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The Refugee Roulette:

The Role of Country Information in Refugee Status Determination

2010

Immigration Advisory Service
LOTTERY FUNDED

'COI is very important so that organisations or individuals understand how the HO makes a decision about a person seeking sanctuary'

– asylum seeker from DRC

'The HO will not contemplate evidence from the country, they reject everything as 'lies'

– asylum seeker from Cameroon

'Country information helps people, when they speak to people seeking sanctuary, so he or she will be able to understand if the claim made by the person seeking sanctuary is genuine or not. Without the COI it will be difficult to make an appropriate decision... In my own case...I can see that the HO has not made a good decision because my case is covered by the country of origin information'

– asylum seeker from DRC

'I don't think that this information for the time being will change much, as I believe that most of the decisions are made on political basis regarding selected countries, not depending on the individual case. However, using it properly could provide benefits to both sides.... This information might lead to a little change for the people who claim asylum only if used properly'

– asylum seeker, Iraq

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UKBA was pleased to participate in this project but does not necessarily agree with all the views and conclusions expressed in this report.

CONTENTS

ABBREVIATIONS AND ACRONYMS

AI	Amnesty International
AIT	Asylum and Immigration Tribunal
APCI	Advisory Panel on Country Information
BIA	Border and Immigration Agency
BLF	Big Lottery Fund
CG	Country Guidance
CIPU	Country Information and Policy Unit
COI	Country of Origin Information
COIS	(UKBA) Country of Origin Information Service
CPR	Civil Procedure Rules
CSAPT	Country Specific Asylum Policy Team
DIJ	Designated Immigration Judge
EIN	Electronic Immigration Network
FCO	Foreign and Commonwealth Office
FFM	Fact Finding Mission
FG	Focus Group
HO	Home Office
HOPO	Home Office Presenting Officer
HRW	Human Rights Watch
IAGCI	Independent Advisory Group on Country Information
IARLJ	International Association of Refugee Law Judges
IAS	Immigration Advisory Service
IFA	Internal Flight Alternative
IJ	Immigration Judge
ILPA	Immigration Law Practitioners' Association
LGBT	Lesbian, Gay, Bisexual and Transgender
LSC	Legal Services Commission
NAM	New Asylum Model
NGO	Non Governmental Organisation
NSA	Non-Suspensive Appeals
OGN	Operational Guidance Note
RDS	Research, Development and Statistics Directorate
Rep	Legal Representative
RFRL	Reasons for Refusal Letter
RSD	Refugee Status Determination
SCW	Senior Caseworker (UKBA)
SEF	Statement of Evidence Form
SIJ	Senior Immigration Judge
UKBA	United Kingdom Border Agency
UNHCR	United Nations High Commissioner for Refugees
USSD	United States State Department

RATIONALE FOR THE PROJECT

This publication forms part of an 18-month project, entirely funded by the Big Lottery Fund, that sought to improve the use of, access to, and understanding of country of origin information (COI) in the refugee status determination (RSD) process. The project aimed to achieve this through a programme of research and training, which targetted all stakeholders involved in asylum determination.

The motivation for the project arose from a hypothesis that there is poor and inadequate use of COI amongst many of the key stakeholders involved in the refugee status determination (RSD) process.

The project aimed to produce four tangible outcomes:

1. Raise the profile of properly used COI as an essential component of quality advice and representation.
2. Increase the quality of service through access to, and use of, diverse sources of country information by 200 advisors and representatives.
3. Increase the skills and knowledge for 200 advisors and representatives through improved understanding of county information and its uses.
4. Facilitate greater dialogue between, and understanding of, the distinct needs of four different sets of country information users. [1]

Thus, research was undertaken to assess what the barriers and facilitators are to accessing and using country information; identify knowledge and skills gaps; and make recommendations for the implementation of good practice.

In turn, a series of country specific training packages were designed including on Iran, Iraq, Somalia and a general course on Internal Flight Alternative. Training sessions were delivered to over 300 individuals from the following sectoral groups: Immigration Judges, NGOs, Refugee Community Organisations (RCOs), legal representatives, experts, refugees and asylum seekers.

[1] The main sets of users this project has focussed on are: legal representatives, UKBA asylum caseowners/caseworkers, immigration judges and experts
The motivation for the project arose from a hypothesis that there is poor and inadequate use of COI amongst many of the key stakeholders involved in the refugee status determination (RSD) process.

CHAPTER 1 : INTRODUCTION

'Country information has got to be more at the forefront than it is. There must be awareness that these are political decisions'

– Legal representative.

Country of origin information (COI) is an integral part of asylum decision-making in the UK at all stages of the refugee status determination (RSD) process. COI details the social, political, judicial and human rights profile of a given country. This information is used within asylum decision-making to assess the risk upon return for individuals to their country of origin as well as the credibility and plausibility of individual claims. COI enables decision-makers to assess if an asylum seeker's subjective fear is based on objectively adverse circumstances, and therefore whether an asylum claim is 'well-founded'.

The need for country of origin information within RSD is explicitly stated in the UNHCR Handbook thus: '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'.[2] The legislative and policy framework underlining the use and importance of COI are also outlined in the UK Home Office policy instructions as well within the EU Qualification and Procedures Directives.[3]

COI material consists of a variety of sources including reports produced by experts, news services, Non Governmental Organisations (NGOs) and government bodies, including the UKBA's COIS reports.[4] Reported case law and Country Guidance (CG) cases also contain guidance, assessments and sources of COI. Operational Guidance Notes (OGNs) are Home Office policy documents and provide country specific guidance to caseowners on particular asylum seeking groups. Whilst these contain COI, its content is not monitored by an independent monitoring body and is arguably selected on the basis of policy considerations.[5]

Within the RSD process, a number of stakeholders use COI, namely Immigration Judges, UKBA caseowners/caseworkers, Home Office Presenting Officers (HOPOs), legal representatives, experts and unrepresented asylum seekers.

[2] 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, para. 42.

[3] EU Qualification Directive: 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 - see Article 4. EU Procedures Directive: Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status – see Article 8 (2)

[4] The UKBA Country of Origin Information Service (COIS) produces COI reports, which are a compilation of diverse source extracts. Within this report, they are referred to as COIS reports. COIS Reports are provided on the 20 countries which generate the most asylum applications in the UK. 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. 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.

[5] Immigration Advisory Service (2009) *The Use of Country of Origin Information: Critical Perspectives.* London: Immigration Advisory Service, pp. 78-106.

Asylum applications are assessed by the Home Office and the Asylum and Immigration Tribunal (AIT), against the relevant background information on the country from where the claimant fears persecution. In this way, decision makers are able to assess the credibility of claimants and their risk of persecution if returned to their country of origin and thereon whether the UK, in accordance with its international obligations under the 1951 Refugee Convention and Article 3 of the ECHR, should provide protection.

If legal representatives, advisors or decision-makers are unable to properly access, understand and utilise country information, they cannot provide quality advice and representation to asylum seekers or make adequate decisions. Should the advice or representation given to asylum claimants be sub-standard or even erroneous, or if a wrong decision is made, the consequences for the individual could be significant. This might include enforced removal and ultimately return to a country where they could be at risk of persecution or death.

Despite the importance of COI within RSD, it remains relatively unexplored. Indeed, little has been done to interrogate how COI is used by practitioners or decision-makers. Attempts have been made to formulate criteria for the assessment of COI but there is little monitoring or regulation of the information being used. Part of the reason for this is because COI is a constructed field of knowledge that incorporates knowledge from a variety of disciplines and sources, which for the most part are not written with the RSD process in mind. This provokes tension because these diverse origins present divergent modes of thought, mandates, and approaches to information production. Subsequently, attempting to create and implement criteria for an ideal standard of COI is problematic. In turn, these factors further complicate its usage.

This report intends to explore how individuals from each of the stakeholder groups understand, approach and use COI. Based on the results from the data, a series of recommendations are proposed that intend to improve usage and ultimately contribute to a more rigorous determination system.

[6] See the following publications for further information:
Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) (2004), *ACCORD COI Network & Training. Researching Country of Origin Information: A Training Manual.* Available at: http://www.unhcr.org/refworld/docid/42ad40184.html (Date Accessed: 05 May 2009).
UNHCR (2004) *Country of Origin Information: Towards Enhanced International Cooperation, February 2004.* Available at: http://www.unhcr.org/refworld/docid/403b2522a.html (Date Accessed 05 May 2009).
IARLJ (International Association of Refugee Law Judges) Country of Origin Information – Country Guidance Working Party (2006) *Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist.* In: 7th Biennial IARLJ World Conference, Mexico City, 6-9 Nov. 2006.
Gyulai, G. (2007) *Country Information in Asylum Procedures: Quality as a Legal Requirement in the EU.* Budapest: Hungarian Helsinki Committee.
More recently, in line with the current trends of harmonizing European asylum procedures, common EU guidelines were created. See for example, European Union (2008) Common EU Guidelines for *Processing Country of Origin Information (COI)*, April 2008. Available at: http://www.unhcr.org/refworld/docid/48493f7f2.html. (Date Accessed 04 May 2009).

CHAPTER 2 : METHODOLOGY

About the Research

This is a qualitative research study that examines how COI is used by the diverse stakeholders involved in the RSD process. Four stakeholder groups came under scrutiny: Immigration Judges (IJs), UKBA staff, legal representatives/ advisors and experts. Using a sample of individuals from each of these groups, this research project distils their views on COI and its usage, and captures their perceptions of how other stakeholders engage with this form of evidence. Through identifying some of the barriers and facilitators to using COI, this report will make recommendations for good practice.

Research Project Aims

The research project sought to achieve the following aims:

- Assess the levels of understanding of what COI is
- Identify the barriers and facilitators to accessing and using COI
- Understand the processes associated with poor usage of COI
- Examine the perceptions different stakeholder groups have of each other with regards to their usage of COI
- Examine whether the adversarial system has an impact on the way people approach country information
- Understand whether a "hierarchy" of information sources exist and if so, why
- Identify training needs
- Identify examples of good practice for using COI

Research Methodology

The research involved three methods of data collection: interviews, questionnaires and focus groups.

Across these three methods, data was collected from the following groups of people: Immigration Judges; legal representatives and advisors; experts; UKBA staff; and COI researchers.

Interviews

Individual consultations were held across four regional sites.[7] In total 20 interviews were held with the following groups of people:

- 6 legal representatives – 2 caseworkers; 2 solicitors; 2 barristers
- 5 Immigration Judges – 2 SIJs; 1 DIJ; 2 part-time IJs
- 5 UKBA staff – 2 initial decision-makers; 3 SCWs (1 of which was also a PO supervisor)
- 4 country experts

[7] Interviews were held in London, Birmingham, Manchester and Newcastle.

Each interview lasted approximately 45 minutes and were recorded and later transcribed. Interviews were semi-structured using set topic guides. The topic guides were designed around a set of six themes, which drew on the research aims listed earlier.

Identifying the sample:

Legal representatives from high-calibre firms or individuals who had an interest in matters relating to COI were particularly encouraged to participate. As with UKBA staff, individuals likely to be involved at the initial decision making phase, such as caseworkers or solicitors, were particularly targeted in order to get a well-rounded view of how COI is used at the different stages of the RSD process.

Having secured permission to collect data from an UKBA representative, regional contacts were given to the researcher as a point of contact. Using these representatives as an initial source, the researcher then arranged interviews with 5 randomized individuals.

The sampling for IJs and experts was more randomized at this stage, with the sole criteria of individuals holding a particular interest in the use of COI. Experts were selected on a similar basis, primarily identified through the ILPA directory.

Data Analysis:

All data was transcribed and then coded thematically using the constant comparative method. This allowed the key findings to be drawn out and allowed for an analysis by topic and by sector.

Initial coding was based on conceptually derived codes and categories defined by the interviewees themselves. However, codes were constantly reviewed and compared as new data was developed, thus refining the categories as the process went along and establishing its properties. This enabled the researcher to identify the emerging relations between codes and understand the processes underlying methods of usage. Deviant cases were also identified in order to make the process more rigorous.

Questionnaires

The questionnaires were used in order to triangulate the interview data, expand on some of the themes identified and assess whether the findings captured in the interviews were reflective of and encapsulated the same ideas and trends. Using a wider and more diverse sample, they would also enable the researcher to identify training needs.

In total, 50 completed questionnaires were gathered from UKBA staff and 50 from legal representatives. Of the UKBA respondents, 13 were HOPOs, 33 were caseowners and 4 were senior caseworkers. All questionnaires were anonymised and coded.

Sampling frame for legal representatives:

The sampling frame sought to achieve a randomized and representative sample of 100 legal practitioners. However, after realising the response rate was low, this aim dropped to 50.

The questionnaire was designed in a way to make the questions relevant to all types of legal practitioners from level 1 accredited caseworkers to experienced solicitors and barristers.

The sample was derived through a mixture of contacts; directly emailing individual firms located through Google; and by posting the questionnaires on Internet sites for immigration law practitioners. The aim was also to ensure a mixture of small specialist firms and larger firms; private and public organisations; as well as a regional selection.

Sampling frame for UKBA staff:

The sampling frame for UKBA staff was slightly different, employing a convenience sampling technique. Having secured access to collect data from an UKBA representative, regional contacts were given to the researcher as a point of access. The researcher sent the questionnaire to the regional contacts who then distributed the questionnaires to staff electronically.

Questionnaires were sent to a mixture of HOPOs, senior caseworkers and initial decision-making caseowners. Thus, the questionnaire was designed accordingly, so all questions could be applicable.

Although the line of questioning was somewhat different to legal representatives, the questionnaire for UKBA staff was also designed to repeat some of the questions given to legal practitioners in order to be able to form direct comparisons (18 questions were repeated).

Questionnaire design:

Breakdown of Question Types for legal representatives:

Open questions	10
Yes/ No	4
Likert	12
Rank	2
Closed	2
Total	30

Breakdown of Question Types for UKBA staff:

Open questions	13
Yes/ No	4
Likert	7
Rank	1
Closed	8
Total	33

- Space for additional comments was left at the end of each questionnaire for respondents to address anything else they felt they wanted to comment on but did not have space to elsewhere.
- Likert[8] was used to measure and evaluate. For example, to assess how people are working, or to identify barriers and facilitators to good practice.
- Ranking questions were used to identify the most relevant indicators that facilitate or are barriers to conducting COI research.
- Open questions were used to allow for greater detail; establish any new themes; and expand upon the results already found.
- Closed and Yes/No questions added depth to the data and allowed for the development of quantitative results.

[8] Likert is a psychometric scale used in questionnaires where respondents specify their level of agreement to a statement or a question.

Closed questions were mainly used and presented statistically. With open questions, responses were categorized and rated in terms of popularity of response. Quotes were also selected where themes emerged.

Few completed the ranked or graded questions as required. However, those who simply marked 1 choice or marked several choices and weighted them equally, or rated their top 2 or 4 (rather than all 7, for example), have all been incorporated here. It was felt that the ratings should be amalgamated and kept as they were presented. For example, if someone voted 6 options as 1st in importance, this is reflected in the data findings.

For UKBA staff, analysis was conducted as a whole but also by job role: caseowners; senior caseworkers; and HOPOs. Further analysis was conducted within the caseowner category to examine if there were differences between normal caseowners as opposed to Solihull[9] caseowners and fast track caseowners. Only where results were significant owing to job role, was this presented in the analysis.

Some individuals from UKBA did not detail which location they work from. When this was not completed, the researcher traced their code to the original email to check their office.

Limitations of questionnaire:

The questionnaire comprised of many open-ended questions, which whilst providing fruitful data, were difficult to analyse. Furthermore, the response rate for these questions was lower, with people often leaving them out altogether. In hindsight, alternative response methods (such as tick boxes) for some questions could have resulted in heightened consistency

Focus Groups

6 focus groups were held: 5 with multi-stakeholders and 1 with UKBA staff only. The aim of the focus groups was to bring together individuals from the different stakeholder groups. This was primarily to:

- Stimulate dialogue
- Share experiences and concerns about COI usage
- Assess how knowledge exchange operates; how views are constructed and expressed; and understand the relationship between the representations of the individual and those of the group
- Provide space for contradictory arguments and discussions
- Allow participants to collaborate and reflect on what kind of actions or recommendations could help them solve the problems associated with COI usage

Each focus group was made up of 5-8 people and lasted between 1.5 and 2 hours. However, the UKBA-only group contained 4 individuals. Listed below is a breakdown of the participants in each of the 6 focus groups.

Topic guides were formulated based on the key themes drawn out from the interview and questionnaire data, as well as new questions to elicit the diverse use of COI amongst the stakeholder groups.

[9] The Solihull Pilot emerged out of a proposal developed by UKBA and the LSC in March 2006 that sought to improve asylum decisions through offering early legal access.

The topic guides were also designed in a loosely structured manner in order to allow for flexibility and spontaneous discussions.

The researcher led discussions and directed the group to new themes as and when necessary, whilst ensuring certain topics were covered but not stifling free flowing discussions. At the beginning of each session, confidentiality was stressed. All focus groups were recorded, transcribed and then analysed using the constant comparative method.

Sampling Frame:

Participants were selected using convenience sampling and based on their knowledge or interest in COI. UKBA staff were sampled from the regional contacts given at the inception of the project. Legal representatives were selected using convenience sampling from the initial sampling frame of London contacts and were selected on a 'first come first serve' basis. Experts were selected from the ILPA directory based on their area of expertise, experience and interest in the project or in the field of COI. Two focus groups had an IJ present and this was secured through direct contact.

In each group (with the exception of the UKBA-only group), a COI practitioner was selected to be present. This was mainly to ensure that one stakeholder group was present in every focus group and also to allow for consistency.

Explanatory Note: Data Presentation

The focus groups have all been given a number, for example FG1 for the first focus group held. Within each focus group, individuals have been coded according to their stakeholder group. For example, LR1 for a legal representative or EX1 for an expert. The codes are as follows:

- EX: Expert
- LR: Legal representative
- CO: UKBA Caseowner
- IJ: Immigration Judge
- COIS: UKBA COIS staff
- CR: COI Researcher (non-UKBA)

Below is a list of the focus groups with the participants coded:

FG1:	FG2:	FG3:	FG4:	FG5:	FG6:
• EX 1	• CO 1	• CO 1	• CO 1	• COIS 1	• CO 1
• EX 2	• CO 2	• CO 2	• COIS 1	• LR 1	• CO 2
• CR 1	• CO 3	• LR 1	• COIS 2	• CR 1	• CO 3
• CR 2	• LR 1	• LR 2	• LR 1	• CO 1	• CO 4
• COIS 1	• LR 2	• LR 3	• CR 1	• IJ 1	
• COIS 2	• LR 3	• LR 4		• EX 1	
	• CR 1	• CR 1			
		• IJ 1			

Therefore, in the first focus group (FG1), 2 experts, 2 COI Researchers and 2 UKBA COIS staff members attended. By comparison in the sixth focus group (FG6), only 4 UKBA caseowners participated.

All interviewees have been anonymised and are referred to by their overarching stakeholder group. During the discussion, UKBA caseowners and caseworkers are all referred to as UKBA caseowners for the purposes of clarity.

Ethical Considerations

i. All participants were assured anonymity and confidentiality.

ii. All participation was voluntary with informed consent.

iii. All participants received a "participant information sheet", which detailed why the information is required; what the project seeks to do; and outlined the benefits of contribution.

iv. Research clearance was obtained to conduct interviews and distribute questionnaires to individuals from UKBA.

v. Clear procedures that reduce risk and maximize confidentiality were established. Field notes and transcripts did not contain personal identifiers. Raw and processed data was password protected.

