

ILPA Response to the Chief Inspector of the UK Border Agency
A thematic inspection of asylum – the use of country information in decision making

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, including UK Border Agency and other, 'stakeholder' and advisory groups.

ILPA welcomes the Chief Inspector's decision to undertake a thematic inspection on the use of country information in decision making. Many of the questions set out are targeted at individual practitioners; different ILPA members have had different experiences and we have sought to represent this in the answers below. Where there is an opportunity to comment on wider issues, highlight trends or make general remarks, we have done so.

1. The use of country of origin information in the refugee status determination

Thank you very much for taking part in this survey for the Office of the Independent Chief Inspector of the UK Border Agency.

Please note that this inspection is chiefly concerned with how efficiently and effectively country of origin information is identified, sourced, cited and referenced by the UK Border Agency. It does not intend to review the quality of UKBA COI Service reports as this is monitored separately under the remit of the Independent Chief Inspector. However, any use of incorrect or unsourced COI will be reviewed.

ILPA welcomes the opportunity to provide comments as part of this survey. Country of origin information is an integral part of the refugee status determination process. In light of the criticism decision-makers have faced with regards to objective evidence, we welcome the Chief Inspector's efforts to monitor its use. We have had reference to the UNHCR Quality Initiative reports and reports of the Immigration Advisory Services on country of origin information, including the latest report: *The Refugee Roulette: The role of country information in refugee status determination*¹

UNHCR's Quality Initiative Team stated in its second report to the Minister²

¹ Natasha Tsangarides for the Immigration Advisory Service, January 2010.

² February to August 2005

“3.5...based on its own use of the available COI and country guidance when assessing decisions, UNHCR continues to observe that further improvements in the provision of country information and guidance can be made. Country information and guidance should be focused, well presented, unambiguous and consistent, as well as up to date.

3.6 UNHCR still recommends that caseworkers be equipped with the necessary skills to conduct their own research. They should be encouraged to consult a variety of COI sources and assess their reliability, and relevance to the applicants claim. UNHCR continues to believe that inviting external country experts to provide briefings to caseworkers will be beneficial.”

UNHCR noted progress that had been made in its fourth report³ although problems were still noted in its sixth report with regards to children.⁴

2. How often is country of origin information (COI) cited in the cases you see?

Usually

In members’ experience, country of origin information is used in most cases. This includes cases where the applicant/appellant was unrepresented at the time of the reasons for refusal letter and/or appeal. However, we have seen many instances of inaccurate or irrelevant information relied upon in refusal letters and an overreliance on standard paragraphs in such letters.⁵

Although a country report prepared by the Home Office may be cited, what is being cited is a particular extract that has featured in an Operational Guidance Note, without consideration of other parts of the country report that may make the paragraph less pertinent to the individual’s case. Thus while the information is used, it does not appear adequately to be considered and analysed, both as it relates to the particular case in hand and also as it relates to other information about the country, such as might allow an holistic understanding to be developed.

It is very unusual to see reference to country of origin information in assessing credibility or plausibility, despite its relevance to this issue. For example, even though country of origin information might state that corruption is rife, or escape from detention common, the UK Border Agency will argue that release through bribery is inherently improbable and therefore cannot have taken place in a particular case, despite the lower standard of proof that applies in asylum cases.⁶ A similar example might arise in the context of a particular type of ill treatment, such as domestic violence. The country of origin information might suggest that it is commonplace, yet the UK Border Agency will analyse peripheral aspects of the claim for asylum such as the journey to the UK or a ‘late’ claim after arrival and conclude that the claim to be a victim of that type of ill-treatment is false.

³ March 2006- December 2006

⁴ http://www.unhcr.org.uk/fileadmin/user_upload/pdf/6_QI_Key_Observations_Recommendations6.pdf

⁵ See *Right first time*, E. Smith for the Medical Foundation for the Care of Victims of Torture, London 2004; Independent Asylum Commission (2008) *Saving Sanctuary*. London: Independent Asylum Commission. <http://www.independentasylumcommission.org.uk/files/Saving%20Sanctuary.pdf>; Trueman, T. (2009) Reasons for Refusal: An Audit of 200 Refusals of Ethiopian Asylum Seekers in England. *Journal of Immigration, Asylum and Nationality Law*, Vol. 23, No. 3

⁶ *R v SSHD ex p Sivakumaran* [1988] Imm AR 147

3. How satisfied are you with the use of COI in refugee status determination (RSD) decisions made by the UK Border Agency (UKBA)?

