

Executive Summary

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The Refugee Roulette:

The Role of Country Information in Refugee Status Determination

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Country of origin information (COI) is an important part of the refugee status determination process. If legal representatives, advisors or decision-makers are unable properly to access, understand and utilise country information, they cannot provide quality advice and representation to asylum seekers or make adequate decisions.

This report explores how individuals from four stakeholder groups use COI and what factors impact on their level of use and approach to COI. Data was gathered from UK Borders Agency (UKBA) staff, legal representatives, immigration judges (IJs) and experts.

Overall, insufficient usage of country of origin information is reported to be commonplace, particularly at the initial decision making phase, despite improvements under the New Asylum Model (NAM). Furthermore, a varied use of country information owing to differential levels of knowledge, application and analysis of the information, is observed within each of the stakeholder groups. It is proposed that improvements in using COI can impact on a rigorous determination system.

Research Methodology

Findings are based on results from 3 methods of data collection:

- Questionnaires: 50 completed by UKBA staff and 50 by legal representatives.
- 20 interviews with 5 Immigration Judges; 5 UKBA staff; 6 legal representatives and 4 experts.
- 6 focus groups: 5 multi-stakeholder and 1 UKBA-only group.

Results

Method of Use of COI within the Determination Process

'It still comes down to it often not being the actual product in terms of country information but in terms of the way it's sometimes even ignored by caseworkers who are, we think, encouraged at least to produce refusals' – legal representative

An improvement of the usage of COI by UKBA staff in recent times was reported. Reasons include a perceivable rise in the calibre, training and experience of UKBA caseowners, as well as the Solihull Pilot. However, it was also indicated that variance still exists as do poor quality refusal letters.

Both an underuse and a poor use of COI amongst legal representatives and UKBA staff are reported in the data. Furthermore, it is observed that there is variance in the level of use both across stakeholder groups and within the groups. For example, one UKBA caseowner uses it post-interview whereas another uses it prior to interview.

The research highlights persistent problems with COI usage within UKBA refusal letters, including selective quoting, speculative argument and reliance on outdated sources. Initial decision makers were criticized for poor usage specifically in credibility and plausibility assessments, with some legal representatives believing there was a seemingly deliberate wrong use of COI to make negative credibility findings. The findings evidence the opinion that there was a perceived overall lack of engagement with COI during the initial decision-making process.

In particular, Country Guidance (CG) cases were considered to both have value and limitations: legal representatives indicated that CGs often weigh against the appellant, due to underlying politicisation. A lack of transparency regarding the methods of selecting countries and issues to be country guidance was reported, along with a lack of transparency about the selection of judges to hear the cases.

Barriers and facilitators to using COI

'I really don't think that either practitioners or those making the decisions properly assess the claim within the cultural, the historical, the political or the human rights perspective' – legal representative

Questionnaire results from legal representatives and UKBA staff indicate that COI enjoys considerable usage but limited analysis. A key factor in understanding the limited analysis of COI is lack of time. The average **ideal** time to conduct COI research amongst legal representatives was 4 hours and 48 minutes and amongst UKBA caseowners, 7 hours and 42 minutes. By comparison, the average total time UKBA caseowners spent on a case was just over 15 hours of which 22% would be spent on COI research (3 hours 18 minutes). Thus, they spend half the time they would like to spend.

Legal representatives also stressed funding constraints as a barrier to undertaking COI research within other caseload priorities. Indeed, 72% of legal representatives believed that the Legal Services Commission (LSC) funding regime has negatively affected their levels of research.

Amongst UKBA staff, the biggest facilitator to accessing COI was to be able to have unrestricted Internet access. Bureaucratic issues were also cited, such as requesting access to various sites and the approval of new sources. Such issues also feed into problems of time constraints, inadvertently dissuading caseowners to seek sufficient alternative sources and conduct further research or analysis.

The data also highlights that there is inconsistent use of COI throughout every stage of the refugee status determination (RSD) process. This is partly due to the differential level of knowledge and expertise in each of the stakeholder groups. Another variable noted for inconsistent approaches to country information was the role that subjectivity plays in approaching and interpreting information. For example, some individuals commented on an "IJ Lottery", which is perceived to exist, whereby divergent decisions can be reached, depending on the particular judge.

While stakeholders agreed that employing good COI practice may encourage better decision-making, some noted that in practice, this is a problematic proposition because it requires making a commitment to a fair determination system that is separate from, and above, any political concerns.

Adversarial Use of COI

'Our asylum policy goes according to our foreign policy...that's getting in the way of country information but every asylum decision is taken within a political context' – legal representative

There was a belief amongst certain stakeholders that a "culture of disbelief" pervades refugee status determination. This relates to their view that there is an overarching political concern to keep numbers of asylum seekers and refugees down. In turn, the perceived impact is politicised information production and usage.