CHAPTER 3 : RESULTS

This section presents the results from the data gathered. 3 methods of data collection were employed: questionnaires completed by 50 legal representatives and 50 UKBA staff; 20 interviews across the 4 main stakeholder groups; 5 multi-stakeholder focus groups and 1 UKBA caseowners focus group.

Limited narrative takes place in this Chapter as the focus here lies on reporting the data. An analysis and commentary will be presented in the Discussion section in Chapter 5. The results are presented by theme and each section, for the most part, are broken down according to method of data collection for purposes of clarity. Not all data methods are included under each section, if results were not yielded.

The key themes emerging from the data overall are as follows:

a) Value and Limitations of COI
b) Levels of Use and Analysis of COI
c) Barriers and Facilitators to Use and Analysis
d) Method of Use within the RSD Process
e) Politicisation of Information Production and Usage
f) Sources
g) Country Guidance (CG) Cases
h) Experts and Expert Evidence

a) Value and Limitations of 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

Questionnaires:

90% of the legal representatives believed the country information should be given more weight in the RSD process. This result not only highlights its value and importance but also suggests that it is not currently being given enough weight.

Interviews:

All individuals interviewed were in agreement that employing good practice in COI research should impact on better decision-making. However, some respondents, notably amongst the legal representatives and experts, noted that in practice, this is problematic as it requires political will.

All individuals from the 4 stakeholder groups highlighted the value of country of origin information. Reasons cited included that COI:

- Situates claims in the appropriate social and cultural context
- Provides general background information
- Assists in developing better lines of questioning
- Encourages better decision making
- Assists credibility assessments
- Helps assess risk on return
- Corroborates a claim and / or particular episodes relevant to the client
- Helps to assess the merits of the case

Legal representative: 'you cannot understand a claim except in the context of the country... a proper analysis of credibility can only be done in the context of country information and not devoid of it. And too much of it is done devoid of it'.

Immigration Judge: 'In an asylum appeal... the Tribunal has said on a number of occasions that no decision about an individual application will probably be made without reference to background material. So it features as the backdrop against which any findings of fact are made. It also becomes the means by which you're likely to be able to make the assessment of risk on the facts as found'.

UKBA caseowner: '…if you do your background research and an issue comes up in the interview, or they raise something new, you can either test it or challenge it in the interview'.

Expert: '…the country information is the context, without context there's no meaning. So how can we reach a sensible decision about anything if we don't understand the context?'

One UKBA caseworker talked of the fundamental need for objective information within the RSD: 'I think that's why it's important that COI is balanced. Because we shouldn't be starting from the point of view that we are going to refuse people. What we should be doing is recognising when people need the protection that they are seeking and you can only do that by having a proper understanding of what is going on'.

There was questioning amongst the majority of individuals interviewed about the idea of COI being "objective" evidence. This was particularly amongst legal representatives, experts and IJs. Furthermore, whether COI can ever establish truth was also questioned. One barrister stated: 'It can never establish truth, truth of what? It depends on what an appellant is saying. Because the mere absence of what an appellant is saying on the objective evidence does not necessarily establish truth'.

All stakeholder groups recognized and agreed that COI had ***limitations***. For example, the following concerns about COI were raised:

- The partiality of sources
- The existence of out of date information
- It is not definitive
- It can only be general and fixed in time
- There is a specific lack of information on culture
- There is a lack of thematic information, such as on women, children and trafficking

Furthermore, points were raised regarding the limitations emerging out of its use:

- It can be impossible to find COI to cover all the specific facts of a particular case
- A lack of information may not mean it didn't happen
- Credibility rests on many other factors too
- The interpretation of COI involves a level of subjectivity

One immigration judge highlighted the limitations in establishing credibility through using COI: '…if there is an allegation that an individual attended a riot ... or demonstration in a particular place and there is no reference to that in the background information …the fact there is no reference to it would not normally indicate that it didn't take place and therefore I think we have got to exercise a degree of caution about using background information in the credibility assessment'.

However, there was also consensus that the problem with COI rests more on its usage than its actual production. In other words, key problem areas are a poor use of COI, non-specific usage of COI or under-use of COI.

Experts in particular emphasised the theoretical underpinnings of COI and were the only group to talk about the problems of COI being used to meet legal tests. For example, they spoke of the impossibility of establishing the level of threat of non-state actors or the risks associated with internal relocation.

One expert stated: 'A particular problem I get over and over again from instructing solicitors. They will ask me a series of questions and I recognise immediately they are asking me to actually meet legal tests. A popular one these days is "state your opinion as to whether the conflict in Iraq constitutes an internal armed conflict". This has a particular legal meaning, it's not my business, I don't know. I had a judge three or four weeks ago, who said in relation to Iraq, what percentage risk will this person run? ... I mean to ask an expert that sort of question I think is misplaced. So … the difference between objective reality as I understand it, understanding actually how a situation is in a country on the one hand [and] what are actually a series of legal tests, of legal hurdles on the other, and there's often a confusion of the two'.

This highlights that there is a disjuncture between expert knowledge and meeting legal tests. This suggests a clash of disciplines, whereby social scientists feel uncomfortable with notions of fact or certainty, something which will be explored further in the Discussion section.[10]

However, despite the various limitations, all stakeholders agreed on both the value of COI and that improved usage could, in theory, contribute to better decision-making.

b) Levels of Use and Analysis of COI

'For doing asylum decision work, it's more about using the country information to either back up one of your arguments or to argue against a point an applicant has made'

– UKBA representative

Questionnaires:

Questions were posed to legal representatives and UKBA staff in order to assess how often they use COI in asylum cases. Secondly, respondents were asked whether they analyse the country information that they use. For example, conduct source assessments, scrutinize information or challenge contradictions.

[10] For more information on this subject, see: Good, A. (2004) '"Undoubtedly an Expert"? Anthropologists in British Asylum Courts' *Royal Anthropological Institute,* 10

The questionnaire results highlight higher levels of use of COI than analysis of COI. For example, whilst 94% of legal representatives use COI either 'in all cases' or 'in the majority of cases', only 46% analyse the information 'always' or 'for the most part'.

Similar results are observed amongst UKBA staff. Country information is used 'in all cases' or 'in the majority of cases' by:

- 32/33 (97%) of caseowners
- 4/4 (100%) of senior caseworkers
- 11/13 (85%) of HOPOs

By comparison, country information is analysed 'in all cases' or 'in the majority of cases' by:

- 12/33 (36%) of caseowners
- 3/4 (75%) of senior caseworkers
- 8/13 (62%) of HOPOs

Results from the questionnaire showed that in an ideal world, the vast majority of people would spend far more time conducting country research. Amongst legal representatives, of those who gave an ideal time (43), the average time stated was **4 hours 48 minutes**.

By comparison, amongst UKBA caseowners, 28 of 33 respondents stated their ideal time was greater than what they currently spend. Only 4 respondents said they currently spend sufficient time, whilst 1 failed to respond.

Of the 33 UKBA caseowners who completed the questionnaires, the average number of cases they had per week was 2.93.[11] The average time spent per case was just over 15 hours, of which 22% of that time, on average, is spent on country research.

For those who quantified how much more time they would like in an ideal world, this figure ranged from a minimum of 1 hour to a maximum of 1 week. Of the 17 individuals who quantified their ideal time, the average ideal time stated was **7 hours 42 minutes**.

9 individuals noted that the time required for research depends on the case. This time is contingent on the complexity of the case; prior knowledge of the country; prior experience of claims from a particular country; and the amount, quality and accessibility of information. One other variable noted by an individual was that if the file doesn't arrive in time after the interview, there is insufficient information for effective research. One other individual also stated that the pressure to make a number of decisions per week can restrict time spent on research.

Interviews:

Across and within the stakeholder groups, diversity in the use and levels of analysis is observed. Furthermore, it was observed that each stakeholder group holds views regarding one or more of the other stakeholder groups' poor use of COI.

[11] Average number of cases per week amongst caseowners was 2.93. Caseowners from the Solihull Pilot had an average of 3.59 cases per week, while fast track caseowners had an average of 1.5 cases per week.

Legal representatives

The amount of time legal practitioners spend on COI depends on each particular case. Variables included: whether it is a new country; the stage of the determination process; LSC funding constraints; resources available; and the complexity of the case. One barrister noted: 'I don't think I could get a proper understanding of the basic ground rules [of a country] within anything less than a few hours'.

The legal practitioners interviewed took a similar approach to the analysis of COI and all had a strong understanding of how to conduct a source assessment. However, time was noted as a barrier to analysis.

It is important to note however that the practitioners interviewed do not necessarily reflect standard practice. Indeed, the diversity in the quality of representatives was highlighted by the interviewees. For example, one barrister explained: 'I've seen lots and lots of decisions by other lawyers on immigration cases … and so far as I could see in none of them had anybody …pointed out to the Home Office parts of the case that were … corroborated by the background material …. but also they didn't even do a proper statement so I mean that would just be a luxury really background material'. Thus the poor quality of legal representatives in the system means that COI research can sometimes even be a "luxury" or an afterthought.

Legal representatives who were interviewed felt that there is an underuse and a poor use of COI amongst some practitioners and initial decision makers. For example, one individual stated: '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'.

One solicitor argued that there is underuse at every stage: 'I think it is underused at every stage, both up to the initial HO decision, when people seem to think they can assess credibility, both the practitioner and the HO, without setting it into context… And I think it is then underused when it comes to the appeals process, you get court bundles without trying to be as specific as possible, or people putting in huge reports and actually only a tiny bit of it is relevant and it distracts from the point we are trying to make.' Finally, another practitioner argued 'No, it's not under-used, I think people use it in the wrong way'.

The stages of RSD seen as being the most crucial for using COI were the initial stage and at the appeals stage. For example: 'It is crucial at the beginning stage but you know at the appeal hearing it is very crucial because it's like your last attempt'.

A barrister explained: 'At the initial preparation stage, I think it is important for anybody doing an asylum case to have a clear idea of the country from which the appellant has fled… I think the caseworker must have at least a broad understanding of the background of that country because it may well be that the information that is given to an appellant is incomplete. ...It may well be that the appellant provides specific objective evidence that proves that the information provided in the COIS report is in fact wrong. Because it is never taken as a fact that all the information in the COIS report is right. It may well be right at the date when the information is being sought but there will be instances when it can be shown that the information is no longer reliable'.

A lack of understanding about the importance and centrality of COI to one's claim amongst UKBA staff was also noted: 'I have seen HO [Home Office] interviews where they have stopped the person, saying "we don't need COI, we just want you to tell us about your case".

And the person can't because their case is so closely tied in with key political events, they have to give the COI… I think that is a significant problem with the HO and IJs and that's that you can't explain a culture or a mentality or a political development without knowing that these things can happen'. This suggests a misunderstanding about what the function of country information is and how central a country's social and political climate and history can be to an individual asylum seeker's claim.

Furthermore, a mistrust of IJs was also observed amongst some of the legal representatives interviewed, primarily rooted in the idea of the diversity in the quality of IJs. For example, one barrister explained how a tactical approach to using COI was required due to the divergent nature of the different immigration judges: 'In the first instance asylum appeals I would not set out to corroborate each part of the case because that presupposes that the Tribunal you are appearing in front of will almost always be one that is open to persuasion by evidence and because a very substantial body of immigration judges are not open to persuasion by evidence'.

Thus, the results from legal representatives indicate poor levels of use amongst UKBA staff and legal representatives, despite the importance of relying upon this form of evidence throughout the RSD process. Furthermore, the overall poor usage of COI must be placed within the context of the varied quality of all the stakeholders within the decision-making process. Indeed, one barrister described the system as "irrational" where it is a "survival of the fittest" as to whom will receive refugee status:

> 'Well the problem is that lots of people doing it are not very good and the AIT simply shrugs … I mean it's a very difficult job being an IJ because the quality of representation is so poor and because the Home Office doesn't test the stuff that's being put forward and so clients lose for stupid reasons and win for stupid reasons. And so the system….is [a] kind of survival of the fittest … The system … itself is very illogical and decides cases on a illogical basis, so [a] very substantial cohort of immigration Judges probably, the majority, routinely decide cases on stupid irrational bases'.

UKBA Staff

Of the 5 UKBA employees interviewed, 2 worked on initial decision-making and 3 on appeals. Across the different job roles, there is a differential use of COI in accordance with the respective stages of the RSD process. However, the interviews highlighted that there is also variance in the way that COI is used within the different stages by individuals with the same job role. For example, at the initial decision making stage, one person used it after the asylum interview, whilst the other used it prior to and after the interview.

One initial decision-maker explained that the stage where COI was both most crucial and most underused was pre-interview, having already explained that s/he did not use it at this stage. (S/he uses it after the asylum interview). S/he states:
'In an ideal world I'd like to do a bit more preparation before the asylum interview to understand the country a bit better, to tailor the questions in the interview. But the lack of time…you don't have preparation time'.

The levels of use of COI fluctuated for a number of reasons, mostly to do with the profile of the case applicant. Of the 5 individuals interviewed, 2 UKBA staff stated that they always use COI (1 initial decision maker and 1 appeals worker).

A common example mentioned for little or no use of COI was Zimbabwe MDC claims because of familiarity with the country due to the volume of claims.

One UKBA staff member who works at the appeals level stated they used COI in 60% of claims: 'Particular types of claim you don't even need to refer to COI, for example trafficking or medical situations, the caseworkers wouldn't really need to dig into the COI'. Other examples of claims that fall into the 40% that the caseworker believed do not require COI include the following: 'These are very poor claims that have no chance of success at the stage of appeal, especially if there are no Convention reasons; the claim is weak [with] many credibility issues. Very little more is required in court because the refusal letter says it all. Many of these cases the applicants don't have representatives anyway because they haven't passed the MT [merits test] but they still have the right of appeal. So in most of these cases, there isn't really a need to refer to much COI'.

Another finding was the admission that less time is spent on COI at the appeals stage when there is no legal representative. 'Well you know you're not going to get an evidence bundle or an expert report, you may not even have a statement that rebuts our refusal letter. So you are going to court with only one document, the refusal letter. So there is less to prepare. There may be some argument that the COI is not the most recent, but it's mainly credibility. As we know when there is no representative, there is clearly less preparation because there is less documentation'. By contrast, one appeals worker noted that they would make a point to highlight the paragraphs they were relying on in order for the appellant to respond.

Finally, it is important to note that the UKBA staff interviewed had different levels of sophistication and approaches to analysis. The more senior staff members seemed to have a greater understanding of what COI is, its limitations and had a more holistic outlook on the nature, objectivity and possibility of establishing "fact".

However, there was consensus across the 5 interviewees that they would not analyse COIS reports because there was no need. This was based on a belief that they should have already been sifted for objectivity internally by the COIS department and externally by the Advisory Panel on Country Information (APCI).[12] Nor would they analyse any of the external sources that are "approved" sources.[13] For example, one individual stated: 'I would automatically assume…that would be my default…that I can use it because it has come from COIS, I can rely on it'.

[12] The APCI is a body set up by statute in response to consultations and pressures by opposition MPs to establish an 'independent documentation centre'. This documentation centre did not materialise and instead the APCI was created to provide independent advice and comments on the COI produced by the Home Office. It has now been replaced by the IAGCI.

[13] In the interviews, individuals referred to "approved" sources, which are either sources provided within their Intranet system or sources cited in the COIS reports and key documents.

An example demonstrating how the adversarial culture and the lack of analysis of COIS material can encourage a lack of engagement with material and in turn, the use of standardized paragraphs:

1. If different reports are saying different things, do you question the objectivity of COI?
   'It depends if it's been submitted by a rep, I might question the balance or the bias of the report or the author of the report. Whereas if it comes from our Home Office COI Service, I would treat that as a description of what happens in that country.'
2. So essentially you are making a source assessment (of reps' bundles) and do you often do that?
   'Well we don't have to go into great details because we've got our report and the **standard paragraphs and lines that we use** so we've got that already.'

HOPOs instead analyse the legal representatives' bundles and may assess the contents of COIS reports too, but solely in order to preempt any arguments that may emerge in court – this may involve dealing with contradictions that may exist, looking at source documents and cross referencing.

Thus, analysis takes place more for adversarial purposes at appeals. Furthermore, if only COIS materials or "approved sources" are used at the initial decision-making phase, these results suggest that no analysis may take place at all.

Experts

The point made by some of the legal representatives interviewed regarding the diversity amongst judges was also an issue stressed by some of the experts. For example, one expert stated: 'There is variety amongst the judges, some good, some intellectually worthless'.

Experts also commented on the variance in quality of all players in the asylum determination sector, primarily based on their experiences of being instructed by legal representatives and their engagement with Reasons for Refusal Letters (RFRLs) and Statement of Evidence Forms (SEFs), for example. However, they acknowledged that the standard of expert advice was also not consistently high.

Immigration Judges

The time spent on COI by IJs was difficult to establish. Some said a "significant amount of time" or "quite a long time". Another was more precise, explaining, 'I doubt that I would spend, even with a big bundle, more than half an hour, probably about 20 minutes or so … because you skim read'. By comparison, an IJ noted that when engaging with COI, 'it's likely to be not simply a question of what the words are but analysing that by cross-referring to other disparate pieces of evidence and trying to make an assessment'.

However, there was consensus that the time spent on COI would vary depending on the case, whether it was a new or unfamiliar country, and whether UKBA is accepting or challenging that the account is consistent with the background situation. Another variable cited was whether there had been a CG case on the issue, which would often narrow down the decision making process to findings on credibility.

The judges interviewed seemed to treat lack of information on a particular issue and how it impacts on a decision differently. On the one hand, it was argued that without information it would be difficult to assess whether there was a risk at all. On the other hand, this lack of information was linked to a limitation of COI itself because non-coverage of a particular issue does not equate to something not happening.

One IJ explained how a lack of information does not impact on credibility: '…the background doesn't really have to support them, if there's nothing in the background which contradicts what they say and they give the same account and they've given it a couple of times and there's no apparent reason not to believe it and it's a generally credible account… then that's probably the burden of proof discharged'.

Another IJ explained that in cases where there is a lack of information, that judges can dismiss the case on the basis of no evidence or adjourn and make a direction for expert evidence. However, this latter scenario was noted to be extremely rare.

Indeed, IJs are also under pressure to write their determinations under time constraints within a culture that is not favourable towards adjournments as disclosed in this focus group.

FG3
LR2: I have heard once that statistics are collected against ... how many refusals are allowed and how many are not, a judge has ... felt very proud about the fact that his statistics were the best for refusing adjournments
IJ1: … they do keep statistics on how many adjournments we grant and how many we refuse, every month - we get a little congratulations letter or not - so they're very conscious, they don't like us adjourning

It was also noted that there were differential levels of conducting analysis or source assessments amongst IJs. In part, this was owing to differing perspectives on source materials. For example, for those who questioned the quality and reliability of COIS reports, higher levels of analysis were observed.

When asked, *'do you assess the strength of a source?'*, one IJ responded: 'I don't generally do that. I think I would be more likely to question it if it doesn't actually fit with the rest of the stuff'. Another IJ argued that analysing COI was the legal representative's responsibility because an IJ is simply meant to consider the evidence before him: 'I will often go and look at the original report if I'm not satisfied that the extract that they have included is the end of the story but it's for the representative to kind of engage with that material ... you need a good representative to deal with that kind of material, you can't just assume that the IJ's going to do it'.

By comparison, one IJ who spoke extensively on his levels of analysis stressed the need to look for sourcing, currency, relevance and context when analysing information: '...you're given a sheet of paper, you're being told to look at this paragraph here because that supports or undermines the appellant, you're looking at the rest of the page to see that it's consistent with the rest of the page really. It isn't that … the representatives are being dishonest in any way, but their job is to highlight all the good bits for or against, depending on which side they're on and ... You're deciding whether or not that's a genuinely good point.'