Dissatisfied

There is a lack of consistency in the use of country of origin information in UK Border Agency decision-making and the quality of its use is variable. The common problems with its use are as follows:

- Country of origin information not being used early enough in the process (it should be used prior to interviewing an applicant to tailor questions properly)
- Use of standard paragraphs for certain groups of claims in circumstances where the point being made is not relevant in the individual case
- Failure to consider the information holistically sense, displayed in inadequate cultural awareness, which can in turn encourage inadequately reasoned arguments that an account is not plausible
- Overreliance on Country of Origin Information Service (COIS) and US State Department (USSD) reports
- Selective use of information
- Misrepresentation/misunderstanding of country information, for example, using information out of context
- Use of speculative argument or subjective assertions in circumstances where country of origin information is available on the point, which highlights a lack of engagement with/ misunderstanding of the available country of origin information
- Use of outdated information
- Improper use of country of origin information – UK Border Agency caseowners often use country of origin information to check assertions of fact and to confirm precise locations/events, rather than using it to provide context. This demonstrates poor understanding of the function of country of origin information and a failure to recognise that not everything that happens is published.

The failure to integrate into the decision-making process better understanding of how people from different backgrounds live their lives in very different countries with different cultural backgrounds is a flaw in UK Border Agency asylum decision-making. Expectations as to “normal” behaviour are imposed on particular situations. Better and more profound understanding of country conditions and culture could help to address this. However, it would take more than merely improved referencing of country of origin information to achieve this. The way in which the information is used, to assist in understanding other countries and how people have behaved, and the use of this to inform culturally sensitive/appropriate plausibility and credibility assessments, are all relevant.⁷

4. Have you ever provided COI to UKBA in support of an applicant?

N/A

ILPA, as a membership organisation, does not represent individuals. However, ILPA best practice guides and training materials do discuss at length the appropriate use of country of origin

⁷ See the discussion in *Asylum Law and Practice* Symes and Jorro, Bloomsbury 2010, section on ‘Assertions’ at 16.83 and the chapter in which it is embedded (‘Evidence’) more generally. See also R Thomas *Assessing the credibility of asylum claims: EU and UK approaches examined*. European Journal of Migration and Law [2006] 8: 79-96.

information, including expert reports where published information does not cover the point⁸ and we should expect members to submit relevant country of origin information in asylum cases.

5. Do you believe this COI was properly taken into consideration?

N/A

Please comment

See above, ILPA is a membership organisation and experiences of members will vary. Where country of origin information has been submitted to the UK Border Agency in support of an application, in many cases, there appears to be a failure properly to take this information into consideration. It is either not referred to in refusal letters or references are selective. Often, country of origin not from a well-recognised source is given short shrift at the initial decision stage.

6. Do you believe that COI used by UKBA in decision making reflects appropriate sources? This could be COI Service reports as well as alternative sources of country of origin information

Sometimes

Firstly, there is an overreliance on two sources by UKBA caseowners: reports from the Country of Origin Immigration Service and US State Department reports. The overreliance on these reports means that appropriate sources for any given country are not adequately represented. Secondly, the information used by caseowners and presented in their refusal letters, is often selective.

While ILPA agrees that the Country of Origin information Service reports draw on a variety of sources, the information that is presented has been through a selection process. When then used by caseowners, the Country of Origin Information is once again filtered and selected. It is necessary as a practitioner to look back at the original source of the paragraph cited in a Country of Origin Information Service Report, to check the context. As to US State Department reports, we refer you to the discussion in *Asylum Law and Practice*.⁹

Because of almost exclusive reliance on these approved sources, the UK Border Agency often misses more up to date sources of information about very recent events or developments. Such sources will be taken into account on appeal. For example, newspaper and press reports from local or international newspapers and news organisations, alerts from human rights monitoring groups and other near-contemporaneous sources are very rarely relied on by the UK Border Agency until they have become incorporated into Country of Origin information service reports many months further down the line. UKBA plays perpetual catch up in this respect.

