRIN news report as stating that the men were then charged with the 'lesser crime of soliciting homosexual sex' and freed on bail.[177] In another instance, the *Nigeria* OGN states that 'According to reports ...', when in fact it bases that particular country information only on extracts from the U.S. Department of State 2006 report as quoted in the Home Office Country of Origin Information Report on Nigeria[178] or even on one interviewee[179]. Similarly, with regard to 'Fear of secret cults, juju or student confraternities' the OGN bases its country assessment on one single source, namely an anthropology professor quoted in a Canadian Immigration and Refugee Board Research Information Response and referenced in the Home Office Country of Origin Information Report on Nigeria.[180]

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[175] UK Border and Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.9.10, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[176] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.13.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[177] UK Border & Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 21.06, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

[178] Compare Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.14.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/2008) with Border & Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 13.01, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

[179] Compare Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.9.7, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08) with Danish Immigration Service, Report on human rights issues in Nigeria, January 2005, para. 6.2.13, http://www.ecoi.net/file_upload/470_1161611888_joint-british-danish-fact-finding-mission-to-abuja-and-lagos.pdf (Accessed: 16/07/08).

[180] Compare Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.12.2, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/2008) with Border & Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 29.01, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

With regard to omitting country information found in referenced sources, the *Nigeria* OGN stated that 'Muslims can opt to have their case judged by the parallel criminal justice system but few opt for non-Shari'a courts'.[181] However, the source referenced in the footnote stated that Muslims who opt not to have their cases heard by Shari'a courts 'will be regarded as not being 'complete Muslims' and are open to being charged with 'hypocrisy'.[182] Furthermore, it 'is a serious move and can be considered as apostasy by the local community'.[183] This COI is material to an assessment of whether a Muslim can in practice opt for a non-Shari'a trial. In the section dealing with 'Sufficiency of protection' for women fleeing FGM, the OGN stated:

> Internal Relocation: The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restrict movements of individuals.[184]

Instead the section from the footnoted source has not been included, which stated:

> NHRC (National Human Rights Commission) added that it might be difficult for a woman residing in the southern part of Nigeria who wishes to avoid FGM to take up residence in the Northern part whereas all Nigerians have the possibility to take up residence in Lagos due to the ethnic diversity and size of the city. [185]

In a further example, the reach of cults in Nigeria had been downplayed by not including the additional sentence in the footnoted source which stated '[a]longside all of this, many politicians mobilize local cult members as the foot soldiers of political violence. Some politicians are themselves members of cult organizations'.[186] Similarly, the fact that the inadequately funded and understaffed health care system in Nigeria can 'contribute to overall discriminatory behaviour' has not been included in the OGN, despite the footnoted source referring to it in the sentence following the one from which the COI was taken. [187]

The January *Uganda* OGN not only contains incorrect COI, or incorrectly interpreted information[188], but also relevant information has been omitted from the original source[189]. For

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[181] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.9.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[182] Danish Immigration Service, Report on human rights issues in Nigeria, January 2005, para. 6.2.4, http://www.ecoi.net/file_upload/470_1161611888_joint-british-danish-fact-finding-mission-to-abuja-and-lagos.pdf (Accessed: 16/07/08).

[183] Danish Immigration Service, Report on human rights issues in Nigeria, January 2005, para. 6.2.5, http://www.ecoi.net/file_upload/470_1161611888_joint-british-danish-fact-finding-mission-to-abuja-and-lagos.pdf (Accessed: 16/07/08).

[184] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.10.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[185] UK Border & Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 23.25, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/2008).

[186] Compare Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.12.4, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08) with Border & Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 30.07, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

[187] Compare Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 4.4.2, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08) with Border & Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 32.01, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).

[188] UK Home Office, Operational Guidance Note Uganda, 15/01/2007, paras. 2.7 and 2.8 and footnotes 9 and 11, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08).