Despite the lack of implementation of a set of formal criteria for evaluating sources amongst IJs, those interviewed had a good understanding of how to analyse sources and applied similar techniques for analysis, albeit to different degrees. However, only 1 out of 5 IJs had heard of or were familiar with the IARLJ [14] guidance, which deals with COI usage and analysis. Rather, when analysing, emphasis was placed on judgement and the normal judicial procedures of weighing up evidence.

Focus groups:

One focus group discussed how there is an inconsistent use of COI all the way through the RSD process:

FG1
CR2: (…) there's huge variation ... in the way that those individual decision makers have engaged with the case itself and the country of origin information and how that's apparently informed their decision … There is no consistency that I can see… in terms of how country information is engaged with in terms of decision making. So it seems to sort of shift the burden of that higher up the process constantly, so it's almost like an assumption that at the first stage the country of origin information is not properly engaged with in very many cases and then it's at the level of the appeal that that's going to have to take place …at which point again it's… depending on the immigration judge, their interest, their knowledge, their expertise, what they bring to it, again it's hugely varied (…) if you were looking at a CG case, there's incredibly close engagement with the country information but I mean that's not the case normally at all

CR1: Also there's a tremendous amount of inconsistency on the practitioner's side as well depending on how committed the practitioners are. (….) So this is why the COIS report which becomes the definitive report that everyone ultimately relies on, sometimes practitioners also just rely on that … because they don't have legal aid money to do the research or they don't have the expertise within their firms to do it … and then again the third variable factor is the engagement of the IJs so it's a lottery all the way through at this point.

This idea of an "IJ Lottery" was also found in the second focus group, with an UKBA caseowner suggesting that appeal results are almost pre-destined depending on which IJ one has:

FG2
CO2: I think what can be scary … in some instances is that, you do look at it sometimes as a lottery in terms of when it does go to court. You will get certain judges who will kind of come to a determination that, say, some other judges wouldn't see the same way. And in that sense you do look at it as a bit of a lottery, sometimes in terms of what judge you're actually going to hear the case with. Most judges will come to the same decision but it doesn't always work that way, so even in that case - when the judges have got all the information in front of them - their subjectivity comes to the fore...I don't know how you get around that.

[14] The International Association of Refugee Law Judges created COI guidelines.

The variance in the quality of decision making and a need for training is also acknowledge by an IJ in FG5– a point expanded on by a legal representative with regards to the treatment of experts.

FG5
IJ1: Well it would be naïve to think that there isn't a variation in the quality of judicial decision-making … any decision maker, be it a judge at any level or a decision maker in the Home Office, you are going to get variable quality and there is nothing you can do about that (…) Well, it is a question of training, you know, we have programmes of training judges as decision makers…we try and give guidance in decisions... but at the end of the day it is a judicial decision and that means that there is an independence of the decision maker

LR1: And I think the discrepancy of the treatment of expert evidence in this jurisdiction is exacerbated by the fact that a judge is normally considering, on one side, expert evidence, on the other side, their submissions on the part of the Home Office representative...So whereas in other jurisdictions where both sides are expected to produce expert evidence if they wish to establish a point … here some judges will take the view that if one side is producing expert evidence which appears credible then they will accept it unless the other side's got a very good reason why not. Other judges appear to be frustrated by the failure of the Home Office to produce expert evidence and try and set themselves up as a sort of opposing expert to knock holes in the country expert…

Thus, the focus groups produced the common finding of the diversity of use and treatment of COI. This diversity must be situated within the context of variance in the quality of individuals within each of the stakeholder groups. In turn, the concept of a "Refugee Roulette" will be explored in the Discussion section.

c) Barriers and Facilitators to Using, Accessing and Analysing COI

'In an ideal world, we would have much more information from the reps. Reps would have got us witness statements. We would know what we were looking at and we'd be able to look at it in much more detail. But it's not like that in the real world. We have too many cases. We have too many other things pulling us backwards and forwards.'

– UKBA representative

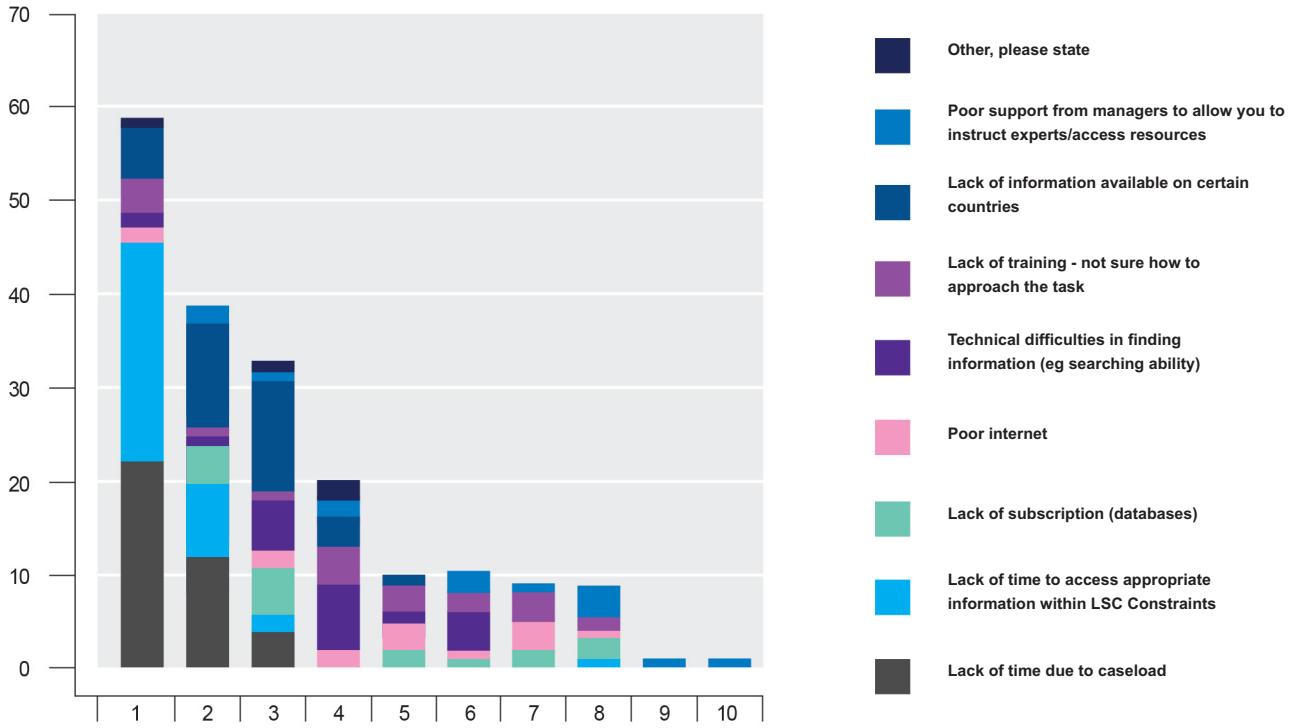
Questionnaires:

The questionnaires sought to identify the main barriers and facilitators to using and analysing country information. Different types of questions were posed including rating the barriers to access, open ended questions regarding facilitators, as well as more specific questions about potential obstacles.

Legal Representatives

Amongst legal representatives, clear patterns emerged regarding their barriers to access. Participants were asked to rate, in order, their greatest barriers to accessing information from a list of 9 different variables.

Main Barriers to Accessing COI amongst legal representatives:



The x axis (horizontal) shows the level of importance with one being of most importance. The y axis reflects the number of ratings the barrier received. As noted in the methodology, where individuals rated multiple options as primary importance for example, this is reflected in the results with each option given one vote.

The main barriers to access in order of importance are as follows:[15]

1. Lack of time due to caseload
2. Lack of time to access appropriate information within LSC constraints
3. Lack of information available on certain countries

[15] Exact results as follows: Lack of time due to caseload (21 votes for 1st in order of importance; and 12 for 2nd). Lack of time to access appropriate information within LSC constraints (26 votes for 1st in order of importance; and 8 for 2nd). Lack of information available on certain countries (7 votes for 1st in order of importance; and 11 for 2nd).

The least significant barriers were the following:

- Poor support from managers
- Lack of training
- Poor internet
- Lack of subscription

Similar results were also found when the open-ended question regarding barriers to analysis was posed. The vast majority of individuals (21) stated that time was the greatest barrier to analysis, whilst funding (7) also proved to be a significant factor.

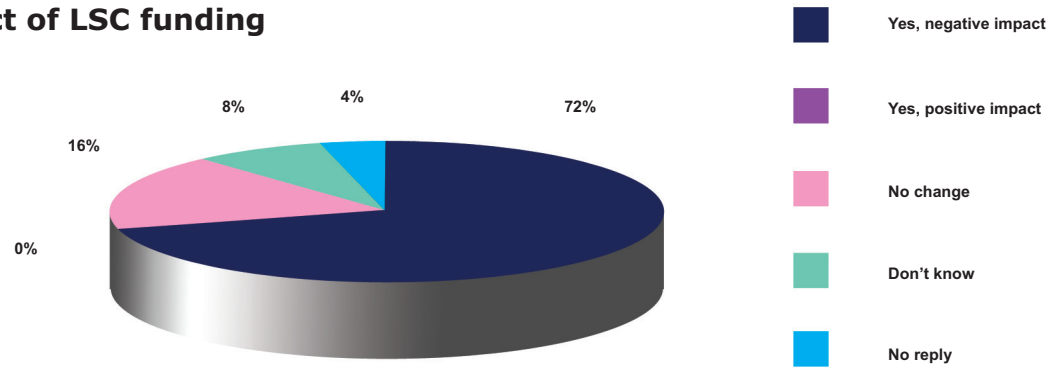
The findings also complemented the open-ended question responses to what would facilitate better access to country information. The most common response was more time followed by increased LSC funding to conduct the research. Two other popular responses were an issue referenced database, sorted by both theme and country, with greater information sharing as well as a more up to date expert database / heightened availability of expert's work in public domain materials/ databases.

When asked whether individuals have the capacity to conduct country research, 98% of legal representatives said that yes, they either have 'excellent resources' or 'adequate resources'. However, 78% also agreed that external research support would be beneficial to them. Thus, the issue is not necessarily capacity but rather the ability to conduct research within the time/funding framework. For example, one individual noted: 'I usually bill for 2 hours for country research in an appeals case but generally spend at least twice this and do it at the end of the day in my own time'.

Thus, the additional factor of commitment to one's job plays a role, as some legal representatives conduct COI research in their own time due to the funding constraints in place.

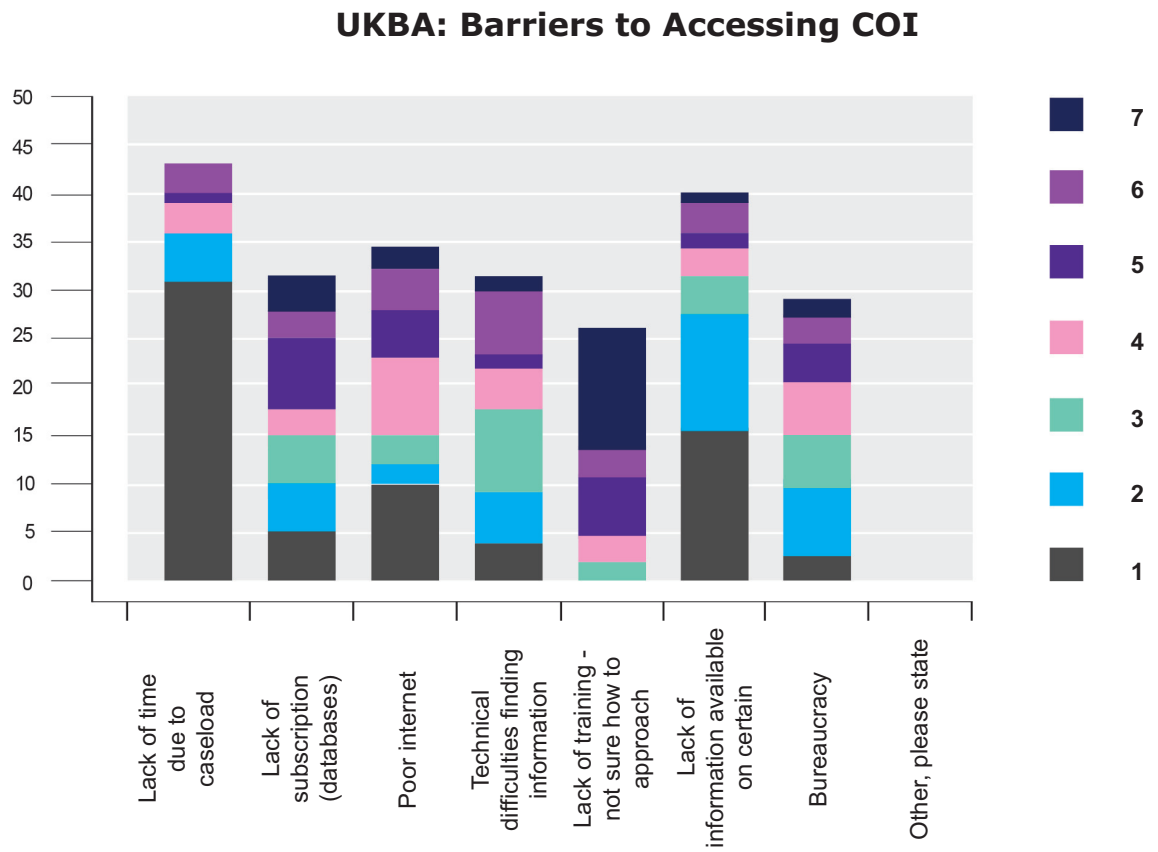
Indeed, 72% of individuals stated that the LSC funding framework has a negative impact on their levels of research, whilst 0% said it had a positive impact.

Impact of LSC funding



Amongst legal representatives, there are clear patterns regarding barriers and facilitators, with lack of time and funding constraints emerging as the greatest barriers to using, accessing and analysing COI.

UKBA Staff



UKBA staff were asked to rate barriers to accessing country information from a list of 8 variables. The following findings emerged:[16]

The most significant factor is:

- Lack of time due to caseload – 31 votes for the 1st barrier in order of importance and 5 voted it as 2nd.

The other significant factors were:[17]

- Lack of information on countries
- Poor Internet

Other important factors were:[18]

- Lack of subscription
- Bureaucracy
- Technical difficulties

The least significant factor was lack of training, with 13 rating it 7th (least important). No-one suggested an additional barrier to the ones offered (Other).

[16] Only 28 out of 50 completed this exercise as required rating the options in order of importance. Those who simply marked 1 choice or marked several choices and weighted them equally; or for those who rated their top 2 or 4 (rather than all 7) have all been incorporated here. It was felt that the ratings should be amalgamated and kept as they were presented. For example, if someone voted 6 things as 1 importance, the graph reflects this.

[17] Lack of information on countries (16 votes for as 1st in importance and 11 for 2nd). Poor Internet (10 votes for 1st and 2 as 2nd).

[18] Rated 1st, 2nd and 3rd in order of importance) were: Lack of subscription – 5, 5, 5 (respectively). Bureaucracy – 3, 6, 6 (respectively). Technical difficulties – 4, 5, 9 (respectively).

In line with these findings, the issue of time also emerged to be the most important factor by far that dissuades UKBA staff to analyse COI. Indeed, 33/50 individuals cited time as the biggest reason for not analysing COI.

Other factors include:

- ➢ Individuals expect information in the COIS reports to be checked
- ➢ Proven usefulness of source / Well-reputed source
- ➢ Lack of confidence to conduct analysis
- ➢ Volume of evidence

One caseowner stated: 'We do not have the time on the whole to conduct research into the accuracy of the sources – we barely get the time to conduct the research in the first place. Information such as COIS reports are put together by country experts who are supposed to check the sources and ensure the accuracy, so there should be no need to check this. Any reports submitted by reps for court are checked to ensure that the party is appropriately qualified/experienced in the field'.

Whilst lack of time appears to be the biggest barrier to accessing and analysing country information, the open-ended question about facilitators to access highlight yet another important barrier.

By far, the most important facilitator to access stated was to provide access to all sites and areas on the Internet without restriction. For example, one caseowner stated: 'Allow access to all websites. As an example, it is a joke that we cannot access CIA World Factbook on Indigo account'. Furthermore, a HOPO noted: 'Full access to the Internet would also be useful without barriers, as some of the websites we need to search (as provided by the appellants) are blocked. It sometimes appears that caseowners may have a wider selection of sources than Presenting Officers'.

Other common facilitators for access included: time; improved turnaround for special requests; and more information within the COIS reports.

Finally, when asked whether having responsibility for certain countries would improve the use and application of country information, 54% said yes, 40% said no and 6% did not know. (1 individual did not respond).

Interviews:

Legal representatives

Legal representatives identified the facilitators for using country research as: Internet research skills; good Internet facilities; information sharing; starting research at the beginning stages; accessible reports; and good instructions from clients. For example, one individual stated: 'you're not in a position to corroborate a case in this way unless you've got a very detailed statement from a client, unless you understand it from their perspective'.

The barriers to using COI reflect much of the findings drawn out from the questionnaires: time; LSC funding constraints; caseload; language; resources; and skills.

One barrister explains the following barriers to using COI: ' a lot of the representatives ...haven't got any, any meaningful legal training, they've not been taught or thought about how you analyse

The remuneration structure of the LSC discourages people who are in that situation from expanding their confidence of opinion and the client base doesn't put much pressure on solicitors… the same kind of pressure that you would get from other areas of the law because they are, they're not repeat clients... They don't speak English and so they don't often understand what's going on and because and they often feel vulnerable and …[have] a lack of assertiveness either because that's the culture they come from or because they're a stranger in a foreign country and this person's helping them and they don't really feel they can criticise.' Thus, a skills and training deficit together with a lack of pressure to deliver from the client base are additional factors impeding good practice usage.

Regarding barriers to access, the key points highlighted were language (not all information is published/ available in English); subscription costs; time; and the expense of hiring experts.

On the other hand, facilitators to access included: Internet access; experts; sharing good practice and sources with other practitioners; Internet research skills; database subscriptions; good instructions/ COI from clients; casework support; and the accessibility of reports such as COIS. These results complement the findings from the questionnaires, which not only identified more time and funding but also greater information sharing and the development of information databases as facilitators to access.

UKBA staff

In the interviews, the key barriers to using COI that came to light were: time, under-staffing, resources, technology/Internet and general workload. Facilitators to using COI included COIS reports and the special request service, adjournments when legal representatives present new information and the Internet.

In line with the findings of the questionnaires, time proved to be a prominent feature. One individual stated: 'give people more time when they're doing their jobs, because obviously time is kind of your worst enemy really…if everybody had more time in an ideal world you'd have a whole day to do one case and you could research… a lot more in depth than you would normally'.

Another individual drew attention to the role legal representatives have on adding pressure to one's case management: 'In an ideal world, we would have much more information from the reps. Reps would have got us witness statements. We would know what we were looking at and we'd be able to look at it in much more detail. But it's not like that in the real world. We have too many cases. We have too many other things pulling us backwards and forwards. That's why'.

The issue of understaffing was also raised as a barrier to using COI. One individual stated: 'If the NAM process worked with the amount of caseworkers we were supposed to get, then we would have enough preparation time'. For example, at the time of interviewing,[19] the Newcastle POU also had to present Leeds asylum team's NAM asylum appeals on their behalf, owing to lack of resources. The individual went on to explain: '…honestly they've got to fit that [presenting] in with their decision-making and interviewing people and everything else that they have to do with part of the case along with all'.