⁸ See *Best Practice Guide to Asylum and Human Rights Appeals*, Mark Henderson, ILPA/Refugee Legal Group, October 2003 and *Making An Asylum Application - A Best Practice Guide*, ILPA (Jane Coker, Garry Kelly, Martin Soorjoo) May 2002; *Working with children and young people subject to immigration control: Guidelines for best practice* Heaven Crawley et ors, ILPA November 2004.

⁹ *Op. cit.* at 16.89

That the country of origin information services relied upon the UK Border Agency are selective and not always up-to-date is, in ILPA's opinion, a factor contributing to the high success rates in asylum appeals, in particular for certain countries.¹⁰

7. Are there other sources that should be routinely used?

Yes

If yes, please describe

International:

UNHCR¹¹

UN Reports of the Secretary General

UN Office of the High Commissioner for Human Rights reports of Special Rapporteurs

Amnesty International

Human Rights Watch

Freedom House

ReliefWeb

Interpress service news agency

Danish Immigration Service reports

Radio Free Europe

IRIN news

Press and news organisation reports both nationally and internationally

Many sources are better identified on a country basis.

8. Is COI referred to in 'Reasons for Refusal' letters (RFRLs) you see accurately referenced?

Sometimes

The problems with inaccurate referencing often include the following:

- The web link does not exist, does not work or has expired
- The wrong web link has been provided
- The wrong reference is cited, for example, inaccurate spelling, incorrect date or name cited

9. Is COI referred to in 'Reasons for Refusal' letters you see up to date?

Sometimes

The Country of Origin information is often at least several months behind current developments because of the time it takes to incorporate events into the sources almost exclusively relied on by

¹⁰ See Control Of Immigration: Quarterly Statistical Summary, United Kingdom, July – September 2010, Home Office, Research Statistics and Development and earlier editions. See also the discussion in *Refugee Roulette* (op. cit.) at page 83.

¹¹ See e.g. *FD (Kosovo, Roma) Kosovo* [2004] UKIAT 00214 (14 July 2004); *ES (Ashkaelians, Mixed Ashkaelian Ethnicity) Serbia and Montenegro CG* [2006] IKAIT 000271 and see the discussion in Symes and Jorro, *op. cit.* at 16.90.

the UK Border Agency. This can be highly problematic where a situation is rapidly developing, as in, for example, Iran, Sri Lanka, Somalia and Zimbabwe in the last two or three years.

Even if the report cited is up to date, the information contained therein may not be. It is possible, for example, for a 2010 compiled report to cite information from 1998.¹²

10. Is COI referred to in 'Reasons for Refusal' letters that you see relevant?

Rarely

As stated in the response to question two, there is an overreliance on standard paragraphs that are not tailored to the case in hand. The use of irrelevant information may be an indicator of a) a failure to understand the function of country of origin information, b) the lack of time caseowners have to spend on country of origin information research,¹³ c) the selective use of country of origin information and d) a failure to get to grips with what the country of origin information is saying.

The UK Border Agency referencing of country conditions and information is often superficial at best and as stated above is rarely relied on to assess plausibility or credibility, the two principle reasons for asylum refusals.

11. Have you ever disagreed with the factual accuracy of COI used?

Yes

The minutes of the meetings of the Advisory Panel on Country Information provide examples *passim*. and see the Immigration Advisory Service analysis of four reports submitted to the 5th meeting of the Panel in September 2010.¹⁴

As described above, the selective use of sources and then the way in which that information is deployed to refuse claims rather than being assimilated and integrated into the decision-making process have been particular causes for concern and have led to information that may be accurate at source and in context being used in a way that renders it inaccurate.¹⁵ Furthermore, different sources may conflict and there are difficulties with the way in which inconsistent/divergent country of origin information is handled. Recent examples can be found in the UK Lesbian and Gay Immigration Group's report *Failing the Grade: Home Office Initial decisions on lesbian and gay claims for asylum*¹⁶ and the Stonewall report *No going back: lesbian and gay people in the asylum system*.¹⁷