[189] UK Home Office, Operational Guidance Note Uganda, 15/01/2007, paras. 2.2, 2.3 and 4.4.5 and footnotes 2, 3 and 41,

example, in the 'Country assessment' section the following human rights abuses were noted based on the U.S. Department of State's Ugandan Country Report on Human Rights Practices in 2005:

> 2.3 The government's human rights record remained poor during 2005 and although there were some improvements in a few areas, serious problems remained including restrictions on opposition party activity, unlawful killings by security forces, disappearances, use of torture and abuse of suspects by the security forces', vigilante justice, official impunity, arbitrary arrest, incommunicado and lengthy pre-trial detention.[190]

However, the following human rights violations, some of which of critical importance to asylum claims, were omitted:

> ... • harsh prison conditions
> • restricted right to a fair trial
> • infringement of privacy rights
> • restrictions on freedom of speech, the press, association, and assembly
> • limited freedom of religion
> • abuse of internally displaced persons (IDPs)
> • government corruption
> • violence and discrimination against women
> • female genital mutilation (FGM)
> • violence and abuse of children, particularly sexual abuse
> • trafficking in persons, particularly children
> • violence and discrimination against persons with disabilities
> • forced labor, including by children
> • child labor.[191]

Moreover, with regards to the availability of treatment for people with HIV/AIDS, the *Uganda* OGN omits important information relating to the country-wide availability of antiretroviral therapy, mentioned in the original source.[192] Instead, it only refers to who provides HIV treatment, as extracted from the original source.[193]

Similarly, in the *Zimbabwe* OGN information regarding the harsh treatment MDC leader Morgan Tsvangirai suffered when he was arrested in March 2007 was mentioned but the extent of it was not. While the referenced June 2007 Home Office Country of Origin Information Service Report on Zimbabwe quotes several news articles using the following descriptions: 'critical state after sustaining head injuries', 'moved to intensive care with a cracked skull' and 'mouth-to-mouth resuscitation'[194], the *Zimbabwe* OGN only states the following: 'Morgan Tsvangirai ... arrested on 11 March and ... reportedly beaten while in police

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http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08).

[190] UK Home Office, Operational Guidance Note Uganda, 15/01/2007, para. 2.3, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08).

[191] U.S. Department of State, Country Reports on Human Rights Practices – 2005: Uganda, 08/03/2006, http://www.state.gov/g/drl/rls/hrrpt/2005/61598.htm (Accessed: 15/07/08).

[192] See Home Office, Operational Guidance Note Uganda, 15/01/2007, para. 4.4.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/2008) and World Health Organisation (WHO), Summary country profile for HIV/AIDS treatment scale-up, June 2005, s. 5, http://www.who.int/3by5/support/june2005_uga.pdf (Accessed: 15/07/08).

[193] See Home Office, Operational Guidance Note Uganda, 15/01/2007, para. 4.4.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08) and WHO, Summary country profile for HIV/AIDS treatment scale-up, June 2005, s. 5, http://www.who.int/3by5/support/june2005_uga.pdf (Accessed: 15/07/08).

[194] UK Border & Immigration Agency, Country of Origin Information Report Zimbabwe, 18/06/2007, paras. 7.08 and 7.19, http://www.homeoffice.gov.uk/rds/country_reports_zimbabwe.html (Accessed: 15/07/08).

custody'[195]. In another instance, information vital to providing a picture about the availability of treatment for HIV/AIDS in Zimbabwe was left out. Instead it was claimed that Médecins Sans Frontières was working towards 'improving treatment for HIV/AIDS in Zimbabwe'.[196] This was certainly Médecins Sans Frontières's aim, but the news article as quoted by the footnoted Home Office Country of Origin Information Service Report on Zimbabwe noted that only the Spanish branch of Médecins Sans Frontières was operating in Bulawayo, while opening a clinic in Buhera district of Manicaland province.[197]

Taking the example of the *Afghanistan* OGN, throughout the OGN important security concerns with regards to Kabul were omitted, as well as UNHCR's concern that '[e]ven in a city like Kabul, which is divided into neighbourhoods (gozars) where people tend to know each other, the risk remains, as news about a person arriving from elsewhere in the country travel [sic] fast', which had been however cited in the sourced October 2006 Home Office Country of Origin Report on Afghanistan.[198] Moreover, information about the difficulties faced by female police officers in providing protection (and also their own risk of being killed by the resurgent Taliban) was not included in the OGN – despite it being stated in the sentence following from the section where the COI has been taken.[199]