[19] September 2008

Indeed, amongst the 33 caseowners who completed the questionnaires, the average number of cases they had per week was 2.93. HOPOs had an average of 9 cases per week, of which 2.4 are asylum cases. These rough statistics are supported by the interview data where, for example, one HOPO explained: 'A normal presenting officer does two or three lists of cases a week. In each list, are two to three asylum cases and a couple of immigration cases. In the old days before case ownership, executive officers were expected to make two full decisions a day, sometimes three.'

Thus, for UKBA staff, the barriers of time, resources and understaffing all come to the fore when examining the usage of COI. By contrast, the main barriers to accessing COI include: resources, technology and bureaucracy.

UKBA staff use the UKBA Intranet system as their primary source of accessing COI. The COIS reports are often their first port of call together with OGNs which provide guidance to staff. Staff can also use "approved sources", which are provided either as direct links or are found at the end of each of the COIS reports. Special requests are also made and are later published on the (internal) Intranet system. The use of the Internet is permitted although restricted access was a common finding.

On the UKBA Horizon Intranet,[20] there are sections on the home page with links to Country Information and Guidance; Enforcement; Intelligence Information; and Removal Guidance. The Country Information and Guidance section is split up by country. In it are COI reports/ bulletins/ key documents, special requests,[21] 'useful guidance' – (OGNs), and a section called "useful external reports". This contains direct links to the following reports: USSD, CIA, UNHCR Refworld, BBC, FCO, European COI network, UNICEF, Perry Library Maps.

During the interviews, reflecting the findings of the questionnaires, the most commonly cited barrier to access related to the Internet – both restrictions and technical problems. Whilst it is stated that there is "free access" to the Internet, there are also "slight restrictions on sensitive sites". If one really need to access something but it has been restricted, one can make a request to COIS to unblock it. However, with the time pressures involved in UKBA working practices, this bureaucratic step creates a further barrier to accessing information. One individual explains:

'…We have difficulties accessing some websites. It is hard to say what and why. Some are because they have to be paid for I think and some are restricted for various security reasons, which we can get lifted if you need to, but you have to make a business case, that would relate to the website of a particular political party.... HRW, intermittently, we can't access but I think that's to do with payment'.

Although, it was stated that accessing the web pages of, for example, the BBC or Amnesty International is fine, problems were encountered more randomly when searching for something specific, such as information on a political party.

[20] This information was gathered upon observation of the UKBA Intranet in September 2008.
[21] Special requests are requests for COI made to the COIS department on issues that are not covered in the COIS reports. Once requested, they are made available and listed on the internal Intranet system.

Furthermore, an inability to access full reports online is also noted to be a barrier to access, which again is related to Internet access. This was also something noted by UNHCR in their second report to the Minister.[22] For example:

Do you feel you have enough access to alternative sources of information? For example the full text of the Amnesty report or the UNHCR reports that are referred to in the COIS report, would that facilitate you?
If we need them then we can access them. There are copies stored in Croydon and there are also copies of the all the sources cited in the COIS report stored in the Research Unit office. We have a Research Unit in Angel Square and they have all the sources so if we want to see a source document we can get them. But I think if they were online for us it would make things much easier. (…)

But if you went on to Google, type cluster bombs in DRC AI report 2008, Google it and literally 10 seconds later you got it.
Sometimes you find it, sometimes you don't. It might not bring up the most obvious website. If you do a Google search like that it might come up with a variety of things and it doesn't automatically take you to the UN, so there is a problem because some of these websites you can't access.

So are there barriers in terms of searching facilities?
You can find it, you just can't access it, so you'll get the Google list.

Say, for example, the Google list came up with the direct link to either AI cluster bombs or UN.
You should be able to get it from a direct link. From a UN or AI direct link we should be able to get it. I wouldn't say we would be able to.

Why not would?
Basically because our computer facilities could be better I think. They are very slow and the access is very slow and we have some problems with something called Activex, which is something I don't understand.

Finally, a common barrier to access identified from the interview data was that caseowners reported that they would not use new sources without consultation and approval from the COIS department. For example: 'So if I found something new, I wouldn't use it without checking it out first'. Here, one observes how the separation of units and job roles leads to lack of engagement with other sources. Another stated with regards to analysing new sources: 'No, I don't make that judgement on my own… I'm not sure how they decide it's a reliable source but if they come back and say yes this is a reliable source, then, yes I would use it'.

Indeed, one individual talks about the need to take the party line on this issue, suggesting a non-questioning of roles and decisions: 'I'm not an expert on researching country information, I'm not an academic … I've got a degree but it's nothing to do with this jurisdiction, so I mean that is really why COIS exist in the Home Office - well, one of the main reasons is to provide some kind of authority on that.

[22] UNHCR Quality Initiative reports and the Minister's responses, see:
http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/

So without wishing to sound like the typical civil servant I would say well, whatever the party line was, that's what I would have to follow and that's what I would follow in all circumstances… Regardless of whatever I thought I would leave it as a decision for COIS what weight was to be attached to it'. Thus, bureaucracy and the limitations of one's job role can be seen to act as a barrier to developing research skills and conducting source assessments.

To summarise, the main barriers to accessing COI identified are technology, time and bureaucracy:

1. The Internet: technical issues & restricted access to external sites, as detailed above.
2. Bureaucracy and organisational structure: when making a special request you have to run it pass a senior caseworker, which may put people off. An additional comment was that the quality is variable, turnaround can be slow and that caseowners are not notified if a country officer is on leave or out of the office.
3. Poor Searching Ability: It is not easy to navigate or search the special requests.
4. Size of COI reports makes it difficult to navigate - they are very big to print but they are easier to read if printed.
5. Skills and knowledge: It requires skills and familiarity with the country to correctly identify the relevant information under tight time constraints.
6. Currency of reports: It was reported that COIS reports tend to cover the current situation for the most part, which is problematic for corroborating claims relating to events in the past.

By contrast, a number of facilitators for accessing COI were mentioned, namely:
the special request service; the Horizon Intranet; external websites; searching using Control-F, and the Presenting Officers' Research Unit website.

Experts

Experts concluded that the external factors of time and resources impact on many areas relating to COI in the RSD process: the quality of the COIS reports; the quality of the bundles put together by both UKBA and legal representatives; the general quality of use of COI; the lack of use of new sources amongst solicitors; and the means of attaching weight to sources. For example: 'I think pressure really is a key concern…how long you have before your case is listereally determines how much work you are going to put into it'.

When discussing the barriers to using COI effectively to make good assessments amongst UKBA staff, one expert offered the following description: 'My suspicion is that the quality of the interviewing is very poor... the people who are employed by NAM, the caseworkers who are employed to do the SEF are low rate civil servants with no research training, the level of pay is fairly low, there is a high burn-out rate, after two or three years they move on to another job and they are under pressure of targets to do a set numbers of interviews and write a set number of refusal letters or letters to claimants in a period of time and therefore they are under time pressure to meet their targets and I think that goes against a good assessment'. A training deficit, a high turnover rate and time pressures are all considered to be explanatory factors for inconsistent and poor quality usage amongst UKBA staff.

Immigration Judges

Once again, time was noted to be a barrier when assessing COI: 'Clearly judges of this jurisdiction are under pressure…

and the problem with things like country background is, in truth, it is an unlimited subject… yet we have a few hours to make a decision involving that … so it's very difficult to ascribe a rational system for what weight you give to each bit of evidence'. Furthermore, the speed with which one writes decision, may also impact on the levels of engagement with COI.

One IJ explicitly stated that targets certainly do not affect decision-making, stating: 'We do have lots of targets, but the one thing that nobody's in the slightest bit interested in is how many people succeed... That is purely a matter for the judge and that is purely a matter for the court'.

Focus Groups:

The focus groups drew out a number of barriers to using, accessing and analysing reports, all of which were consistent with the previous findings from the questionnaires and interviews.

FG2
Reasons for lack of analysis amongst representatives – time and funding:
LR1: (…) it's time and cost, you don't have the time really or the funding to go back and start digging through things
LR2: And you do incur costs … as practitioners we're constantly told you can't incur funding for this, you should know this already, you can't charge for this, and that's frustrating…

FG2
Barriers to analysis amongst UKBA staff – skills:
CO1: … we're not experts, when I'm going into the Zimbabwean Herald, I don't know whether it's the equivalent of the Times of the Independent or whether it's the equivalent of The Sunday Sport, whereas the people who are doing COI do
CO3: And that's where …the reliance on the COIS reports comes in because it's already been sifted for objectivity …

FG2
Barriers for UKBA staff - time and targets:
LR2: Are you limited in terms of time? Are you told are you told this amount of time should be spent on decision and that's it?
CO2: Pretty much you are
CO1: Not to that extent you just, the cases come through and you're expected to do so many decisions and get them within target but
CO3: Yeah it's a general target isn't it that you then have to manage your time in order that you meet that target
CO1: So obviously if you're spending, you know, an inordinately long time on one decision that warrants it, you'll then have to catch that up somewhere else

FG6
Barriers to use at UKBA- time and bureaucracy:
Do you feel you have enough time to collect country research?
All – No.
CO2- You should be doing the research before the interview…that would be really useful to do the preparation as well as looking at it when you're making your decision.
CO3 – Some cases are fine because you've done 10 similar so you know where to find the information. It's when you get an interesting case which is slightly different or a claim you've not heard before, that's when you can take 3 or 4 hours just researching and not writing. But then you feel the pressure that you should be writing and you should finish something by the end of the day and you've got side tracked by looking at x, y, z information…
CO4 – what's frustrating is if you've got one of these new countries and you don't prepare it before the interview because you haven't got time and you come back once you've done the interview and think, I wish I'd asked a hundred more questions, which are more focussed, which would have given me a better idea of where I'm going with it.
What would facilitate further engagement with information?
CO1 – Time for a start. Because we have such pressure on us to deal with what we have that we don't have time to think any more than you need to.
All – yes.

d) Method of use of COI within the RSD Process

'Clients lose for stupid reasons and win for stupid reasons' – legal representative

'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

This section aims to outline some of the key issues that were raised regarding the methods of use of COI within the RSD process. The section will be broken down into the following sections:

(i) COI usage under NAM
(ii) Key problems with usage
(iii) Adversarial use of COI

(i) COI usage under NAM

Interviews:

It is important to note, first of all, that a common finding emerging from the data from other stakeholders highlighted an improvement of the use of COI by UKBA staff in recent times, as evidenced, for example in some improvement in RFRLs. However, there are still problems with usage, as will be shown later in the Results section.

In particular, some individuals commented on the advantages of the Solihull Pilot. Due to higher levels of contact with legal representatives, caseowners could

narrow down issues faster and have all the necessary facts and COI evidence, which strengthened the decision making process.

One Solihull caseowner made the following comments: 'So its really helpful because it's less adversarial because together, we're trying to work together to find out the information that we need to make a correct decision about somebody's claim…. Certainly the whole pilot process of engaging with reps has built up better relationships so we can talk about these things more, you can put your point across. Ultimately it's our decision at the end of the day and obviously people have the right to appeal if we turn them down, but it's certainly made the engagement more'.

Focus Groups:

The findings from the interviews were somewhat reflected in the results from the focus groups. For example, in one focus group, two legal representatives talked about the positive aspects of the Solihull Pilot, although acknowledged that variance across caseowners still exists:

FG3
LR4: In the [Solihull] project cases we've noticed that new case owners do use it [COI] quite effectively …
LR2: (…) It differs from decision maker to decision maker but I would agree … I find that the case owners working on the Solihull project tend to be more open to getting convinced with other objective information …[Some] would just rely on the COIS report, the Home Office, so irrespective of what you submit they would just refer back to their own report, but it differs as I say because there are some others who'd really look at your representation again and reply specifically and comment on the expert report and comment on this article that you've submitted. So a huge difference between the way people react to country information.

The participants in the focus groups also commented on the NAM process more generally. In line with the earlier cited examples, there is a marked variance across caseowners so it is difficult to make generalised findings. However, there was a feeling amongst individuals in one of the focus groups that COI usage had somewhat improved under NAM. Higher levels of engagement with COI, for example, are discussed in this focus group:

FG4
LR1: Since the New Asylum Model, one sees a much fuller engagement with country evidence than used to be the case. I think the quality of engagement probably goes down the further one gets from the New Asylum Model, so if one's dealing with judicial abuse of fresh asylum claims, I think they tend to be much more back in the sort of old system of seeing very general references to country information or perhaps references to an old country guidance decision (….) I think people who have been through the New Asylum Model case owner process, I think they're much more inclined to fully engage with the country material (…)
You mentioned that the NAM caseworkers are engaging with information a lot more. Why do you think that is?
CO1: Probably got a higher calibre of people making the decisions, to be honest, NAM case owners the recruitment process everyone had to have degrees or equivalent experience whereas previously that wasn't the case and people of lower grades with less training doing it quite frankly.

In another focus group, an IJ, a barrister and a COI representative all agreed that there had been an improvement in the quality of refusal letters in recent times, although concerns are raised about the reliance on OGNs. For example:

> **FG5:**
> **IJ1:** There's been a marked difference in refusal letters over the last few years, they're very much more detailed…
> **LR1:** I think it's right that certainly the refusal letters are of a higher quality than they were several years ago (…) That certainly improved, no doubt in March, because the case owners are better qualified than the people who used to decide these cases. One still doesn't get the impression though that the decision makers are really doing anything more than looking at the operational guidance [OGNs] for the country, so the Home Office guidance as to its view of the country rather than informing doing any survey of the country of origin information itself.
> **CR1:** (…) I would agree that the refusal letters have improved and there is more targeted engagement with COI rather than reams of standard paragraphs. There is a reliance and an open public reliance with OGNs which is a separate matter, but also I think there are a lot of other problems (…)

As shown in the following section, despite levels of improvement, there are still serious concerns with COI usage and the quality of RFRLs.

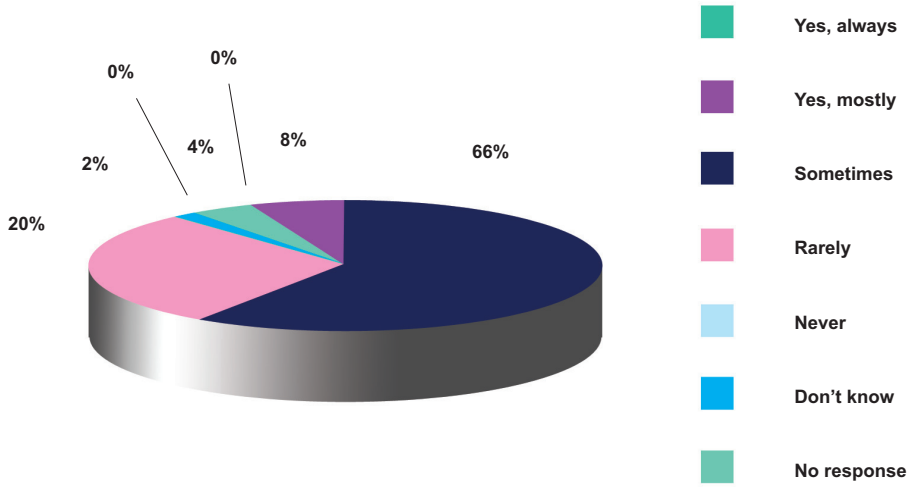
(ii) Key Problems with COI Usage

Questionnaires

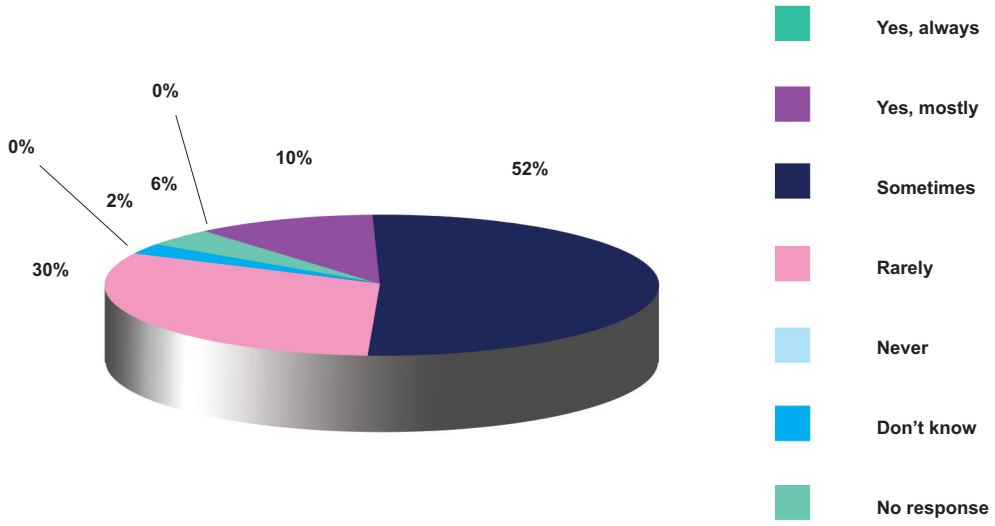
Legal representatives

Legal representatives were asked questions regarding how COI is used within RFRLs and HOPOs' bundles.

Is there accurate use of the selected country information in the RFRL?



Is there accurate use of the selected country information in the HOPO's bundle?



As can be seen from the results above, 0% of legal representatives who completed the questionnaire believed that there is 'always' accurate use of COI in either RFRLs or in HOPOs' bundles. Instead, the majority, 66% and 52%, believed that COI is only 'sometimes' used accurately in RFRLs or HOPOs' bundles, respectively. A significant number also believed that accurate use was 'rarely' reflected in bundles (30%) and in RFRLs (20%).

The most significant reasons given as typical errors were firstly, selective quoting and secondly, the use of out-of-date material. Other common reasons cited include: cutting and pasting without relevance to the case; misrepresentation/ misunderstanding of COI, for example, quotes taken out of context; use of outdated case law; and a failure to take into account other objective material /ignoring other sources.

Examples of the quotes about poor use of COI in RFRLs and HOPOs' bundles:

'RFRLs appear to simply cut and paste general paragraphs from the COI that often have no bearing on the client's actual claim. For example, [in] a recent case involving a Zimbabwean client who had deserted from the army, throughout the RFRL and the HOPO's bundles, they insisted on citing evidence re MDC supporters when at no time had my client ever claimed to be MDC'.

'The use of country information in the RFRL or respondents' bundles always tends to be selective. Therefore they may accurately reflect the particular part of the COI information, however, they conveniently omit the paragraph/ sections of the report that is relevant to our client's case. Other errors are outdated material or information not from the correct country'.

'…rigid and inflexible adherence to any piece of country information which supports their refusal: for example where objective information contradicts with the appellant's account even when the appellant has given a reasonable explanation as to why there might be such a discrepancy'.

'Tend to select anything contrary to client's case - clear indication that they are not trying to fairly appraise case'.

'They often haven't read the whole of the COI, or have not conducted any further research on specific issues, or looked for more up to date material'.

'The RFRL and HOPOs rarely refer to corroborative evidence. Tend to refer to the evidence only when it strengthens their arguments'.

Interviews:

In the interviews there were many complaints about the way COI is used within the RSD process. Normally, individuals within their own stakeholder group recognized a diversity of quality and problems within their own sector, although, for the most part, criticism was directed at one or more of the other stakeholder groups. For example, 4 IJs commented on a need for training amongst all stakeholders, placing emphasis on a need for better presentation of COI amongst legal representatives and more stringent instructions to be given by solicitors and followed by experts.