¹² See, for example, the 2010 Country of Origin Information Report Iraq, September 2009. A recent IAS publication showed the use of outdated material in this report, which drew on old thematic reports, news reports and UNHCR eligibility guidelines, when this information had been superseded by more recent publications. For further information, see: Immigration Advisory Service (2010) *The APCI Legacy: A Critical Assessment*. <http://www.iasuk.org/news--media-releases/apci-legacy.aspx>

¹³ See *The Refugee Roulette*, *op.cit.* at page 28.

¹⁴ Immigration Advisory Service (2010) *The APCI Legacy: A Critical Assessment*. <http://www.iasuk.org/news--media-releases/apci-legacy.aspx>

¹⁵ See the discussion in *The Refugee Roulette*, *op. cit.* at page 37ff and see E Smith *Right first time?* The Medical Foundation for the Care of Victims of Torture, London, 2004.

¹⁶ UKLGIG April 2010.

¹⁷ Stonewall, 2010.

12. At what stage did you disagree with the COI?

See comments below.

There are examples of ILPA members taking issue with country of origin information at all stages of the process. However, it is not common that specific reference is made by UK Border Agency caseowners to country of origin information in interviews. There may be comments about the situation in the country, but rarely would these be referenced to a specific document. Issue may be taken with the quality of country of origin information cited in a reasons for refusal letter in post-interview representations or at the appeal.

UNHCR stated in its 3rd Quality Initiative Report¹⁸

“UNHCR is pleased to observe that it is rare for caseworkers not to carry out any subjective (i.e. information specific to the applicant available from his/her file) or objective (country of origin) research prior to conducting a substantive interview. Nevertheless, in UNHCR’s opinion the majority of interviews sampled demonstrate insufficient preparation and prior research by the caseworker. Research appeared to have been done particularly poorly in about a quarter of the interviews sampled to date. UNHCR’s view is that where interviews are not properly prepared for they are less effective – they are less likely to be focused on the material facts of a claim and to identify all salient points, such as apparent inconsistencies.”

13. If you have ever provided alternative COI was this considered? e.g by the Case Owner or Presenting Officer

There are examples of cases where it has been considered and of cases where it has not. See the discussion in *The Refugee Roulette (op. cit.)* at page 35ff.

14. What effect did this have on the case? If you have done this more than once please indicate what effect it usually has.

Other (please specify)

See above.

ILPA also knows of examples from practitioners where evidence affected the decision, whether at the initial stage or on appeal.

15. When non- Country of Origin Information Service reports are used in decision making by UKBA are you content that its use is appropriate in each case?

Sometimes

US State Department reports are the main reports relied upon other than Country of Origin Information Service reports relied upon by the Home Office.

As with the use of country of origin information more generally, the information is often used selectively and the use of the report not appropriately tailored to the case in hand.

¹⁸ September 2005-February 2006.

16. Do you note any difference in the quality of use of COI between different caseworking offices? e.g the way it is sourced and referenced, or how relevant it is to the individual case

Yes

This is very difficult to ascertain. However, there appeared to be more engagement with country of origin information in cases in the Solihull pilot, although this varied between different teams in the pilot.¹⁹ It is too early to judge the use of country of origin information in the Early Legal Advice Pilot.

17. Do you note any difference in the quality of use of COI between cases of applicants of different nationalities?

Yes

If yes, please describe

The list of examples that follows is not exhaustive.

Zimbabwe – there is frequently lengthy citation of standard paragraphs in reasons for refusal letters in Zimbabwean cases, even where these are irrelevant to the particular case. For example, a standard paragraph about MDC supporters has turned up in cases of applicants who had never claimed to be MDC supporters.

Somalia- here the use of country of origin information appears to be particularly poor and there is often considerable use of speculative argument.