It was also observed that by changing the tense and/or adding words to the COI contained in OGNs the original text is at times distorted and misrepresented. The *Israel, Gaza and the West Bank* OGN states that '[t]he police utilized training programs and a bureau in the justice ministry reviewed complaints against police officers and imposed disciplinary charges or recommended indictments against officers'.[200] What the OGN failed to do is refer to what the original source really stated, namely that "Bureau in the justice ministry reviews complaints against police officers and may impose disciplinary charges or recommend indictments against officers'[201] [Emphasis added]. It further omitted to add that 'During 2004 several judges criticized the bureau for launching faulty investigations against police officers who were subsequently acquitted'.[202] Thus, even such subtle differences provide the reader with a distorted view of the situation in the country concerned. A further example in the Israel, Gaza and the West Bank OGN refers to the availability of medical treatment in Israel. Again, by adding two words to the quoted text of the original source a new meaning was given. While the original text comments that family health centres have developed the capacity to engage

[195] UK Border & Immigration Agency, Operational Guidance Note Zimbabwe, 16/07/2007, para. 3.6.3, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/zimbabweogn?view=Binary (Accessed: 15/07/08).
[196] UK Border & Immigration Agency, Operational Guidance Note Zimbabwe, 16/07/2007, para. 4.4.4, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/zimbabweogn?view=Binary (Accessed: 15/07/08).
[197] UK Border & Immigration Agency, Country of Origin Information Report Zimbabwe, 18/06/2007, paras. 29.36 and 29.38, http://www.homeoffice.gov.uk/rds/country_reports_zimbabwe.html (Accessed: 15/07/08).
[198] Compare Border & Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/08) with Home Office, Country of Origin Information Report Afghanistan, 16/10/2006, paras. 8.08 – 8.15 and 28.07, http://www.homeoffice.gov.uk/rds/country_reports_afghanistan.html (Accessed: 16/07/08).
[199] Compare Border & Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, para. 3.14.7, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/08) with Home Office, Country of Origin Information Report Afghanistan, 16/10/2006, para. 23.42, http://www.homeoffice.gov.uk/rds/country_reports_afghanistan.html (Accessed: 16/07/08).
[200] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, para. 3.12.6, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).
[201] U.S. Department of State, Country Reports on Human Rights Practices – 2005: Israel and the occupied territories, 08/03/2006, s. 1d, http://www.state.gov/g/drl/rls/hrrpt/2005/61690.htm (Accessed: 15/07/08).
[202] U.S. Department of State, Country Reports on Human Rights Practices – 2005: Israel and the occupied territories, 08/03/2006, , s. 1d, http://www.state.gov/g/drl/rls/hrrpt/2005/61690.htm (Accessed: 15/07/08).

in 'intensive outreach efforts in the areas of immunization and well-child care more generally'[203], the OGN notes that 'intensive outreach efforts in the areas of immunization and well-child care [have developed] more generally in Israel'[204] [Emphasis added]. Similarly, in the Nigeria OGN, the following was observed with regards to people seeking asylum due to the fear of having to undergo FGM. The Nigeria OGN states that 'the incidence [of FGM] has declined steadily in the past 15 years'[205], while the source referenced states 'the incidence [of FGM] has declined steadily in recent years'[206]. Again, a small change of terms can place a significant different sense of meaning to the sentence, implying that incidences of FGM have been declining since 15 years ago versus 'in recent years', and consequently might support an intended policy conclusion that incidences of FGM are less likely to occur now than in the past. In the Afghanistan OGN the term 'sexual violence' as stated in the original source was replaced with 'rape' – confining it to a specific and single act of sexual violence instead of the broader definition of the term.[207]

## 5. Policy conclusions do not appear to be consistently supported by the selected COI

It was not the purpose of this study to contest the policy conclusions in OGNs. However, it is necessary to note that certain policy conclusions were drawn, which do not appear to be supported by the COI selected and presented.