Legal Representatives

With regards to UKBA usage, these comments reiterated the findings from the questionnaires relating to poor usage. In particular, there was a feeling amongst some practitioners that often decision- making focuses on credibility, which in turn can affect COI research. As one UKBA caseworker states: '…if somebody is completely internally inconsistent then you can say, well why go to COI?'

One legal representative drew on a case example to illustrate the poor use of COI and the knock-on impact this has on poor decision-making: '…it's not difficult to check the veracity of Home Office discussions about practices in a particular country on the Internet for instance.

And just to give an example, a client recently ... was disbelieved in his account to be a teacher from Zimbabwe because he had said that he taught children of a certain age in a primary school, and I think the age was something like 7 to 17, and the Home Office country information report or some other official report that the Home Office had access to gave a different band for ages of primary school children in Zimbabwe, it's much more restrictive than 7 to 17. And because of that, despite the fact he'd produced teaching certificates they said well you obviously weren't a teacher because you're just making it up about the age of children in the primary school. It took me about 5 minutes to find a United Nations report saying that primary schools in Zimbabwe, particularly in the rural areas, are jam-packed with over-age children. So you know that kind of thing. It's just an invaluable tool at certain stages of the process.' This point highlights the need for using COI accurately in credibility assessments.

This is supported by a legal representative who argues that the focus on credibility can come at the expense of conducting COI research: '…Because credibility's the way that the thing decides most cases… generalized country information that is applicable to lots of cases is just never reached'. This quote also suggests a misunderstanding of the function of COI amongst UKBA staff regarding how it can assist in credibility and plausibility assessments. Similar opinions are expressed in the focus groups as outlined later.

However, it is important to note that the most numerous instances of "incredulity" findings are based on the seemingly deliberate wrong use of COI. For example, through using speculative argument, subjective assertions or the use of outdated material.[23] This will be explored further in the Discussion section.

Experts

Experts were also highly critical of the use of COI in the RSD process and in particular, of how it is used by the different sets of decision makers. In both cases, experts pointed to the diversity that exists in the quality of expertise and knowledge amongst UKBA caseowners and IJs. For example, regarding UKBA caseowners, an expert stated: 'if you read the SEFs very carefully, the quality of the interviews varies immensely'.

Indeed, all the experts interviewed shared the sentiment of a strong criticism of initial decision-making. The experts highlighted how RFRLs show an inadequate use of COI. In turn, this reflects the weaknesses of caseowners' decisions and the limitations of their knowledge and understanding of countries relevant to the RSD procedure. For example, poor grammar, misunderstanding of information, and the use of standard paragraphs, which may not be appropriate or specific to the claim, were common complaints.

One expert explained how there is always poor use of COI in RFRLs and that this then feeds into a poorly functioning and wasteful system.

> 'Very often the letters are, quite literally, incomprehensible because of grammar probems, they don't know where to put apostrophes, sometimes I literally don't know what they're talking about, it is impossible to comprehend occasionally. They misunderstand grossly what they call objective information. It is, in the end, it's a fantastic waste of resources, that they write these nonsensical letters (…) they don't

[23] Immigration Advisory Service (2009) *The Use of Country of Origin Information: Critical Perspectives.* London: Immigration Advisory Service.

> reflect reality at all. Then experts like me have to be hired at considerable expense, ap peal hearings have to be held at great expense and then the government says, "Oh my God, look at the budget, look what we're spending on". You know, spend a little bit of money getting a higher quality of person at the early stages and in the end you could probably halve the asylum budget…. That's how it appears from the refusal letters. You don't get any sense of people who have the slightest interest or knowledge of what they are doing…. It's just a machine to say 'no', which in the end is very very costly … Quite apart from the ethical dimension it's not just a matter of cost, these are serious matters.'

The functioning of the AIT also came under attack, with some experts drawing attention to the wide variety amongst IJs. For example, 'judges, on the whole, are not bad but there is … a minority who are actually dreadful'. Thus, the main problems with COI usage must be seen in light of the previous finding of the diversity of quality within each of the stakeholder groups.

Focus Groups:

Many examples of poor usage of COI within decision-making were drawn out in the focus groups. For example:

FG1:
EX1: I find that in reading refusal letters, when I'm asked to comment on cases, as well as quoting country of origin information, newspapers sometimes get quoted, 1998 is still being quoted in some Iranian asylum cases, which is so out of date the information...Obviously one source of where you get your information from is the country, the laws of the country, how the country wants to portray itself... I work with Iran, a lot of the information or the laws and the regulations are actually the very things that are being violated and when you say in your country of origin information [COIS] that, for example, the Constitution of the Islamic Republic allows the freedom of press and then we have a journalist here claiming asylum and he is being persecuted because he is a journalist, he is being refused because and then the country of origin information is being quoted because [of] the Constitution [it] says freedom of press. That's where I come in, that's where I would then have to challenge it and I try to say well actually, yes, that is there but it's not always the case (…) Sometimes the reason for refusal letter are so poorly put together …

This example points to a complete lack of engagement with COI at the initial decision-making stage. For example, relying solely on the laws that are in existence without questioning whether they are implemented equally, fairly or at all. Thus, there are problems not only with content, such as out of date material, but fundamental issues relating to a lack of analysis and a need for training.

Legal representatives reported a lack of awareness of the importance of cultural context and a lack of cultural sensitivity at the initial decision-making phase. This focus group discussed the importance of COI particularly with regards to credibility and cultural awareness. The admission by an UKBA caseowner of not using COI when accounts are internally inconsistent is of great concern. Linking to the previous concerns outlined about credibility expressed by legal representatives in interviews, similar opinions were reflected in focus group discussions:

FG2
LR3: … I think country information reports are extremely important, if nothing else but to understand the culture. If somebody …makes a claim … you don't look at it as from the point of view of somebody sat at in the Home Office or a legal office in Birmingham in the UK, you have to look at it from the point of view of: is what that person saying likely to have happened in the context of what's going on in the country? …
LR2: I mean time and time again in court especially when we're relying on an expert report that we've had funded and then when making submissions, presenting officers always … ask you to find that the appellant's not credible. And because the appellant's not credible, the report doesn't add anything to the case when case law itself tells us that when assessing you can't make credibility findings first and then reject its credibility then you look at the objective material, it's part of your assessment in fact finding to look at that and put it in context when you're assessing whether the claim is plausible and looking at credibility to look at the objectivity or alongside that, not after you've rejected it (…)
CO1: It's more that if somebody is completely internally inconsistent then you can say well why go to COI? Why go to an expert if an expert says it's bad for say XXX in Somalia, why even go there if the applicant is so inconsistent?

In the third focus group, the relationship between COI and credibility/ plausibility assessments was commented on by a legal representative and a UKBA caseowner. Both emphasised the importance of having an understanding of the cultural context in decision-making with the legal representative criticizing an IJ for an improper plausibility assessment.

FG3:
LR1: (…) I had an Immigration Judge who, half way through the hearing the client was giving evidence and he said, "but that just wouldn't happen would it? Because families don't work like that do they?" And it was … really odd, it was a kind of bias, like the judge thinking he knows what happens and obviously the client's trying to give their opinion …
CO1: …That sort of thing could have raised credibility issues. If in a witness statement, for example, they've called this person an uncle, but then called them a cousin… But that's what happens you know your cousin is your uncle in terms of what relationship is and that'd be useful to know I think.

(iii) Adversarial Use of COI

Questionnaires:

It is very difficult to identify an adversarial use of COI using the results from the questionnaires. However, two points of interest emerge under this theme. Firstly, in response to a question asking in what cases would one not use country information, a UKBA caseowner wrote: 'when the information would be damaging to our stance in refusing a claim'.

The other issue which emerged, came in response to a question about which sources individuals feel carry less weight. On this point, a significant number of HOPOs (5 of 13) who responded to this question felt that reports by NGOs fell into this category because they were seen to be

biased. For example, the following responses were given:

- 'NGO can be selective and follow own agendas'
- 'Objective source material which shows a bias, eg Amnesty International reports'

These findings are supported by responses in the questionnaires completed by legal representatives. For example, one individual stated: 'HOPOs tend to try and say reports by human rights organisations are unbalanced and biased'.

Interviews and Focus Groups:

UKBA staff

During the interviews with UKBA staff, the method of use of COI in the RSD amongst UKBA staff demonstrated an adversarial use of knowledge. Whilst UKBA staff perceive themselves to be objective, this feeling does not extend to legal representatives. In line with the questionnaire findings, an adversarial approach is taken with diverse forms of COI in order to discredit them, whilst holding complete faith in COIS reports. For example, one senior caseworker explained:

> 'You can do your own research depending on how much time you've got. On the Internet. You have to be careful with things taken from the Internet because everyone could just have put it there. That's what we always do with the appellant with information: we just say that anyone could have put it up on Internet'.

COIS reports are written in such a way that allows them to be open to interpretation. In turn, caseowners were asked how they deal with contradictory information, which provoked responses of some concern:

FG6
CO4 – We do place some weight on some paragraphs in country reports more than others because I think in the country of origin reports, one paragraph goes in favour of what you're trying to argue and the next paragraph might not. So, it's kind of a two way argument where the reps are relying on one paragraph and you're relying on another.
How do you deal with this? When you're looking at one report and it's saying two different things? With the objective evidence, how do you overcome those sorts of contradictions?
CO4 – If it's crucial to the claim, the best thing to do is to ask the country officer, make a COIS request and ask the country officer to do some more research and to get more of a standardised answer. That's probably what I tend to do most of the time (…)
CO3 – I don't know. It never really comes up. **I just put in a paragraph that I like and then ignore one that I don't.**
CO4 – You look at everything you're considering in that decision and if you think it's a really big claim and the rest of the claim is completely trash, you might as well go with the one that supports your argument more. Because if you have a belief in yourself that the rest of its crap, then why should you.

What emerges from this discussion is a use of COI to support one side of an argument, which although is in part inevitable when "defending" a decision, also suggests that COI is used in an

adversarial manner to support a pre-determined decision rather than as a tool to support decision-making in the first place.

Indeed, one of the findings from the interview data was that COI is sometimes used to support decisions rather than assist in forming the basis of them. Rather than COI being used to assess the legitimacy of credibility, for example, it seems that COI was used to back up decisions made prior to COI consultation. In this way, COI becomes distorted to fit end goals and one observes an adversarial use of knowledge. This is also supported by an admission by a caseowner that the use of COI does not necessarily involve analysis but rather involves selective usage of specific information to back up one's arguments:

> 'I think for doing asylum decision work, it's more about using the country information to either back up one of your arguments or to argue against a point an applicant has made. So it's not really analysing it as such. But you're finding the bits that refer to the bits you want to support your claim, to support your decision and not support their claim if it's a refusal. But it can be the other way round…to support a grant of asylum'.

These admissions of selective usage of COI to back up one's arguments are of concern and will be explored in the Discussion.

Legal Representatives

Legal representatives also take an adversarial approach to COI, with some not submitting evidence that would be damaging to their client's claim. In the fourth focus group, one practitioner suggested that professional codes of conduct and duties impact on how the different stakeholder groups approach cases: 'Legal representatives have their duty to promote the interest of the client… which means that they obviously wouldn't put forward material which was adverse to their client's case…some of these solicitors and barristers have little interest in making the right decision as opposed to putting their client's case as forcefully as possible'.

By contrast, some legal practitioners discussed how an adversarial system affects the usage of COI. For example, one practitioner believed that the COIS report on Somalia is of a good quality but the way Home Office caseowners use it is not. For example, one rarely sees chunks of the Amnesty report on Somalia in the RFRLs. Instead, he argues, there are random attacks on credibility. 'The individual is a lot easier to attack than the objective material so it's an attack on the individual, whatever the report says… Why is the Amnesty report not on every caseworker's desk who is dealing with Somalia? Is it because Amnesty is regarded as too soft, too pro human rights, can you be too pro human rights, it seems to me to be ridiculous. Particularly when you're dealing with refugee, humanitarian themes, I'm not sure that the Home Office remember that'. There is therefore a concern that incredulity findings can be made, which are unrelated to the overwhelming direction that the background evidence points to. Thus, even when COI is supportive of a claim in general, random credibility findings can be made to undermine the claim.

Another point raised by a barrister was the lack of duty amongst HOPOs firstly in withholding COI to win a case and secondly to concede when they should. In turn, (s)he warned of the adverse circumstances this can have, particularly if an appellant is unrepresented or has poor representation: 'I do think it's surprising that the Home Office haven't told them [HOPOs]- look, your duty is to make sure the immigration officer makes the right decision and doesn't get it wrong. If you think there's something in the COIS material which is relevant, whether it hurts

your case or helps it, you should tell the IJ about it and you should make sure he's seen it. (…) [HOPOs] have a very strong culture which is, we think that's the right decision so we don't care how we win… I don't think that's the right approach...But that is the culture...that's why people who are principled don't stay because they don't like it and because they get told off by their seniors... Occasionally you get HOPOs who say things like, I'm not allowed to concede the case, if I were allowed to concede the case I'd concede this one'.

Immigration Judges

In interviews with IJs, an interesting point emerged about the issue of an adversarial system for unrepresented appellants. 'It's the adversarial against the inquisitorial system as of old, and we are generally told that we shouldn't be going away and looking for the evidence. It's up to the parties to present it to us'. However, as one IJ explained, in cases with unrepresented appellants, a judge may have to be more inquisitorial and there is an ongoing debate about how inquisitorial one can be. Another judge concurred arguing that one would spend more time analysing COIS reports in unrepresented cases.

However, the process involving an unrepresented appellant is not deemed unfair because of the diversity of sources included in the COIS and the normal judicial process of weight attachment. Furthermore, it was noted that 'the standard of proof ought to compensate for things'. In addition, in some cases, the appellant may bring COI as evidence, such as a newspaper article, but they are often not trained in source assessments and therefore the evidence they provide may be problematic.

Experts

Amongst the experts interviewed, there were shared feelings of being seen as a "hired gun", which in turn may impact on credibility issues. This clearly seems to stem from the fact that their evidence is used within an adversarial system.

The experts were conscious to avoid being seen as such and therefore, specific efforts are made to show balance and assistance to the courts. For example: 'There's a strong tendency …to assume we're a hired gun…and I go out of my way to say… I am preparing this report and this report is my objective opinion and I am not required to advance interests'. This feeling was supported by evidence gathered from legal representatives and will be discussed later in this report.

e) Politicisation of information production and usage

'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

Although touched upon in d) Method of use of COI in RSD, there is one important aspect identified from the data, which encompassed a political approach to information production and usage. This was noted by legal representatives and experts. The concept of a "culture of disbelief" as well as the development of cynicism within UKBA was explored in a focus group discussion with UKBA staff.

Interviews:

Legal Representatives

The idea of politics influencing information production and usage was a common finding amongst the legal representatives and experts interviewed. One solicitor talked of the partiality of COIS reports and the intricate links with UKBA's asylum policies as well as the government's foreign policy:

> 'I think it should always be used with a degree of caution because it must inevitably be written from a political perspective. …. That's the problem with asylum, our asylum policy goes according to our foreign policy and that has always been the case. We didn't necessarily give asylum to Kurdish people suffering chemical warfare under Saddam Hussein until Saddam Hussein became an enemy when he invaded Kuwait. And we don't generally give asylum when we went in and liberated a country because it is supposedly safe to go back to Iraq. That's getting in the way of country information but every asylum decision is taken within a political context. The fact that I have to say every individual expect to be refused, expect your asylum claim to be refused and then whether we succeed at appeal [depends] on which IJ we get. So yes, we need be relying more on objective criteria with all the caution that it may be politically biased. That's better than the subjective bias of the individual.... Country information has got to be more at the forefront than it is, there must be awareness that there are political decisions'.

However, the way information is used is also political, argued one legal representative: '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'. Thus, a feeling that politics is the driving force is observed in some of the data gathered from legal representatives.

Experts

Some of the experts interviewed discussed the politicisation of decision-making. For example, one expert drew on an example of the politics of language, where their expert report was criticised for political reasons: '(…) a classic example in a country guidance case involving the West Bank Palestinians, [where the judge] criticised me for using the word colonisation to describe what Israelis are doing on the West Bank. Now this is bizarre, it's actually bizarre and, she's taking in effect a propagandist position. It is colonisation by the dictionary definition, the BBC uses the word, the United Nations uses the word. She said "we prefer the more neutral word occupation". Well that is actually a different word with a different meaning - occupation is something static; colonisation is a process which is simply happening. So one gets that sort of nonsense'.

Another expert went as far as claiming that a culture of disbelief exists in the AIT: 'There is a culture of disbelief, and I think a feeling amongst the IJs, there's too many of these bastards are getting in, they're all lying. And backed up by a Home Office view that we've got to keep them out and a political view that we've got to keep the numbers down'.

The interviewee continued, stating that the issue is not about COI but rather policy concerns: 'But overall, it's the political considerations which I think drive the whole thing. And the way in which the government has succeeded in setting up legislation in such a way as to create "star chambers", which are largely… they are constantly making efforts to put asylum decisions beyond

the reach of the court of appeal. And the courts of appeal aren't adverse to that because they have an immense amount of stuff that still comes up to them, most of which they just bat straight back again … I think the real problem is how do countries which have signed up to ECHR, human rights and all the rest, manage to exclude the rotten bits of shit which are nominally human beings which turn up on their shores. That's what the issue is. And we have to treat them as bits of shit because that's what popular opinion demands'.

Immigration Judges

Recognition of a political agenda embedded in COIS reports was reported by 3 of the 5 IJs interviewed. For example, one IJ explained a relationship between UKBA's wider policies and its information production. He warns: 'The COIS reports, they come from one side in an adversarial system. They've been prepared by a one-sided adversarial system … we don't hesitatingly assume that this is absolutely independent. The organisation, the Home Office has a, it doesn't have a mission to stop people getting in … but it wouldn't surprise me if it tended, because of the adversarial system, to lean that way and that may well rub off in other parts of it. So it just means that you just have to remain a bit of not scepticism, but you know, you just don't accept it as being absolutely independent'.

Focus Groups:

The perceived or real politicisation of information and decision-making impacts on the cynicism with which some individuals view the RSD process. This is reflected in the following discussion from FG3:

LR1: I think one of the problems is that… the country is just so anti-immigration … that you do get people that are at completely different sides of the spectrum… I think it's really difficult because it is so polarised to get consistency … I think it's really difficult to be objective….
Do people in this room agree that politics is a driving force?
LR4: Yes, because … when there's something going on in a particular country, no matter what [the] merits of the appeal are, the judge is just going to dismiss it, sorry some judges do dismiss it … Sometimes we walk in and see "IJ so and so" is going to be dealing with, hearing the appeal [and] we know we may have a good case but we're going to lose
LR1: We might as well just walk out
LR2: It's a human factor unfortunately again it plays such a huge role right through the process …
IJ1: …I think if you have inconsistency in decisions, like when you go and you see a judge's name on the board and you think, "oh my God I've lost my case" before you've even got into the room and if you go into the room and you're treated badly or the judge doesn't want to listen to your rep, you have to make a complaint…but no-one does that (….)
LR1: I think sometimes though the reason that complaints don't go in as well is just that it's seen as kind of endemic in the system you know like in the bad old days in the Home Office and decisions were bad (…) And it's kind of an apathy to a certain extent … it's the system we're dealing with… some people don't want to make complaints because they just can't be bothered, they don't think it's going to make any difference.

This discussion amongst legal representatives highlights a feeling that both information

production and usage within decision-making is affected by politics and subjectivity. Also observed, is a sense of powerless and resignation towards a system that seems ridden with a variance in the quality of decision-makers.