Country of origin information will often focus on the main causes of flight from a country. As a result it often deals inadequately with groups whose problems are very specific, for example children, persons who have been trafficked, gay men and lesbians. The UNHCR Quality Initiative stated in its

“In a quarter of the decisions assessed, the country of origin information (COI) sourced by Case Owners was not childspecific.

Whilst acknowledging the occasional difficulties in accessing childspecific COI, UNHCR observes instances where Case Owners source objective information not relevant to the particular circumstances of the child’s case or put excessive weight on insufficient or incomplete COI.”²⁰

The situation of women in a country may also not be covered sufficiently. There are also particular difficulties with the question of whether there is a possibility internal relocation.

In some cases, and cases from both Zimbabwe and Somalia provide examples of this, there is extensive quotation from country of origin information but the case turns on the UK Border Agency’s not accepting a decision of the courts, including a country guidance case. For example, following the decision in *RN (Returnees) Zimbabwe CG* [2008] UKAIT 00083 the UK Border Agency issued a new

¹⁹ See *The Refugee Roulette, op.cit.*

²⁰ April 2008 – March 2009

Operational Guidance Note²¹ purporting to justify not following the decision. In such cases, there is often a high success rate on appeal.

In her Annual Report for 2005/2006 Report the then Independent Race Monitor, Mary Cousey provided examples of examples of country information being misused to refuse applications.

Country of Origin information is used frequently in Operational Guidance notes. Because these notes are published more frequently than new country of origin reports there is scope for the Operational Guidance Note to distance the UK Border Agency from certain elements in the country of origin information, without making clear that the 'updating' is not subject to the same scrutiny as to accuracy or impartiality as is the country of origin information. Some Operational Guidance Notes appear to be 'written against' the country of origin information and designed to show why the latter should not be relied upon. Individual decisions then merely implement UK Border Agency country policies which the Operational Guidance Note had codified.

18. Further comments. Please feel free to submit any further comments you may have.

ILPA does not consider that the use of country of origin information can be adequately reviewed without extensive reference to Operational Guidance Notes. It matters not how accurate the country of origin information is, if it distorted and misrepresented in the Operational Guidance Notes.

On 14 April 2009, ILPA wrote to the then Home Secretary, Jacqui Smith MP, about the October 2010 Operational Guidance Note cited above. A copy of that letter is appended hereto. It is illustrative of ILPA's concerns.

In ILPA's October 2007 *Response to the Border And Immigration Agency consultation on the transposition of the EU Asylum Procedures Directive 2005/85/EC* into national law, ILPA wrote:

"ILPA is particularly concerned that while Country of Origin information is the subject of comment by the Advisory Panel on Country Information, the more widely used Operational Guidance Notes (OGNs) are not. This concern is exacerbated when reference is made to the Advisory Panel on Country Information in ways that imply that it comments, for example on the designation of a country as safe, when in practice it does not do so. ILPA considers that, while there is an Advisory Panel on Country Information, it should look at OGNs and well as at other Country of Origin information and at designation of states. It should always be made explicit on the face of a specific country report or OGN or other country information whether or not that report or OGN has been considered by the Advisory Panel on Country Information, and when. While the Advisory Panel on Country Information operates as it does it at the moment, then, when countries are designated, the Explanatory Note accompanying the statutory instrument that sets out the designation, should state explicitly that the Advisory Panel on Country Information does not comment on the designation of a particular country as safe, nor in any way approve that designation".

This echoes concerns raised at numerous meetings of the Advisory Panel on Country Information, as the minutes of the meetings testify. ILPA repeatedly urged the Panel to do more to persuade the UK Border Agency to extend the Panel's remit and, for as long as those efforts proved unsuccessful, to

²¹ Zimbabwe Operational Guidance Note version 7, issued October 2010, available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/zimbabweogn?view=Binary>

work to ensure that the limits of the powers of the Advisory Panel were widely known and understood.