For example, the *Uganda* OGN describes prison conditions with the following words: 'harsh ... frequently life threatening ... several reports ... tortured inmates ... overcrowding ... prisons were believed to have high mortality rates'.[208] However, the policy conclusion reached is as follows

> 3.8.9 Conclusion. Whilst prison conditions in Uganda are poor with overcrowding and disease being particular problems conditions are unlikely to reach the Article 3 threshold ... However, the individual factors of each case should be considered ... relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health.[209]

While the selected COI painted a very dire situation of the state of and situation in prisons in Uganda, possibly in breach of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[210], the policy conclusion did not reflect this. A similar observation was made in the 'Prison conditions' section of the *Nigeria* OGN.[211]

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[203] European Observatory on Health Care Systems, Health Care Systems in Transition: Israel, 2003, p. 51, http://www.euro.who.int/document/E81826.pdf (Accessed: 15/07/08).
[204] Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, para. 4.4.2, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).
[205] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.10.2, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).
[206] UK Border and Immigration Agency, Country of Origin Information Report Nigeria, 13/11/2007, para. 23.21, http://www.homeoffice.gov.uk/rds/country_reports.html (Accessed: 16/07/08).
[207] Compare Border & Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, para. 5.3, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/2008) with UNHCR, Humanitarian Consideration with regards to Return to Afghanistan, May 2006, p. 2, http://www.unhcr.se/Pdf/help/hum06.pdf (Accessed: 16/07/08).
[208] UK Home Office, Operational Guidance Note Uganda, 15/01/2007, s. 3.8, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08).
[209] UK Home Office, Operational Guidance Note Uganda, 15/01/2007, para. 3.8.9, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/ugandaogn?view=Binary (Accessed: 15/07/08).
[210] [European] Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS 5), 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos. 3, 5, and 8 which

Another example from the *Nigeria* OGN illustrated a general tendency to view the work of a few NGOs as sufficient to provide assistance and even protection to all people in need of that support. The OGN implied and concluded that the operation of '10-15 NGOs' in Nigeria is sufficient to provide protection to a person fleeing FGM and that therefore '[w]omen ... would if they chose to do so, also be able to seek assistance from women's NGO in the new location'.[212] This suggests that these NGOs operate nationwide and are able to provide protection to anybody and everybody that requires it, whereas this is not clear from the COI. Furthermore, conclusions reached in the *Zimbabwe* OGN with regards to '[m]embers/supporters of the MDC' and the level of protection and possibility of internal relocation for 'Gay men/Lesbians' are not based on any country information presented in previous paragraphs.[213] This is also the case for people fearing '[r]eligious persecution' and '[f]ear of secret cults, juju, or student confraternities' in Nigeria.[214] Despite having included COI that states that religious freedom is being restricted and omitting information about how Muslims are perceived if they decide to have their cases heard in a non-Islamic judicial court (see earlier point made above), the policy conclusions do not reflect this.[215]

Whilst most policy conclusions are stated in the last paragraph (it always starts with 'Conclusion') of the relevant category of claim, some policy statements have been found to be made earlier. In the *Kenya OGN* the following finding was made in reference to the level of protection provided to people fearing FGM: '... [t]he authorities actively prevent FGM and there is clear evidence that those in fear of undergoing, or being forced to perform FGM may seek and receive adequate protection from the state authorities'.[216] However, this sentence has not been referenced and none of the sources used in the *Kenya* OGN have made such a strong statement. Moreover, under the sub-heading 'Internal relocation' for the same category of claimants, it is suggested that 'FGM is a regionalised practice mainly in Eastern, Nyanza, and Rift Valley provinces'.[217] However, what the actual source states is that '[a]ccording to the NGO Maendeleo Ya Wanawake (Development of Women), the percentage of girls undergoing the procedure [FGM] was 80 to 90 percent in some districts of the Eastern, Nyanza, and Rift Valley provinces'.[218] These two instances where findings were not substantiated by any sources and information provided is misinterpreted led the Country Specific Asylum Policy Team to conclude that 'adequate state protection and a viable internal

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entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively, Article 3.

[211] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, s. 3.14, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[212] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, paras. 3.10.4 and 3.10.7, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[213] UK Border & Immigration Agency, Operational Guidance Note Zimbabwe, 16/07/2007, paras. 3.6.10 and 3.6.11, and 3.8.5 and 3.8.6 respectively, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/zimbabweogn?view=Binary (Accessed: 15/07/08).

[214] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, ss. 3.9 and 3.12, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[215] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, s. 3.9, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[216] UK Border & Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, para. 3.6.6, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[217] UK Border & Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, para. 3.6.7, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).