As stated earlier, much of the disillusionment that experts and legal representatives feel with regards to first instance decision-making is centred on the belief or a suspicion of a "refusal culture" within UKBA. In FG3, the concept of a "refusal culture" and the development of cynicism within UKBA were explored:

FG3:
CO1: If you hear the same story over and over again, it's hard not to, but you kind of become quite cynical to it you know (…) I think it's people's personalities not so much a widespread thing… We should look at things on a case-by-case basis but … your experience can build up some sort of level of cynicism in each caseworker…
LR2: Because that further creates the culture of disbelief, which some of these clients are faced with from the start which, really isn't ideal and you know they should be seen as a case by case basis
CO1: How do you eliminate that?
LR1: I think that one of the problems is that probably you see so many people that they become a number, a Home Office reference number. They're not a person, which you know it's understandable to a certain degree …
CO2: … When you get an applicant that tells you X, Y and Z happened, yet they travelled through X, Y and Z safe country and spoke to the authorities in this, that and the next country, and then you ask them why they didn't stop in any of these countries and asked for help. It's like if they were so scared and things were so bad in their own country, why didn't you ask for any help? … That creates a cynicism and I'm not saying I don't believe them, I'm just saying… I make a decision based on all of the events and a lot of the time the cynicism comes in for me personally when they have been through so many different countries which isn't an objective thing, that's just a fact. …(…)
CO1: … I think we're in a job where we, we can get lied to day in day out occasionally and it's really hard, really really hard to get over that (…)
CO1: Unfortunately some of them do abuse of the system that
CO2: Yeah
CO1: It makes you feel uncomfortable
LR2: But that's, yeah, that's inevitable in any system you know people will take the mickey and find abuse
CO2: And I think that's where we have to keep an open mind to the best we can and use our objective evidence to make an objective decision

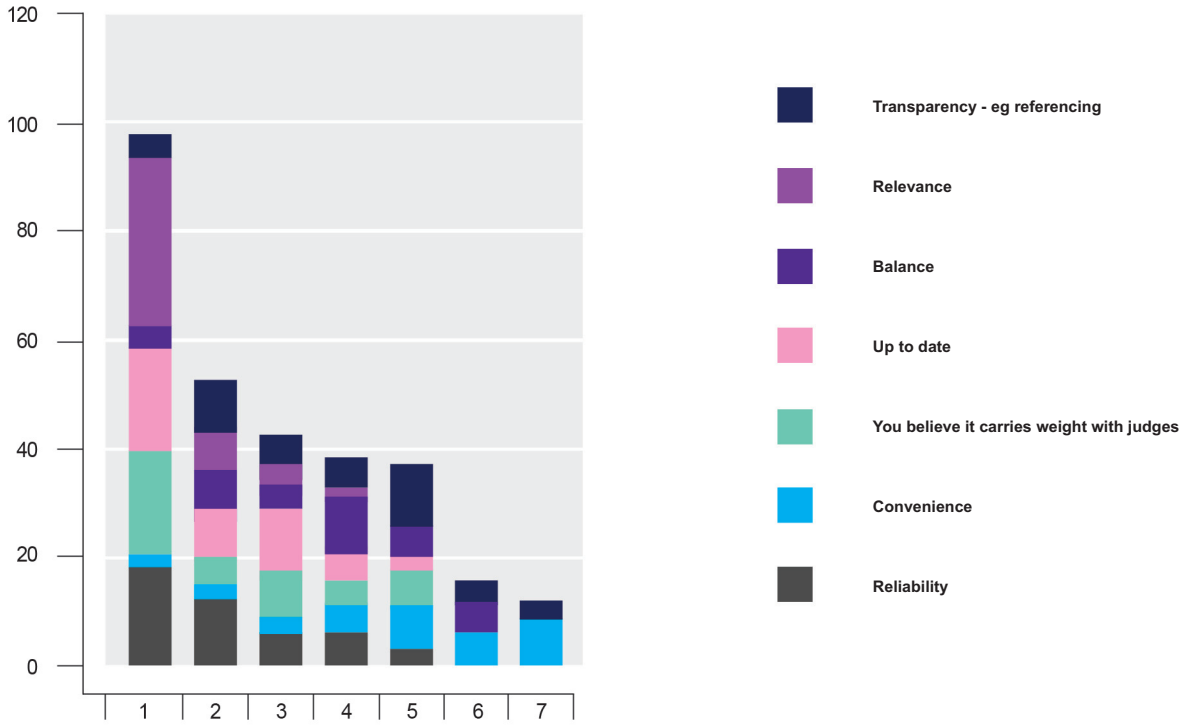
This focus group discussion sheds light on how individual caseowners can become cynical at UKBA. It also highlights the need to take an almost mechanical approach to decision making as a self-defence mechanism against "being lied to". The impact is manifested (or perceived to be) in the form of the dehumanization of asylum seekers in the processing of claims. What is also particularly striking about this discussion, is the sense of disillusionment felt amongst some of the UKBA staff, which has arisen from those individuals who may abuse the system. Thus, once again, we have yet another stakeholder group who is cynical about parts of the RSD process.

f) Sources

'Any objective evidence has to be selective and it's the selectivity of it which is normally the problem about whether it therefore provides a whole story' – immigration judge

Questionnaires:

Source Criteria



Legal representatives were asked to rate in order of importance what they look for in a source. The x axis shows the level of importance with 1 being the most important whilst the y axis demonstrates the number of ratings the indicator received. As noted in the methodology, where individuals rated multiple options as primary importance for example, this is reflected in the results.

The most popular factors in weight order (1st, 2nd, 3rd in importance): [24]

1. Relevance
2. Reliability
3. Up to date
4. Carries weight with judges

The least popular factors were convenience, transparency and balance.

The questionnaires then sought to ascertain which sources, legal advisors are most likely to use and explore the hypothesis regarding an existence of a hierarchy of accepted sources.

[24] The breakdown of results was as follows: Relevance– 31, 9, 3 (31 ratings of primary importance; 9 of 2nd and 3 of 3rd). Reliability - 18, 12, 7 respectively. Up to date – 19, 8, 11 respectively. Carries weight with judges – 20, 6, 8 respectively.

Which sources are mostly used?

Respondents were asked to list the main sources they would normally consult in order of choice. Amongst legal representatives there was a clear division observed in the results between very popular sources (mentioned by 20 or more respondents); fairly popular sources (mentioned by 4-10 individuals); and other sources (mentioned by 1 or 2 respondents).

The very popular sources relied upon were:

AI – 32 [25]
HRW – 27
EIN – 27 [26]
COIS – 26
USSD – 22

Fairly popular sources listed were:

UNHCR – 10
Case law/ CGs/ AIT website/ Bailli - 8
Google searches – 7
Experts - 7
BBC - 4
News reports – 4

The most popular sources, as defined by being selected as the first source an individual would consult in their order of choice were as follows:[27]

- COIS - 12
- AI -7
- USSD - 3
- HRW - 3

Results amongst UKBA staff were markedly different. By far the most popular sources were COIS and USSD reports:

COIS – 42
USSD – 32
Refworld – 22
OGN - 18

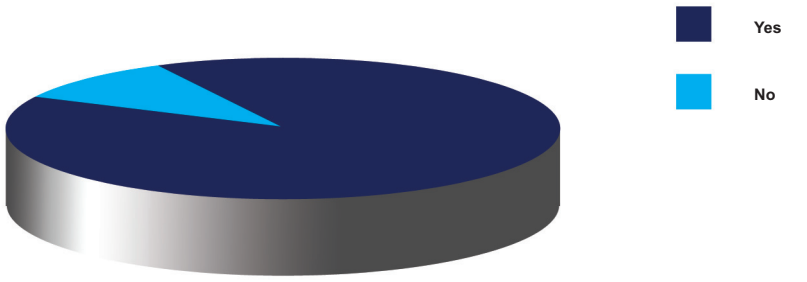
Other important sources were special requests (14), BBC (11) and case law (11). The most striking feature of the results for UKBA staff is that the majority of the most popular sources are internally produced documents.

Do some sources carry more weight than others?

As stated earlier, 20 legal representatives felt that they selected sources on the basis that they thought the source carried more weight with judges. In support of this finding, 44/50 legal representatives felt that certain sources carry more weight than others.

[25] Not everyone completed this question by rating it as requested. Thus, this number refers to the number of people who listed this source, not necessarily making it their first choice.
[26] Note that this is not a "source" but a database containing sources.
[27] Please note that 18 individuals cited EIN as their most popular source. However, as this is a database incorporating different sources, it is not listed above.

In your opinion, do you feel that certain sources carry more weight than others?



Sources that were given more weight by judges were described as having the following criteria:

- Independent sources without a political objective
- A source from a group or organisation rather than an individual
- Well known, reliable, balanced, sourced and up to date
- 2 individuals also added that expert reports are relied upon less

When asked which sources carry more weight, a significant number of legal representatives stated COIS and USSD reports. However, it was noted that sometimes this comes at the expense of other reports. For example, a legal representative stated: 'COIS reports are sometimes overrated by IJs, not enough attention paid to other objective evidence sources or expert reports. Up to date media articles [are] not considered'.

Another legal representative commented: 'COIS reports are always accepted as being the verbatim truth by IJs despite often contradictory and more recent evidence from other sources being supplied'. Another viewpoint related to a lack of faith in the system as a whole: 'CIPU [28] and other government (UK or other) are given disproportionately high weight because the process is biased'.

In line with the findings from UKBA questionnaires, an adversarial approach to and/or a misunderstanding of reports by human rights organisations amongst HOPOs was observed. For example: 'HOPOs tend to try and say reports by human rights organisations are unbalanced and biased'.

The majority (78%) of UKBA staff also felt that certain sources carry more weight than others, with the vast majority of respondents (28/50) stating that they felt COIS reports carry more weight. 23 people also felt USSD reports carry more weight and interestingly, 13 people believed OGNs did.

Reasons for COIS reports carrying more weight were because they were seen as reliable, objective and well researched. For example, one caseowner stated, 'they are totally objective' while another said that the report 'tends to be balanced and quote a variety of sources'.

Reasons for other reports receiving less weight were described as partial or biased sources. Sources specifically named to carry less weight included: Wikipedia, OGNs, Amnesty International and Tamilnet. 5 out of 13 HOPOs specifically stated NGOs in general.

[28] Country Information and Policy Unit (CIPU) was set up in 1997 and was responsible for the production of CIPU reports on specific countries. Following criticism, it was separated from the Policy unit and re-named COIS and separated from the Policy Unit.

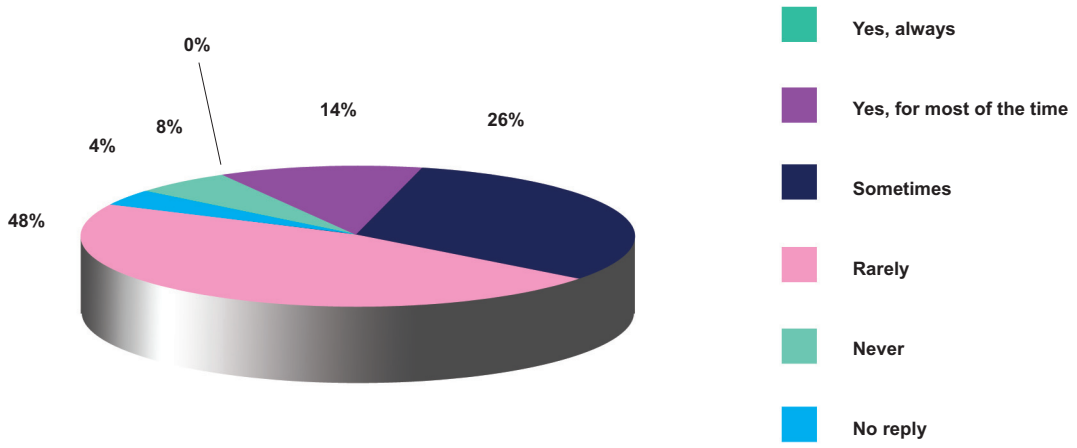
Amnesty International reports were described by caseowners as having a 'biased POV [point of view]', whilst another stated that 'Amnesty International reports for me tend to be heavily weighted towards a larger political agenda'.

The following quotes from HOPOs demonstrate the mistrust of NGO reports:

- 'NGO reports are frequently produced by bodies that have their own political agendas'
- 'Certain NGOs and other groups with a vested interest in presenting the information in a particular fashion'.

Can a single report cover all research needs?

Legal representatives were asked whether they feel that any individual report tends to cover all their specific research needs. The results showed that the majority of individuals (48%) believed that a report can "rarely" do this.



The two main reasons given for this were:

1. It is virtually impossible for any individual report to cover the many issues/ risk categories/ profiles/ facts of asylum cases; most reports are generic whereas cases are specific.
2. There is a need for a variety of reports (and perspectives) in order to achieve reliability in one's bundle and show facts are widely accepted/ recorded.

For example, one individual commented on how it is impossible to cover all facts of cases '… because cases are always multifaceted and depend on their own unique facts and no single report, other than one prepared for that case, is likely to cover everything'.

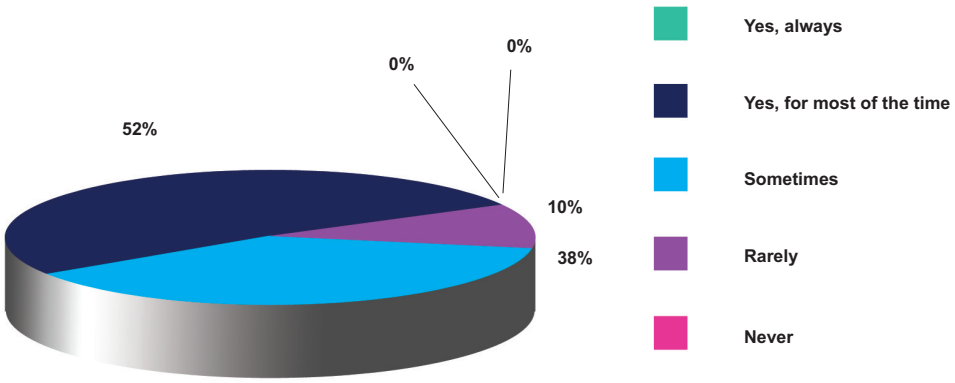
Another individual drew on the differences between general reports and those that cover specific topics: 'The best report is a reputable expert report commissioned to the specific appeal. General reports usually lack detail. Specific reports may not cover all the issues'.

Finally, another legal representative spoke of the need for variety of sources: 'One needs to demonstrate that a range of sources support your case theory, and this can never be achieved with one report'.

Other reasons put forward were that often reports lack specific information, for example on minority groups, or political parties; and that there is a lack of up to date information since many general reports are published once a year so one needs to supplement a report with more up to date material.

By comparison, UKBA staff differed on their position on whether an individual report tends to cover all their specific research needs. Whilst only 14% of legal representatives felt that it could do so "for the most part", 52% of UKBA staff did. Furthermore, whilst 48% of legal representatives felt a report could "rarely" cover all research needs, only 10% of UKBA staff did.

Can a single report cover all research needs? (UKBA)



UKBA use of extra sources

UKBA staff were also questioned about their frequency of use of special requests and external sources. Below are the results only of caseowners as they utilise these functions more often than, for example, presenting officers. [29]

- The majority of caseowners make a special request fairly frequently.
- The majority access information from the external source links directly available on Horizon, (e.g., USSD or FCO) in the majority of cases.
- The vast majority access sources off the Internet that are not offered as direct links on Horizon sometimes.

Interviews and Focus Groups

Information regarding sources was gathered from interviews and focus groups. The findings are presented by stakeholder group below with the following themes explored:

- *Hierarchy of sources - sources used and relied upon*
- *Divided opinions about COIS*
- *Use of OGNs*

[29] These were posed as open questions. Therefore, based on the responses, categories were developed to group the data. These categories included: in all cases; in the majority of cases; often; fairly frequently; rarely; never.

Hierarchy of sources - sources used and relied upon:

Legal representatives

The legal practitioners cited the most and diverse number of sources used compared to UKBA staff. Source selection is seen as something that is relevant to or favourable to the case and some interviewees noted that they would use "any and every source", in line with an "anything goes" attitude. One solicitor explained: 'I mean even if it's a Wikipedia article it can make all the difference. I know people are very snooty about relying on such sources, and of course Wikipedia is not an exemplary kind of source but anything goes in immigration appeals … and it's about building up a picture, and you're never going to be, well you're unlucky if you're going to be relying on one item.... it all builds up a picture, and it really does affect immigration judges' decisions, the decent ones. It's amazing'.

However, this quotation raises issues about the lack of standards within the RSD process and the lottery that (is perceived to) exist(s) within the AIT. Furthermore, it was noted that some do not use new sources because they may not know about them, identifying training needs.

There was no consensus amongst the six legal practitioners interviewed as to whether a hierarchy of sources exists. For those who did believe a hierarchy existed, the common sources such as Amnesty International, USSD, HRW, COIS and WHO were all mentioned, with local NGO sources located at the bottom of the hierarchy. This complements the questionnaire findings that situated COIS and USSD reports at the top of the hierarchy.

It was believed that the "top" reports in the hierarchy had gained status through being around the longest and having garnered a reputation for reliability. One representative explained: '… experience shows that documents such as HRW, Amnesty, they have been authoritatively referred to in judgments, its quite clear that the courts accept and value their competence'. By contrast, for others, which sources carry more weight is more of an unpredictable matter that varies from judge to judge. For example, one solicitor believed that: 'Some judges will be much more reluctant to take in sources that you consider to be relevant.' This again indicates the lack of standardisation and unpredictable nature and approach (perceived to be) taken by IJs.

UKBA staff

Amongst interviews with UKBA staff, a homogenous understanding of sources and how weight is attached to sources was observed. As explained earlier, COI is made available to UKBA staff through an Intranet portal system with access to internal information sources, such as COIS reports, key documents and OGNs, whilst also offering direct links to certain external websites. There is also external Internet access although use of new sources must reportedly be authorized by a senior caseworker or the COIS team. [30]

The COIS department provide a special request service, where individuals can ask the COIS team a specific question relating to COI. However, they can only make them once they have exhausted all other possibilities – for example, searching on the Intranet or Internet, checking previous special requests and asking the senior caseworker. The requests must be authorized by a Senior Caseworker (SCW) who act as a filter between caseowners and the COIS department. On average, it takes about 4 days or up to 5 days to turn around a special request, according to COIS staff. For HOPOs, they have a 2 day turnaround service.

[30] See 'Overall Trends and Anomalies of Data' section (Chapter 5) where this point was disagreed upon in one focus group discussion, although the majority of the data supported this point

However, in the focus group with UKBA caseowners, concerns were raised about the quality of the special request service with reports of poor responses, slow turnarounds, and varied expertise of country officers. Thus, despite being a facilitator to access, it seems the quality of the response is variable.

The COIS department estimates that they receive approximately 1600 special requests per year. Compared to the annual asylum applications per year, this figure seems worryingly low.

Amongst interviews with UKBA staff, the main sources cited as being used were COIS reports as well as case law and 'approved' sources mentioned in COIS. USSD, HRW, AI, FFMs, CIA, BBC, Refworld, Google and Wikipedia are all mentioned. 'Basically, websites that COIS use we also use. And, to be fair, what I tend to do is something like Wiki [Wikipedia], which obviously is not a reliable source, sometimes can give you quite a good overview of certain things. And then you can use that to look for more reliable sources from that'.

UKBA staff were asked whether they consider there to be a hierarchy of sources, with some sources carrying more weight than others. COIS was the most commonly cited source which carries more weight. Other sources mentioned include FFMs, USSD, Jane's, CIA, UNHCR. According to the UKBA staff interviewed, sources gain weight through the status quo; the quality of the reports; and Tribunal determinations.