The successor to the Advisory Panel is the Chief Inspector's Independent Advisory Group on Country Information and ILPA wrote to the Chief Inspector on 8 May 2009 questioning the extent to which it was appropriate to describe the Panel as independent when representatives of the UK Border Agency sat on it to represent the Agency, rather than in their personal capacity. ILPA wrote:

"Our concerns about the Panel can only be increased by looking at the example of how it handled the question of Operational Guidance Notes, a matter that recalls the worst elements of the Advisory Panel on Country Information. ILPA maintains the view that Operational Guidance Notes constitute country information because of the way they are used by Home Office representatives in court and the fact that they actually contain country information. The recent Zimbabwe Operational Guidance Note is an excellent example of the tendency to dress policy as information, as the Operational Guidance Note in question refers extensively to the Country of Origin Information Service report and attempts to mislead the reader into thinking that this information is new and was not considered by the tribunal in the relevant test case. The latest Zimbabwe Operational Guidance Note masquerades as country information, is put forward by the Home Office as country information and should therefore be subject to the same scrutiny as country information."

ILPA considers it essential that the review look at how Operational Guidance Notes are used. Operational Guidance Notes cite country of origin information and are often the first port of call for caseowners if not the only port of call. Shortcomings in Operational Guidance Notes translate into shortcomings in reasons for refusal letters and in decisions.

It is important to look at the interplay between country of origin information and Country Guidance cases promulgated by the Tribunal. It may be helpful to compare the range of information before the Tribunal in country guidance cases with the information used by the UK Border Agency in determining the case or cases that raise similar questions of fact.

We recall the comments of the Court of Appeal in *S and Others v SSHD* [2002] INLR 416:

"28. While in our general law this notion of a factual precedent is exotic, in the context of the IAT's responsibilities it seems to us in principle to be benign and practical. Refugee claims vis-à-vis any particular State are inevitably made against a political backdrop which over a period of time, however long or short, is, if not constant, at any rate identifiable. Of course the impact of the prevailing political reality may vary as between one claimant and another, and it is always the appellate authorities' duty to examine the facts of individual cases. But there is no public interest, nor any legitimate individual interest, in multiple examinations of the state of the backdrop at any particular time. Such revisits give rise to the risk, perhaps the likelihood, of inconsistent results; and the likelihood, perhaps the certainty, of repeated and therefore wasted expenditure of judicial and financial resources upon the same issues and the same evidence.

29. But if the conception of a factual precedent has utility in the context of the IAT's duty, there must be safeguards. A principal safeguard will lie in the application of the duty to give reasons with particular rigour. We do not mean to say that the IAT will have to deal literally with every point canvassed in evidence or argument; that would be artificial and disproportionate. But when it 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. In this field opinion evidence will often or usually be very important, since assessment of the risk of persecutory treatment in the milieu of a perhaps unstable political situation may be a complex and difficult task in which the fact-finding tribunal is bound to place heavy reliance on the views of experts and specialists.'

As to whether Country Guidance cases are indeed '*benign and practical*', ILPA shares many of the concerns expressed in the Immigration Advisory Service Report: *Country Guideline cases: benign and practical?*²²

One feature of country guidance cases, and indeed of cases before the tribunals, is the considerable use that is made of expert evidence in them. Yet experts are, almost without exception, instructed by appellants and, even where the UK Border Agency wishes to take issue with expert evidence, only on the very rarest of occasions does the Agency instruct an expert itself.

In addition to the points above, the following suggestions for the review are proposed:

- Analysis of the use of country of origin information in reasons for grant notes
- Analysis of the use of country of origin information on live cases from initial application to final outcome
- The time, skills and resources of caseowners and the impact this has on the quality of their country of origin information research²³
- Monitoring of refusal letters considering the following:
 - Is the country of origin information used relevant, reliable, transparent and up to date?
 - Is the country of origin information cited specific to the claim in hand? What is missing?
 - Are there speculative arguments or subjective assertions made?
 - Are there trends in the use of standard paragraphs?
- Analysis of the pros and cons of country specialisation among caseowners, something ILPA understands is being considered by the UK Border Agency.
- Consider the whether an independent documentation centre providing country of origin information would be a more effective and efficient use of resources than current arrangements.

ILPA
21 December 2010

²² Colin Yeo et ors for the Immigration Advisory Service, 2004.

²³ See the UNHCR Quality Initiative Second Report to the Minister which highlights a need for training.