[218] U.S. Department of State, Country Reports on Human Rights Practices – 2006: Kenya, 06/03/2007, s. 5, http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm (Accessed: 15/07/08).

relocation alternative' exists for people fearing FGM.[219] Moreover, in the same conclusion, reference is made to the 'Mungyiki sect members', which have not been mentioned anywhere else in the OGN except in the previous section summarising a Country Guidance case on FGM Risk and Relocation.[220] Similarly, in the *Zimbabwe* OGN the conclusion is reached that 'there is a network of information available to ZANU-PF and war veterans'. While this might be the case this statement has not been referenced at all and no country information used in other parts of the OGN mentions this.[221] In the case of the *Afghanistan* OGN the following broad 'findings' occurred without any reference to an original source:

- "3.6.7 Based on the existence of the limited judicial and legal system, *the willingness of the police authorities to enforce the law*, and the presence of ISAF, a sufficiency of protection is generally available in Kabul. However, each case must be considered on its merits and there will be individual cases where sufficient protection will not be available."[222] [Emphasis added]

- "3.9.6 In 2004, the International Crisis Group (ICG) also expressed the opinion that former high ranking PDPA members would be able to live in Afghanistan so long as they did not pursue a communist agenda, although a former PDPA central committee member they referred to did need considerable protection. The ICG thought that some former PDPA members could not safely return to Afghanistan, but that a number of former members were selected by President Karzai to work for the Government, and that many ministries could not exists without their skills. *This appears to reflect a pragmatic approach recognising that many of these people were only trying to make a living and had no strong political interests.*"[223] [Emphasis added]

- "3.7.4 *The extent to which those associated with Hizb-e-Islami face difficulty with the Afghan authorities depends upon whether they are considered to be in conflict with the authorities or other powerful figures in Afghanistan.* The Danish fact-finding mission of March/April 2004 found that there would be few problems for those who are no longer considered a threat, although in the case of RS outlined below, there was found to be an ongoing real risk. *There is no concrete evidence about what treatment current or former members would encounter if they were in fact facing difficulties with the authorities*".[224] [Emphasis added]

In the first example no footnote was provided as to the source that was used to make the statement that the policy authorities were willing to enforce the law, whilst in the second example a footnote at the end of the paragraph referred to the source used for the first two sentences but not to the one emphasised above. This suggests that the last sentence is a statement made by the author of the OGN and not linked to the referenced source. In the last example though the source is named it is neither footnoted nor referenced anywhere in the *Afghanistan* OGN, whilst the first and second sentence again suggest statements made by the author of the OGN without any reference to the source used to come to such a conclusion.

Similarly, the *Nigeria* OGN includes the following:

> 3.12.5 *Sufficiency of protection.* Membership or association with a secret cult or a student

[219] UK Border & Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, para. 3.6.9, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).
[220] UK Border & Immigration Agency, Operational Guidance Note Kenya, 03/09/2007, paras. 3.6.8 and 3.6.9, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/kenyaogn?view=Binary (Accessed: 15/07/08).
[221] UK Border & Immigration Agency, Operational Guidance Note Zimbabwe, 16/07/2007, para. 3.6.7, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/zimbabweogn?view=Binary (Accessed: 15/07/08).
[222] UK Border & Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, para. 3.6.7, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/08).
[223] UK Border & Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, para. 3.9.6, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/08).
[224] UK Border & Immigration Agency, Operational Guidance Note Afghanistan, 20/04/2007, para. 3.7.4, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/afghanistan.pdf?view=Binary (Accessed: 16/07/08).

> confraternity is not of itself illegal but any illegal acts those involved might commit (such as threatening behaviour or murder) are criminal offences and will be treated as such by the Nigerian authorities. As described above, the evidence shows that the Nigerian Police Force take appropriate action in such cases.[225]

This conclusion cannot be substantiated, as it lacks any reference and was not mentioned in previous sections of the OGN. However, the following policy conclusion was reached with regards to the availability of state protection in this particular category of claims: '... [t]he Federal Government is clearly determined to tackle the problems of vigilantes, various warlords, militias and cult gangs'.[226] This conclusion might seem to be based on the selected COI but it fails to consider the practical adequacy of the protection offered.