The perceived or real politicisation of information and decision-making impacts on the cynicism with which some individuals view the refugee status determination (RSD) process as reflected in the results. Not only were there accusations of a "refusal culture" but also the system was criticised for being poorly functioning and wasteful of public funds.

From outside the legal sphere, feelings of being considered a 'hired gun' were common among experts. For example, a point was raised about the trend amongst Home Office Presenting Officers (HOPOs) to discredit experts within the Asylum and Immigration Tribunal (AIT). Indeed, both experts and legal representatives noted that there is a need for greater respect to be paid towards experts amongst immigration judges and HOPOs in the AIT. Further, avenues for redress in cases of misconduct should be developed.

A key issue implied by the research was the adversarial use of COI even at the initial decision making stage, with information seen as a tool used to defend a position already taken, rather than incorporating facts into the process of reaching that position. Similarly, legal representatives appear to take an adversarial approach to COI, although the difference emerging is that they are bound by a code of conduct to represent their client's interest.

Continuing the theme of bias and selectivity, general consensus is that a hierarchy of information sources exists. Thus, the more "established" sources are often scrutinized less and lesser-known sources come to be excluded. There was consensus that the UKBA's COIS and US State Department reports carry the most weight in the refugee status determination process, a point not necessarily related to their quality.

Legal representatives contended that UKBA COIS reports enjoy a disproportionate prevalence over other reports and sources. Conversely, HOPOs tend to consider reports by Non-Governmental Organisations (NGOs) as unbalanced and biased. An unquestioning of the UKBA COIS reports was observed across UKBA staff whilst experts and some legal representatives and immigration judges were critical, particularly about its content and political origins. Operational Guidance Notes (OGNs) were also found to be problematic because no decision should be influenced by policy considerations.

If UKBA decision makers cannot find specific information, they are able to make a 'special request' for information. However, the special requests logged at the UKBA are disproportionately low (1600 per year) in relation to the annual number of asylum claims, and varying levels of quality and turnaround in obtaining special requests was also reported.

Conclusions

Squeezing the Sector

The asylum sector is being squeezed: political pressures, a target culture of speedy processing and under-resourcing is resulting in poor initial decisions. With policy imperatives that require faster decision-making to be at the forefront of the managerial direction of UKBA, it seems that asylum caseowners are being "squeezed" by time and targets, which takes an inevitable toll on their levels of engagement with COI and on their ability to make properly informed and robust decisions.

Financially, legal representatives are under immense financial pressure from the Legal Services Commission (LSC) with a negative effect on levels of research. As the sector becomes increasingly squeezed, legal representatives are leaving immigration practice, the quality of advice is diminishing and disillusionment with the system as a whole grows.

With all of the stakeholders involved working under heavy time constraints, the impact is felt in poorer quality COI research. Indeed, this manifests itself through lower levels of analysis of information sources; a greater reliance on the "established" sources and compiled reports such as COIS; and less use of new sources that contain greater detail and analysis and which can answer complex case specific questions of asylum claims.

The refugee roulette: diversity and disillusionment

The determination system was described by some of its critics within the data sample as "political", "irrational", "illogical", "nonsensical" and "unfair" where it is a "survival of the fittest" as to whom will receive refugee status.

Given the huge variance in the quality of individual players within each of the stakeholder groups, namely legal representatives, UKBA staff, immigration judges and experts, the determination process can almost be seen as a lottery. The variance in the quality of legal representatives and UKBA staff is also a contributory factor in the inconsistent use of COI. The findings from the data indicate a lack of training and skills as well as external factors such as lack of time and resources, all play a role.

Across both COI production and usage, there is a lack of monitoring and accountability. In turn, this lack of scrutiny adds to the disillusionment felt towards the determination process and the variance in the quality within each of the stakeholder groups. Current channels for transparency are not stringent enough to combat the poor use of COI within the decision-making process.

The need for political will

The value of country information in determining asylum claims is undeniable. Yet despite it being a crucial aspect in the assessment of any individual claim, it is both poorly used and underused. Improvements in the usage of country information will not simply come through guidelines or even by adopting a few recommendations. What is also required is a shift in the culture within the refugee status determination process amongst all actors and across adversarial boundaries. This entails a re-statement of commitment to asylum seekers and the humanitarian principles upon which the Refugee Convention was founded and to rigorous and fair decision-making, as well as recognition of the deeper problems plaguing the system. More time, resources, training and funding are essential for people to conduct effective country research and analysis upon which sound decisions can be made. This commitment should also be reflected in heightened transparency and accountability in both information production and usage. Thus, for real improvement to take place, political will from the government to commit resources to refugee status determination is fundamental.

***Detailed recommendations for each stakeholder group are available in the full report.*