When considering the nature of USSD reports, one caseowner notes that despite the reports containing biased information, (s)he would continue to use it. For example, '…say the US State department reports … the impression I get is that if they don't like a country, they put bad things in their report to make it look bad'. However, the interviewee then stated that (s)he would still use it. 'They are, sort of, not that bad … I don't know…If you've got the information you need to back up your point of view in your decision letter, that's enough normally… It's reliable enough for me to use in a decision. That's not necessarily meaning it's 100% reliable, but it's enough for me to use as a source'. Thus, it seems that the formal selection criteria for COI, for example, transparency, is not necessarily applied.

As noted elsewhere in this report, an absolute faith in the quality of COIS reports is observed amongst the UKBA staff interviewed. Furthermore, the choice and use of sources amongst UKBA staff reflect firstly, an adversarial approach to country information, and secondly, a conflation between policy and decision making when using COI.

An example of the conflation between policy and background evidence is observed during an interview where UNHCR reports are being discussed. 'The thing about those is they're usually kind of inextricably linked to recommendations that the UNHCR make about protection…and as much as you know the Home Office works with UNHCR and so on, it's well known we don't always accept their recommendation, or rather I should say we don't incorporate them into… how we deal with certain categories of claims or claims from certain countries'.

This finding should be seen in light of the evidence gathered from questionnaires with regards to UKBA representatives' views on reports executed by NGOs, together with the existence of the policy guidance notes, OGNs.

Thus, a pattern emerges with regards to the understanding of sources amongst UKBA staff, whereby Home Office documents are more highly favoured and less scrutinized, if at all, by their staff. By contrast, reports by human rights organisations are sometimes misconceived as somehow being biased based on the policy positions that the organisations may hold.

Moreover, given the fact that they are mostly used by legal representatives, they come under more scrutiny.

Immigration Judges

The AIT has a Legal and Research Unit that maintains an electronic library for judges with COI listed by country. One example shown was Afghanistan and the following sources were available: Amnesty, UNHCR, the Afghanistan COIS report and the Afghanistan OGN.

According to the IJs interviewed, the sources most relied upon in court include COIS, USSD, AI, HRW, UNHCR. When asked which sources carry more weight, there was consensus amongst the IJs interviewed: COIS, USSD, Amnesty and HRW were all considered to carry more weight. As one IJ explains: 'Yes I think probably there is an implicit hierarchy. But it's not about good or bad sources, but rather the most "obvious" source'.

Other reasons given for how sources develop weight include organisations over individuals; status quo; 'Heinz' brands/ reputation; usage over time and familiarity; and because the contents having been checked in past. Another interesting reason was that some were produced by governments: '...certain things have a status by reason of the fact that they are prepared by government but they have their limitations because the government has a political end'.

Therefore, the well-established reports that are most relied upon and carry more weight tend to be produced by larger and often international sources. Indeed, one IJ explains: 'The problem with regard to it is that the smaller you are, the more sort of specialised are the sources and the more of a possibility that it's actually a pressure group'.

The IJs interviewed tended to question the possibility of truly objective COI, primarily based on two main reasons: political agendas and selective information (either in reports or the excerpts that are presented). For example, one IJ stated: 'Any objective evidence has to be selective and it's the selectivity of it which is normally the problem about whether it therefore provides a whole story'.

Another IJ explains: 'I don't think it can ever be totally objective. Every organisation, every situation has got some purpose to serve and it's a question of what purpose they have got to serve'.

As will be explained later, the immigration judges interviewed had divergent views on COIS reports. Similarly, there were diverse opinions regarding USSD reports, from a tool offering a summary and a global picture, to reflecting political agendas. For example, one IJ stated: 'the US State Department report is not sourced and often reflects US State Department pre-occupations and in particular it often reflects the political attitude toward the country about which it is reporting'. Another IJ supported this explaining, 'there's a case in the UNHCR, Said vs the Netherlands, where the US State Department report was criticized on the basis that it was there to serve a political agenda. It has a political perspective and provided you're aware of that, and take cautious steps not to accept it wholly at face value without question, I think that the majority of the COIS reports and the State Department reports, you can look at and consider'.

By comparison because the USSD is an "established" report, one IJ explained it would not have any interest to invent things. Indeed, this is a common theme across stakeholders, (excluding experts), whereby less analysis is undertaken or less questioning of materials is observed in materials produced by "established" organisations. It is therefore of vital importance that

"established" sources continue to be scrutinised.

Interestingly, 2 IJs raised their concerns about news reports, warning of the need for caution when dealing with them. One IJ stated: 'What one has to bear in mind with the news is that people don't publish good news, they publish bad news, and… I think actually we could all be fleeing this country because of you know shootings in Birmingham...I think we've got to be careful about the weaknesses of news as a source'.

There seemed to be little resistance from accepting new sources in the AIT. However, IJs stressed that it was up to the legal representatives to push this forward. They also stated that new sources should be specific, sourced, and cover the case, and would be assessed on content, currency and relevance.

Local NGOs could be influential as they are on the ground and could provide up-to-the-minute developments, it was explained. However, one IJ presumed their reports or findings would be incorporated into the larger reports by AI or HRW. Similarly, refugee testimonies were said to be problematic because of the need to establish credibility, and because testimonies are likely to already be included in the compiled reports.

Thus, amongst IJs, there seem to be certain assumptions that are associated with the compiled reports. In respect of using refugee testimonies, one IJ explains: 'The problem with that is, I'm not in a position to know, I end up having to decide that person's credibility as well. ... And I mean the reality is that the reports that are in the bundle are usually made up of the result of the organisations becoming aware of people's testimony actually anyway. Because that's where it's really coming from. ... I mean you're relying on the organisation to assess whether this is just one person having a moan or whether it is something that is too common to have to be ignored'.

Thus, there is a reliance instead on compiled "established" reports to incorporate diverse materials and assess the sources included such as testimonies. This point is explained clearly by another IJ when explaining the difference between expert reports and other reports: '... one is a collection of testimonies and observances by a number of people. Each individual may not be an expert but the compilation of it provides a legitimacy ... for example, Amnesty International have been reporting for years on problems are generally thought to be a trustworthy organisation who would not be interested in promoting a dishonest account of anything and they value that their reputation in a sense of wanting to make investigations into things like that then you get to trust their brand if you like. An expert has to produce that each time'.

Experts

Experts highlighted certain processes that are associated with source selection and how weight is attached to them. These factors included: firstly, time and resources and secondly, the diversity of the quality of decision makers and their levels of analysis. Some of the experts also noted that there was a false faith in sources that are published.

One expert drew attention to the USSD reports and the fact that they are considered by many to be a reputable source despite the fact that the reports do not reference their material. The reliance on and lack of scrutiny of this report, (s)he believed was a product of "intellectual laziness and fear". The expert continued: 'It relieves you of the effort and responsibility of weighing evidence properly'.

Focus Groups:

In the second focus group, the content of some sources was debated. Here we observe a similar trend to the questionnaires completed by UKBA staff, whereby there is misunderstanding about Amnesty International reports, leading to a belief that they are less objective or less reliable.

FG3
CO1: But would the Amnesty report ever report on something positive in a country? (…) It's quite politically based
LR4: Yeah I mean it's just used for something entirely different I think
CO1: I mean it's there to pinpoint what's going wrong in a country isn't it, the Amnesty International report they're trying to highlight what's happening in the world and so that's always going to be looking at the negatives of a country (…)
LR2: Isn't that exactly the point then? It's highlighting the fact that this particular area is going wrong in this country (…)
LR4: It's strange why Amnesty's reports aren't accepted because where there is a problem they will actually go out and do something and find out and… they do regular visits, they actually send a representative rather than rely on what everybody else is saying on the street
CO2: But COIS do that as well (….)
CR1: No they don't go to the country they're responsible for compiling a report on (…) It's interesting if you look at the contents of those reports because surely the only reason that the US State Department report has that level of over-reliance is because of the institution that produces it and not necessarily because of the quality of the report because it's not referenced. 70% or more of it is the same year on year, it's not clear if they have presence on the ground and how that feeds back into the report so it's clearly not the content itself or the methodology of the organisation that gives value to the report, it's the institution I think. And the same can be said for Amnesty. … I can't see why that would have less weight to it than an unreferenced State Department report … it must be for political reasons due to the perceived mandate of the organisation.

FG1 debated the idea of a hierarchy of information, suggesting that a by-product of the hierarchy is the exclusion of lesser-known sources, such as NGOs on the ground. By contrast, if these same NGO reports are incorporated into a compiled report, it is automatically accorded legitimacy.

FG1
CR2: (…) I mean there's no doubt … if something is citing the COIS report, it seems to be accepted by all parties more or less without question …
EX2: I think that you have to look at the other side of the coin … because [if] a particular source is not Amnesty or Human Rights Watch or COIS … doesn't necessarily mean to say that it is not sound and so where the problem comes up is when Home Office presenting officers and sometimes you'll see this in reasons for refusal letters [that] will say, "oh well you know that's not a sound source we can't possibly accept that", and adjudicators will often take that on board. … Part of the problem that's created by that negativity is that you have to spend hours, I mean literally hours footnoting and presenting your source (…) because otherwise they will start shooting because it doesn't belong to the hierarchy … and the point is that the hierarchy cannot cover everything and cannot cover all the information.

CR2: Absolutely and in certain countries that is more true than others where they're not allowed to operate, where human rights organisations don't have access…If the same organisation is interviewed and cited in an Amnesty report…or by the UN that automatically gives it legitimacy because of…the reputation of those organisations (…)
CR1: (…) Human Rights Watch or a [UN] Special Rapporteur, they go the same informers at the local level… It's the same people, same informers, they've got the same information from the same sources and then they incorporate them into their reports … with the stamp of Human Rights Watch or [UN] Special Rapporteur.

An important point that emerged from this focus group was the power of judges in determining the value of sources. In turn, a training need was identified:

FG1
CR2: I think that's the slightly strange thing about the whole country information field, there isn't really a field for country information…
CR1: That's what I was going to say the judges ultimately become the arbiters of [COI] … And sometimes they are very ignorant…
EX2: They don't know how to handle this type of information, you know, that's another big problem, that they actually don't know how to analyse, current affairs or history …

Why do you think that is?

EX2: I mean some are excellent but I think a legal mind is not the same as the mind that the social scientists
CR2: I mean that's the biggest problem (…)
CR1: I think in our current system which is adversarial it's just, we end up [with] some information … that contradicts… [and] the judge has then to decide what… looks more reliable, and the judges need to be trained…they need a lot of training.

Divided opinions about COIS:

Amongst the participants interviewed, there were divided opinions about the quality of the COIS reports, with experts featuring as their fiercest critics.

Legal representatives

Despite almost all the legal practitioners interviewed stating that they use the COIS reports, the majority were very critical about the quality of the reports. Furthermore, there was also a consensus that they were concerned about the way the COIS reports were used by UKBA staff, which is often manifested in poor quality RFRLs.

One barrister explained the limitations of the report: 'The referencing and the sourcing, often the fact that they are outdated and often they are merely repeating what is stated in the USSD reports'. He went on to state: 'I don't believe the COIS report is a truly objective document.... the mere fact that it's relied upon in most cases by the respondent, to ask that an appellant's case is dismissed. ... I don't know if it is meant to be neutral'.

The political slant of COIS reports was also drawn out by a legal representative, in FG2: 'I would not use the report for a source of information about a country. I see it more as a source to control the borders and I understand what UKBA's role is'.

The content of the reports was criticized for being too vague and lacking detailed information on more obscure things. With the focus on human rights, a lot of general information about culture and society, such as bribery, is missing. Other criticisms included: the reports can distort information through cutting and pasting; there are inaccurate citations; and partiality is reported.

Another barrister explained his views on the reports: 'And sometimes the citations are just inaccurate, so sometimes … the country material isn't available on the Internet or some of the background kind of stuff, the FCO letter that it cites, it doesn't actually say that... There's no attempt to evaluate which bits are reliable and also there's no attempt to point out the contradictions, so I appreciate that the COIS can't decide necessarily where the truth lies but you know, to have a single paragraph which says Mr A says this but Mrs B says that in a single paragraph will actually show you that there isn't any consensus about this'.

The views on the COIS reports in general reflect the greater understanding of the quality and limitations of COI amongst legal representatives than their UKBA counterparts. The lack of analysis of material in COIS reports is seen as problematic by legal representatives, whilst UKBA staff did not note this.

Furthermore, unlike UKBA staff, legal representatives demonstrated a greater understanding of the role, function and indeed, limitations of the Advisory Panel for Country Information (APCI).[31] For example, 'From my understanding I don't think the process is as rigorous as it should be. I think the people on the panel are quite a large number of people from different organisations and representatives, but only very few actually have a voice, the rest are observers. And I think there is only one NGO that is the one that can comment.' By contrast, some UKBA staff specifically commented on the power of the APCI in ensuring the information in the COIS report is accurate and of a high quality.

Finally, two legal representatives also spoke of the poor quality of the UKBA FFMs. In particular, there was heavy criticism of the Somalia FFM, which was reportedly conducted at the calmest moment of fighting in Mogadishu in 2007, and reportedly undertook poor data collection techniques. For example: '...one of the people we interviewed was making it pretty clear that the Home Office wanted answer A to their questions … and wanted a right answer in their terms'. Another interviewee said the UKBA fact finding team asked very strict, closed questions, supporting this reportedly rigid and biased collection of data.

UKBA Staff

Across the interviewees, there was a complete faith in and lack of questioning of the reliability of COIS. However, sometimes this faith was ill-founded. For example, the levels of "analysis" that characterise the COIS reports was commented on. One individual stated: 'It's *analysing* existing information and compiling that information to give an overview of a country situation but an overview that's also targeted at specific issues and those issues being the ones … that are most pertinent to the main types of asylum claims that we deal with for that country'. However, COIS reports do not "analyse" but merely are a compilation of diverse sources with no narrative.

[31] The APCI was a body set up to scrutinize the COIS reports.

Another common reason for the strength of the COIS reports was because of the monitoring and consultation process that the reports go under. For example: 'Because they are read and there is wide consultations. As soon as they come out if there is something that is contentious it will be challenged straight away'. As noted in a publication by the IAS, the APCI had a limited function with not all reports being scrutinized and inadequate monitoring mechanisms. [32]

UKBA staff also favoured having everything in one report. For example, '... we do sometimes look at HRW and AI, but more often not, because the COIS contains a summary on what is considered to be the primary issues, so for each country we will refer to the COIS report'.

Furthermore, one individual spoke of the usefulness of particular statements made within the reports. 'Within the COIS if there is a comment from usually someone from within the government of that country, so people are keen to point out that that sentence there was said by a prison officer in Iran. Key paragraphs are relied upon over and over again because they are well sourced and people like it when it's said by persons from the country so you get to know these key paragraphs because everyone keeps saying them'.

However, there is a concern that the key paragraphs that are relied upon repeatedly give rise to the standardised refusal letters that has often been raised as a concern amongst other stakeholders in the process. It also suggests a lack of case specific and individualised use of COI when researching.

Experts

Experts were the most fierce critics of the COIS reports and also criticized the idea of any form of "definitive" report. For example, one expert noted: 'I think that the objective of trying to provide a comprehensive set of references on which the immigration courts can rely is just unrealistic'.

All of the experts interviewed agree that COIS produces poor quality COI. Reasons cited include: poor methodology, lack of analysis, poor research skills, a "hodge podge" of quotes, out of date information, and poor coverage of certain issues, such as gender. Furthermore, they noted how contradictory information exists side by side but without an objective narrative that could highlight it. One expert commented:

> 'Well the COIS reports are simply a hodge podge of assorted quotes, there's no judgement, there's no measure or analysis of the meaning of what's being written, there's no comparison of the relative importance of the different elements, it is just a sort of anthology of quotes, some of them utterly ridiculous. Some of them I've seen, the latest Iraq one for example … quotes from sources that I know are propagandist, a particular individual who publishes articles…but is engaged in political propaganda basically... There is no rational measured assessment of these sources by people who actually have a context, the people who produce those reports in a literal sense are not competent to produce those reports and the use to the Internet; again, if it's on the Internet, again it must be right. This is nonsensical'.

The lack of analysis by COIS researchers/ authors was also noted, highlighting a need for training on research methods if one is attempting to approximate an objective reality:

[32] This will be explored further in the Discussion. For detailed information on this subject, please see Immigration Advisory Service (2010) The APCI Legacy: A Critical Assessment. London: Immigration Advisory Service.

'It's absolutely obvious from the product that these are people without any research background… the essence of good research is to weigh things, to develop a feel for what is correct, what is accurate'.

Finally, a link between COIS reports and political relations was asserted. For example, one expert explained: 'The HO is an institution with a particular view driven by the policies from the Ministries on downwards so one expects a particular type of position that would be taken in their public documentation'.

Some of the experts saw an obvious link between COIS reports and the wider political environment, whilst others believed political nuances were made in the COIS reports simply as an inevitable by-product of cutting and pasting. Political nuances are also arguably made through the lack of analysis, inclusion of certain sources or through leaving out certain information. One expert spoke of the example of Pakistan: 'The government wants aid. The government wants to keep on the right side of the international community – "We're doing wonderful things for women" - you should hear what President Musharraf had to say about it …all of which of course goes straight into the [Home Office] COIS reports'.

Immigration Judges

Across the judges, there was diversity in their opinion of COIS as a source of evidence. 3 IJs remained wary of COIS reports owing to political agendas, selective quoting and the use of out of date material.

By contrast, one IJ argued that COIS is the bedrock of COI: 'There's no doubt that the COIS report is the bedrock of country information and it is the one because it is the one which provides the summary of the series of sources'.

There was concern amongst some IJs of the political agenda that COIS and USSD reports may have. Furthermore, one IJ was even confused about its production, believing it was the Foreign Office who produced COIS reports: 'Both the Foreign Office in preparing the COIS reports and the State Department clearly have an agenda. It's a political agenda that they have and you have to approach it in that view'.

Thus, whilst some IJs are wary of political agendas and see problems with content, other IJs are far more accepting of the reports as being well established and reliable. However, given the previous reported results regarding less COI preparation for unrepresented appellants amongst UKBA staff, levels of inquisition should arguably be higher amongst IJs in the round.

One IJ explained that COIS was well relied upon in court, perhaps because of the fact that it incorporates diverse sources, many of which have established their reliability. On the other hand, another IJ commented on issues relating to content: 'I am aware that quotes they often have are selective… where the COI's based on hearsay from British officials and Embassies, … I'm very wary of that and you also have to be wary about the date of the material, because sometimes they rely on things that are quite old and I think one problem with the COI reports is that it's all a mish mash, often put together, you know, recent stuff and old stuff and it's often left to the reader to draw their own conclusions and maybe that's right but … you need to then have an antennae looking for dates and you know...'.

One IJ noted that COIS reports cannot be determinative because they are not tailored to the individual: 'Well as far as the Home Office is concerned it's rarely directly on point because it hasn't been prepared for that case. It can be quite often on point and quite often close, but it's

rarely right on, whereas you would expect, or hope, that the, that appellant would produce matters really much closer'.

Furthermore, other reports unlike COIS have limitations precisely because they are not produced for the purpose of the asylum determination system. As such, information such as details about risk upon return or internal relocation are not covered adequately. One IJ explained: 'I just find that information absent from, it's not really in the brief of Amnesty or Human Rights Watch because they're not primarily concerned about asylum seekers and it's … never in the State Department report'.