Further examples in which policy conclusions were not preceded by relevant COI include the following: in the *Israel, Gaza and the West Bank* OGN it was concluded that prison conditions in Israel are 'meet[ing] international standards for Israeli citizens and Palestinians', especially in the 'permanent prison facilities'.[227] However, the preceding paragraphs contained no COI that could lead to such a conclusion. Instead reference was made to who had access to prison visits.[228] Another example involving the 'section on Israeli collaborators' from the same OGN also demonstrates findings that were not reflected by the COI provided. The selected COI mentions that Palestinian authorities would arrest and detain Palestinians suspected of collaboration but provide no 'police protection' against revenge attacks committed by local residents.[229] It then referred to the number of Palestinian collaborators and their families being offered protection and assistance but highlights the fact that some '3,000 collaborators' families' are not included since they do not have legal residence permits.[230] However, it found in the 'Sufficiency of protection' and 'Conclusion' section that

> Claimants who fear reprisals from local residents [...] are provided with protection and support from the Israeli authorities [...] The evidence indicates that there are around 15,000 Palestinians collaborating with Israel in Gaza and the West Bank and that, if discovered, Israeli authorities have undertaken to provide protection, financial assistance and accommodation in Israel for collaborators and their families.[231]

As with the policy conclusion reached for a particular category of claimants in Nigeria, this policy conclusion was inadequate because it failed to consider the adequacy of the protection offered.

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[225] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.12.5, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[226] UK Border & Immigration Agency, Operational Guidance Note Nigeria, 26/11/2007, para. 3.12.9, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/nigeriaogn?view=Binary (Accessed: 16/07/08).

[227] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, paras. 3.13.7 and 3.13.10, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

[228] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, s. 3.13, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

[229] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, paras. 3.9.4 – 3.9.6 and 3.9.8, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

UK [230] Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, para. 3.9.8, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

[231] UK Border & Immigration Agency, Operational Guidance Note Israel, Gaza and the West Bank, June 2007, paras. 3.9.9 and 3.9.11, http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/98820?view=Binary (Accessed: 15/07/08).

## Key concerns

The following section outlines key concerns regarding the misuse of COI that have arisen from the findings on the use of COI in Home Office OGNs in this study, as well as from material supplied from the complementary studies contained in this publication, and information gleaned from the daily COI experience of the Research and Information Unit. With specific regard to the use of COI that is contained in OGNs and used in Reasons for Refusal Letters as well as in court judgements, please refer to the relevant studies in this publication.

## The use of COI contained in OGNs in other COI products

Through the Research and Information Unit's work it has come to light that experts instructed in asylum cases have referred to the COI contained in OGNs to substantiate their arguments and knowledge about the situation in a particular country. Moreover, the Immigration and Refugee Board of Canada's *Response to Information Request* also use the COI in OGNs to inform their responses. For example, the March 2007 Angolan Response to Information Request[232] and the September 2006 Albanian Response to Information Request[233] referred to COI contained in the Angolan and Albanian OGN respectively as part of their research answer on whether human rights abuses still continue in the Angolan enclave of Cabinda and whether state protection is available to homosexuals in Albania.[234] No reference was made to the fact that this particular piece of COI was specifically selected for a policy document. Given the problems highlighted in this study with regards to the COI contained in OGNs it is advisable that experts, the Immigration and Refugee Board of Canada and any other body refrain from using the COI contained in OGNs or make it explicit that the COI in OGNs exists as part of a policy document produced by a domestic governmental body responsible for Refugee Status Determination in an adversarial system.

## Non-Suspensive Appeals candidate countries and the COI contained in OGNs

In the case of those countries where a Home Office Country of Origin Information Service Report does not exist – and it is likely that Non-Suspensive Appeals[235] candidate countries will fall into this category – it becomes critical that the COI content in OGNs is reviewed as it is sometimes the only or most up-to-date reference to any information on the situation of a given country. Currently, the following countries are designated for Non-Suspensive Appeals purposes: Albania, Bolivia, Brazil, Ecuador, Ghana (Males only), India, Jamaica, Macedonia, Moldova, Mongolia, Nigeria (Males only), Serbia (including Kosovo but not Montenegro), South Africa, and Ukraine.[236]

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[232] Immigration and Refugee Board of Canada, Responses to Information Requests – Angola, AGO102410.E, 22/03/2007, http://www.cisr-irb.gc.ca/en/research/rir/?action=record.viewrec&gotorec=451055 (Accessed: 20/06/08).

[233] Immigration and Refugee Board of Canada, Responses to Information Requests – Albania, ALB101493.E, 08/09/2006, http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=450467 (Accessed: 20/06/08).

[234] A discreet piece of research would be needed to investigate further the extend to which the use of COI contained in OGNs is used in Response to Information Requests produced by the Immigration and Refugee Board of Canada.

[235] 'Asylum applicants from the so-called 'safe country list' [The Nationality, Immigration and Asylum Act 2002 (section 94) created a list of 'safe countries' from which claims would be dealt with in a different way. Applicants whose claims are rejected and returned home and can only appeal from outside the UK] whose claims are deemed to be unfounded are returned to their country of origin. It is only possible to appeal against the refusal from outside the UK. Such cases are known as 'non-suspensive appeals' (or NSA) cases'. See The Information Centre about Asylum and Refugees in the UK (ICAR), 'Definitions and abbreviations'. Undated. View http://www.icar.org.uk/?lid=5981 [Accessed: 16/05/08] for more information.

[236] UK Border Agency, 'Guidance and Instructions, Asylum Process Guidance, The appeals process: Non-suspensive appeals', Last updated: 10/10/2007, p.19. View: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/theappealsprocess/guidance/nsaappeals.pdf?view=Binary (Accessed: 16/05/08) for more information.

Until the end of June 2008, the following OGNs and Home Office Country of Origin Information Service products existed for these countries:

| Countries | OGN (Date) | Home Office Country of Origin Information Service Report | Home Office Country of Origin Information Service Key Document | Home Office Country of Origin Information Service Bulletin |
|---|---|---|---|---|
| Albania | April 2007 | N.A. | May 2008 | N.A. |
| Bolivia | N.A. | N.A. | N.A. | N.A. |
| Brazil | N.A. | N.A. | N.A. | N.A. |
| Ecuador | February 2007 | N.A. | April 2007 | N.A. |
| Ghana | September 2007 | September 2005 | December 2007 | N.A. |
| India | April 2008 | January 2008 | N.A. | N.A. |
| Jamaica | February 2008 | November 2007 | N.A. | N.A. |
| Macedonia | N.A. | N.A. | N.A. | N.A. |
| Moldova | April 2007 | March 2006 | July 2007 | N.A. |
| Mongolia | April 2007 | September 2005 | March 2007 | N.A. |
| Nigeria | November 2007 | November 2007 | N.A. | N.A. |
| Serbia (including Kosovo) | February 2007 | March 2008 but only for Kosovo | April 2007 | N.A. |
| South Africa | December 2007 | March 2006 | April 2007 | N.A. |
| Ukraine | April 2007 | June 2006 | August 2007 | August 2006 |

As already discussed, Home Office Country of Origin Information Service Key Documents and Home Office Country of Origin Information Service Bulletins cannot substitute the COI provision contained in Home Office Country of Origin Information Service Reports. Analyzing the above table it becomes clear that out of the 15 NSA designated countries, 7 do not have Home Office Country of Origin Information Service products which are more up-to-date than the country information contained in OGNs. A similar conclusion is reached when analyzing the existing number of OGNs and Home Office Country of Origin Information Service Reports for the current list of countries for which there is one at least. Out of 70 countries which currently (as of end of June 2008) have one Home Office Country of Origin Information Service product, 34 countries have COIS reports and 52 countries also have an OGN. Out of these 52 countries for which an OGNs has been produced, only 33 countries also have a Home Office Country of Origin Information Report though with differing publication dates, sometimes with a one year gap.[237] Consequently, this discrepancy means that Home Office officials potentially only have the COI contained in OGNs to make a decision whether to designate a country as a Non-Suspensive Appeal country or not. Given the far-reaching consequences of such a decision and observations highlighted in this study with regards to the problems of COI contained in OGNs this could have major consequences for the individuals in question. This could be avoided if further COI research is undertaken and a wider range of sources are consulted.

## The way forward

Whilst it is unrealistic and impractical to advocate for the complete removal of any COI contained in OGNs, its content and use has to be challenged by all actors in the Refugee Status Determination process. In this regard the Home Office made an encouraging statement in March 2007 announcing that the content of OGNs is 'being reviewed' and a key aim 'will be to reduce the country material in OGNs to the minimum necessary for the understanding of the guidance. This will ensure that users refer to the relevant Home Office

[237] Although some of these 33 countries might have a more recent or older Home Office Country of Origin Information Service Key Document or Home Office Country of Origin Information Service Bulletin, as stated in the explanatory notes, the Research and Information Unit does not believe that these two products fulfil the same role as Home Office Country of Origin Information Service Reports since they are more of a bibliography or starting point in the process of gathering COI than actual compilation of COI material.

Country of Origin Information Service product for COI'.[238] However, as demonstrated throughout this study, the problem lies not only with the level and amount of COI contained in OGNs but with its actual use as a COI source or COI material as it forms part of a policy document and has been most likely specifically selected with a sought-after policy conclusion in mind.

Consequently, this study advocates the inclusion of the widest range of quality COI available in OGNs in order to create a more transparent process. This would ensure not only that policy conclusions reached by the Country Specific Asylum Policy Team are more robust and transparent but also that case owners clearly understand the background behind the policy guidance provided in OGNs. In order for case owners to use the policy guidance to inform their decisions on an individual case further research for more relevant, accurate and current COI material must be undertaken by them, relevant to the specificities of the applicant's case. In no circumstances should case owners use the COI contained in OGNs to inform their decisions. This also relates to legal representatives who might rely on the COI contained in OGNs in their submissions to the Home Office or in Court. Instead, legal representatives and immigration judges should challenge the use of COI from OGNs and insist on a decision by the case owner based on the use of the widest and most current available COI possible in the most transparent way possible.

Given that in reality the COI contained in OGNs continuous to be used to inform decisions in the Refugee Status Determination process, as concluded by the Home Office study and as discussed at the Advisory Panel on Country Information, as well as through the conclusions reached in the other two studies in this publication, this paper recommends that the COI contained in OGNs needs to be independently reviewed, preferably through the continuation of or under a new form of the Advisory Panel on Country Information.

## Conclusion

The issue of whether the Advisory Panel on Country Information's remit allows it to have oversight of the country information components of OGNs has been a recurring feature of its discussions. A Home Office study and the daily work of the Research and Information Unit highlight the fact that the COI contained in OGNs is seen and used as a consultation and even first-instance decision making tool by Home Office case owners. These concerns motivated this study's analysis of the COI contained in OGNs.

Despite the limited size of this study's sample, its observations highlight the inaccuracy, underuse of, misuse and even in some instances misinterpretation of the COI selected for inclusion in OGNs. Given that OGNs might be the only Home Office document consulted by case owners and the COI contained in OGNs the only referenced country information referred to by case owners and legal representatives alike, it is imperative that the content of OGNs is revised. An OGN does not fulfil the role of a COI material or a COI source and can therefore not be used as such.

Three main recommendations emerge from this study:

- Firstly, that the Home Office make their policy conclusions more transparent by including the widest possible range of quality COI available in the public domain and through their internal resources.

- Secondly, that all users in the Refugee Status Determination process refrain from using any of the COI contained in OGNs as they are selected by the policy unit of a governmental body to guide their own case owners responsible for Refugee Status Determination in an adversarial system.

[238] Advisory Panel on Country Information, Eighth Meeting 06 March 2007: APCI.8.3 Operational Guidance Notes, 06/03/2007, Home Office response & Conclusion, http://www.apci.org.uk/PDF/APCI.8.3%20OGNs.pdf (Accessed: 20/06/08).

- And lastly, that an independent monitoring body be instructed and allowed to monitor the COI content in OGNs.

Whilst OGNs may have an evidentiary role in the Refugee Status Determination process in so far as they are evidence of the policy or intention of the Home Office for individuals of a certain profile, they should not form part of the COI evidence, nor be relied upon in considering country conditions.

## ANNEX 1

## QUESTIONNAIRE

**Name of country:**

**Date of OGN:**

**Documents & dates of any other COI product:**

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| QUESTION | ANSWER |
|---|---|
| **Is COI used?** | |
| **What COI sources are used and how often?**<br>- COIS report<br>- COIS case specific research service<br>- U.S. Department of State reports<br>- Other (specify) | |
| **Is COI referenced?**<br>- Specify form of referencing used | |
| **Are the sources listed at the end of the document compatible with sources referenced in footnotes?** | |
| **Does the OGN contain "facts/findings" not substantiated by referenced sources?** | |
| **Does COI lead to inconsistent "conclusions"?** | |
| **Any other observations?** | |

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