Finally, of concern, is the faith that some IJs held in the APCI. One IJ stated: 'There's this independent committee…that meets regularly and has representatives on it. I don't think you can do much more than that'. However, as expressed earlier, the APCI had a limited remit, and as one will see in the Recommendations, there is a lot more that can be done to monitor and improve the quality of COIS reports.

Focus Groups:

In this focus group discussion on sources, various issues were drawn out: the complexity of cases; the misuse of COIS reports; and the dangers of relying exclusively on COIS reports because using COI for direct and simple corroboration is rare. Thus, the need for multiple types of COI and high levels of analysis are crucial.

FG1
EX2: I think as a compiled report COIS is a very good starting point. In reality they are pushed for time as we are, they're not going to have time to start looking for themselves… I think time is …a really important factor in how COIS is used because, as I say, we often see misuse of COIS because it's contradictory when it's being quoted. They just don't have the time to read from page 1 to page 275 and they miss a lot of things (…) Sometimes the character of the case owner is very evident from word go to the end, sometimes it's very confrontational and then you read … how COIS is being used and how the decision to refuse has been put together…
CR2: (…) Firstly people's lives are messy and rarely susceptible to black and white definitions of fact and truth and certainty and the complex pictures that we need to sometimes build with country information to give context and explanation for something that's happened to somebody or the fear that they have (…) It's so rare that you have a simple case corroboration of an event or whatever, sometimes it happens but very often it's not as simple as that
CR1: (…) In reality what has happened is …the COIS has become the definitive report of a country that is currently in the asylum system and that is a problematic proposition.

The fifth focus group discussed the limitations of the role of the APCI, drawing attention to the great need for heightened transparency in the decision-making process at all levels.

FG5
LR1: Yes the APCI definitely brought about a substantial improvement in the country of origin reports …(the) main concern was not so much that APCI wasn't doing a good job of the reports but rather it wasn't doing a good job more widely on how the Home Office used country information and what country information it was using apart from the reports
EX1: Or OGNs for example
(…)
IJ1: … it's a limited function that it can have … I personally believe that OGNs are policy and that's the way they should be looked at and …therefore it is a political position … and I'm not sure that a committee can steer somebody in the direction of those policy considerations (…)
EX1: … there needs to be some way that the transparency can be more than lip service. Institutions and decisions they need to be more transparent (…) judges make their assessments and then we have to lump it. There is also a hierarchy of power in the way that decisions are taken, the way that different kinds of professionals are judged if you like in the entire asylum system. I'm left to wonder as to how we could eliminate some of the obstacles which clearly relate partly to communication, partly to the adversarial system…

Use of OGNs:

Operational Guidance Notes (OGNs) are policy documents, which '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'.[33] Whilst OGNs contain COI, this COI is not subject to any independent scrutiny and arguably is selective to meet policy aims. OGNs are for guidance only and should not be quoted in RFRLs – it contravenes HO policy if they are cited as a source of objective evidence in RFRLs. However, there is evidence to suggest OGNs continue to be cited in RFRLs. [34]

Legal representatives

The legal representatives interviewed commented on the OGNs in terms of their quality and usage, and also commented on how strongly relied upon they are by UKBA caseowners, which can come at the expense of engaging with other COI material. In particular, there was a concern about their political nature. For example, one legal representative stated: 'Well the OGNs are political documents drafted … in response to the protests of people who are presenting the appeals and don't like losing them, so that's the problem with OGNs'.

The individual continued, arguing that their usage can have negative impact on fair decision making:

> 'I think the OGNs should be drafted so that they are loyal to the COIS reports and don't represent what is essentially a policy… but the real problem of the matter is that they're policy documents which are shaped by a policy of trying to refuse asylum to as many people as possible. That's why they can't logically follow through on their position, I mean

[33] UKBA, Country Specific Asylum Policy OGNs. http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/
[34] Immigration Advisory Service (2009) The Use of Country of Origin Information: Critical Perspectives. London: Immigration Advisory Service.

> for example if you're Burmese, what rationale is there for restricting asylum to people who…will be perceived as a serious threat by the Burmese government? You know when they imprison people who read our poetry or write cartoons, where do you get that from? Why don't you just say…anything you perceive to be in opposition to the government you know? What's the problem? Well because well what we don't want to happen is that we'll have our nose rubbed in that when five hundred people come through the door. We don't want to give them asylum and that's the real problem in all of it, is that they're not actually, trying to get to the truth or trying to grant refugee status to general refugees. That's irrelevant'.

Thus, there is a feeling that the existence of OGNs is enormously problematic because no decision should be influenced by policy considerations. Furthermore, the fact that they are not scrutinized by an independent body, adds to the frustrations that some legal representatives feel.

UKBA Staff

Both of the initial decision-making caseowners interviewed stated that they use OGNs – although they were also aware that they are not meant to include them in the RFRLs. One appeals worker also explained why they believed it was not bad practice to use them, even in RFRLs: '...the stuff that's in the OGN's is lifted out, directly out of the COIS reports as far as I understand or it has references to case or current country guidance cases and they are updated and they are current as far as I am aware, so … in terms of citing them I don't think it's very bad practice… if you ask me personally I would say I don't think it's bad practice because if the OGN is being used as a guide and the case owner has accessed that guide and the case is deciding that claim then it's only fair in a way that they include a reference to it in the refusal letter and it's clear when you look, when you go away and look at the OGN that it's relying on the COIS reports so I don't think it is necessarily bad practice'.

Given the important role OGNs hold in the determination process and the lack of scrutiny they come under, they are of concern. Furthermore, there is evidently a misunderstanding about why it would be bad practice to quote OGNs in a refusal letter. This shall be explored further in the Discussion.

Immigration Judges

OGNs are not intended for use as a source of COI by any RSD decision maker. However, they are provided by the AIT Legal and Information Unit and made available to all judges through their internal COI database. 'OGNs are not, haven't got the imprimatur of the COIS service so they don't pretend to have the same academic scrutiny attached to them, they're policy documents and they come from a different department in the Home Office and therefore one would have to, I would certainly exercise greater caution in the OGN in an OGN assessment'.

However, one must question why OGNs are being provided to IJs at all as they should not be being used. Secondly, the point about "academic scrutiny" raises yet another misunderstanding about the material produced by UKBA. OGNs, or indeed, any policy considerations must be separate to any decisions being made.

Focus Groups:

In the focus group with UKBA caseowners, one individual spoke of the strength of OGNs:

> **FG6**
> **CO3** – I tend to have a look if someone says something that I haven't heard of. I'll look at the OGN first of all and see what that's got to say, and if there's nothing in there, then I'll have a look at COIS. But the OGN's are good really because it writes everything there and then for you so you've got case law you need to look at, you've got the objective stuff, you've got an answer already there, a conclusion which tells you what you need to do, and you can go into more depth….But it's really useful to have an OGN which says, look, this is how it is, and this is the conclusion about how you deal with most cases. Because sometimes you look at the country report and you just think, mmm, ok, now what's the conclusion?

In turn, the objectivity of the OGNs was debated, which again highlighted misunderstanding about COI content and notions of objectivity. For example, when asked about whether OGNs can be considered to be objective country information, there were divergent viewpoints:

> **FG6**
> **CO2** – I'd say it's not objective.
> **CO4** – Well, it is objective, but it is often not the most up to date document to rely on either.
> **CO1**- It takes the objective information and it provides the Home Office's conclusion on that objective information so it's objective to the voices of the Home Office's objectiveness.
> **CO2** - It's someone's opinion though rather than standings of factual evidence of a country. It's somebody's opinion. It's a forceful/thoughtful opinion. I mean, I'm not saying, they have made it up but it is an opinion nevertheless.

g) Country Guidance (CG) Cases

'As far as CG cases go, they are rarely helpful as far as our clients go. If you look at the statistics, more CG cases are dismissed than allowed'

– legal representative

Country guidance cases were found to be helpful for providing context; limiting the scope of argument; narrowing down issues; defining risk categories; assessing the merits of a case; settling contradictory COI; and providing a wealth of expert and COI evidence. However, their limitations were also noted: they go out of date; country situations are dynamic; ultimately they are case specific with general conclusions drawn out; the Home Office can concede at any given moment; the categories defined are often very narrow; there are divergent outcomes owing to the variance in the judiciary; and countries and issues tend to be selected almost randomly and in a non-transparent manner.

Immigration Judges

The majority of IJs spoke of the value of CG cases. However, one IJ highlighted their limitations, stressing that they do not adequately define or describe country situations: 'Because they're out

of date, they go out of date very quickly, they're always considered in the kind of context of the facts of the particular case.... some of them are prepared extremely thoroughly and some are not. It's a bit of a lottery which cases become a country guidance case and… if the rep isn't particularly good you can't be certain that they've found all the evidence that could have been before the Tribunal, so I think they're problematic'.

Once again the issue of a "lottery" emerges, this time with respect to poor legal representation on behalf of the appellant – in CG cases, this can have even more far reaching consequences, one IJ explained.

Of concern, was one IJ's comment that in some cases, one may not need any COI because CG cases determine the starting point of one's assessment: 'In many cases it may be that you don't look at any background material because you've got a Tribunal decision on country decisions which, a country guidance issue which determines, or which doesn't determine but which is the starting point for your consideration of the assessment'.

Legal Representatives

The legal practitioners interviewed identified the advantages and disadvantages of CG cases, with some respondents being more critical of them than others. Overall, however, there was consensus regarding the diversity of outcomes of CG cases, as highlighted also by the experts.

Divergent outcomes were a repeated complaint, in line with the "IJ lottery" cited earlier. Indeed, one legal representative believed the odds were stacked against appellants in CG cases: 'As far as CG cases go, they are rarely helpful as far as our clients go. If you look at the statistics, more CG cases are dismissed than allowed. And therefore it makes the Home Office's case much easier. If you look at Iraq, for example, most of the CG cases say it's safe for people going back there. But is it really safe there?'

This was supported by a solicitor who explained: 'My experience at the Tribunal is to try and produce a determination that closes down as many claims as possible, so it's not viewing the COI in an objective fashion. Whether it is a floodgate issue I don't know. I think that's the biggest problem. The other problem is, depending on what country they are dealing with, as soon as they publish the determination it's often months after they have heard the evidence or have the arguments put to them, but it takes so long that it's out of date. And yet it will stand on record for several years'.

One crucial element of CG cases is that often they extend past the facts of the individual case. Through doing this, it makes for poor quality guidance. One legal representative explained: '...clearly one of the useful functions of courts is that they make decisions that can be useful for other cases and not simply decide everything on a case basis and that is useful. It is a mistake however to let the tail wag the dog and the problem with the AIT is that that's what they do. ..the biggest problem about CG cases is that it just ignores a very basic principle about litigation which is that the parties we deal with are the issues that matter to them, not the issues to matter to the immigrants, so you can't really be surprised if your CG case isn't as well informed or as well argued on these issues that don't affect the applicant before you'.

Finally, one individual spoke of the lack of transparency in the AIT in their methods of selecting CG cases: 'It's not a lottery, no. It's entirely determined by XXXX and his mates...because XXXX makes all the decisions about all the strategic decisions about work allocation and so unless you're favoured, you don't get to take part in the interesting stuff in the AIT, you don't get

interesting legal cases, you don't get interesting factual cases, certainly not if anyone else has previously identified them as interesting. … I think that the problem is that the contempt is infectious. They have contempt for the immigrants they have contempt for those who are representing, contempt for the Home Office and it spills over into contempt for other immigration judges. I think there's a real problem within the AIT, I don't think they trust each other... if you do an analysis of country guidance cases and whose names appear in them it would not correlate evenly across the body of people who work full time as SIJs. Who's on the committee that decides whether or not cases are reported? ... We know Mr XXX is, who else is on committee? Who appointed them?'

Thus, there is a political dimension to CG cases, in the selection of issues, countries and IJs, which needs exploring further.[35]

Experts

The experts interviewed held different views on CG cases –they believed that they vary by case and by IJ. While one expert said they were "helpful", another commented that they were "absurd".

There are a number of other variables that were argued to have an impact on the quality of CG cases.

- ➢ Different responses for different countries as some countries have "better" determinations
- ➢ There is variance in the quality of judges
- ➢ Time pressures to do the bundles for CG cases mean some are prepared to a poorer standard

A further important point raised in some of the interviews was the role of politics within the AIT's selection of cases that are chosen to be country guidance and their selected issues for focus. Indeed, this point adds to the disillusionment felt by some of the experts towards the wider RSD process.

Some of the experts also spoke of a "politics of knowledge" about the kind of information that gets submitted - one expert recommended there should be an independent documentation centre to resolve COI disputes in CG cases. A recurring recommendation was also the need for expert reports, which have been heard and accepted in CG cases, to be included in COIS reports.

h) The Role of Experts

'There's a strong tendency …to assume we're a hired gun'

- expert

Questionnaires:

In the questionnaires, legal representatives were asked about the advantages and disadvantages of instructing experts. The overwhelming response regarding the advantages was the provision of client specific information. For example, one legal representative highlighted that expert reports are information 'provision by way of inference and context that no generic report could provide'.

[35] For more information, see: Colin Yeo (Ed) (2005), *Country Guideline cases: benign and practical?*, Immigration Advisory Service, London

Other popular reasons cited for the advantages of instructing experts include: the provision of up-to-date and accurate information; experts have better access to sources and a greater knowledge base, which is especially useful in cases where there is little COI available; if experts are found to be reliable they carry weight with IJs; and they are helpful for corroboration and challenging matters raised in RFRLs which would otherwise make the client's case seem implausible or not credible. For example, one legal representative noted that experts 'counteract[s] [the] tendency of HO and AIT to treat country information as rigid template and any divergence of client's account/ circumstances from template as contraindicative of credibility'.

By contrast, when asked about the cons of instructing experts, the most significant responses were firstly, cost and funding, and secondly, that experts may not be perceived as independent, judges may be biased against them or that they have been or may be discredited by the AIT. For example, one legal representative stated that the use of experts 'engages [the] Tribunal agenda which appears to be to discredit experts whose evidence tends to support claimants'.

This is supported by another individual who highlighted the attacks on the credibility of experts in the AIT. They stated: 'The HO/Tribunal tend to be very quick to attack an expert and his/her credibility. The Tribunal need very little to dismiss an expert report as being unhelpful'.

Other negative points mentioned include the difficulties in identifying reputable experts. For example, one individual noted: 'The XXX database is not all comprehensive or even useful…. There are very few country experts that are "untainted" by judge's comments. It is difficult to know whether to continue to use an expert who has had negative comments about him in determinations'.

Other matters raised were that some experts are too general in their findings; the process can be time consuming; and some experts do not follow instructions properly.

When considering the negative aspects of expert reports, a training need emerges. One individual noted: 'Experts generally have a lack of understanding of the role and lack of understanding as to how their expert opinion should be supported in the written report'. Furthermore, in line with this lack of understanding and a perception of the judiciary bias against experts, another legal representative stated: 'They are often hopeless at writing reports that impress immigration judges. There are many pitfalls, and most experts leap into most of those pits'.

Interviews:

Legal representatives

The legal representatives interviewed reiterated the findings regarding the pros and cons of instructing experts. The barristers interviewed also went into detail about how expert evidence is received in the Tribunal. For example, one barrister stated: 'Tribunals are reluctant to hear experts… I think a lot of experts have been put off via comments they have received'.

Another barrister launched a scathing attack on judges calling for the need for respect: '…Because they come from a very narrow slice of kind of middle-class intellectual culture where they think they know better than everybody else and … they have no respect …I'm just a lawyer but these guys YYYY and XXXX, they think they know everything and they think everybody else is a Charlatan and so they think when they give country guidance they are country experts… and

they're not, they're a bunch of immigration judges and they're not psychiatrists either and they should have respect for what those people say. And I think one of the reasons they've got themselves in that position is because historically the Home Office hasn't produced any expert evidence on the other side so they have always ended up seeing themselves in opposition to the only other big brains in the room, and because the Home Office never produced any big brains'.

On the other hand, some legal representatives spoke of their frustrations of some experts who over step their role as an expert when writing reports, or going beyond their remit. For example, one legal representative stated: 'Very often they take over control of the way in which the case is being presented I think. Unwittingly no doubt. But I would much rather do my own basic research than commission a country expert report at every turn of the way'.

UKBA Staff

There is strict assessment of expert reports, which for the most part, was expressed through a credibility assessment of the expert. However, the staff interviewed did see the merit and use of experts.

One caseowner stated: 'When we get an expert report from a rep … it's like, how do I deal with that information? That's what you look at – when was it published? Are they qualified to comment on what they're commenting on? What's their academic background? Do they understand their duty to the court?'.

It must also be noted that the levels of analysis and criteria applied to experts, was not however, extended to other sources. Furthermore, an adversarial approach to expert evidence was noted. For example, an UKBA representative explained how (s)he believed that an expert cannot be objective because they are hired by a legal representative, an advocate on the opposite side of the adversarial process.

Immigration Judges

The IJs interviewed expressed the value of experts particularly in cases where there is a lack of information available. For example, in FG5, an IJ stated: 'any judge wants to hear what the expert says, wants expert evidence. If he's doing his job correctly he wants expert evidence and he wants to be able to analyse that'.

However, it was noted that experts had been criticised in the past regarding partiality. One IJ commented that the problem of partiality can stem from or be accentuated by solicitors and their instructions: '...there has been a lot of criticism of experts because they aren't doing their job properly in various cases…that they have become partial…but I mean, to an extent, that may be what questions are asked by the solicitors. If the solicitors spout the questions and the experts merely answer the questions posed, then you can't criticise the experts for doing what he's asked. It's a question of making sure that the way that the issues posed are appropriate, and too often, you don't see what the instruction letter is to the expert from the solicitor...The expert is doing his job in as much that he's answering the question but he's got to be capable of stepping back and saying – well, wait a minute, that's not the question I should be answering. I should be answering a wider question. But equally, the solicitors, they are too close to their case. They're failing to appreciate what the purpose of expert evidence is'. Thus, there is an evident need for stringent guidelines, which are actually implemented, as well as training.

Experts

The experts interviewed discussed why their knowledge in particular is valuable within the RSD process. This covered issues such as being able to provide in-depth social and cultural (or linguistic) understandings of specific locations. As a result, they are able to, for example, ask appropriate questions, verify documents and provide alternative viewpoints and information that is not covered elsewhere.

Furthermore, the extent of their knowledge and information sources is highly valuable. For example, one expert stated: 'I use and establish my own networks, to academics, to NGOs, to organisations involved in medical claims, torture claims, things like that, which are not on the radar of the official authorities to try to flesh out the problematic aspects of failed asylum seekers going back and having access to health services which officially exist which unofficially may be very difficult to access. So that is where I try to fill in the gaps'.

However, expert knowledge is sometimes very specific, limited to regions or thematic issues. Experts who have not visited a country for some time have had their evidence criticised or dismissed. It was also acknowledged amongst the experts interviewed that there is variety in the quality of experts.

The experts interviewed had varied opinions about how their information is received and valued by the courts. Responses regarding how their information was received included, "occasionally listened to" and "on the most part, positive". Once again, one of the variables for the different reception of their reports was related to the variety of IJs.

Data analysis shows that perceptions of how expert evidence is received impacts on views on the AIT and decision-making. Furthermore, the more negative one's experience had been at the AIT, correlated with an increased scepticism of the AIT and the determination process.

Amongst the experts interviewed, there were shared feelings of being seen as a "hired gun". The experts were conscious to avoid being perceived in such a way and make specific efforts to show balance and assistance to the courts. For example: 'There's a strong tendency …to assume we're a hired gun…and I go out of my way to say…well, I have to say, I am preparing this report and this report is my objective opinion and I am not required to advance interests'. IJs' focus on the credibility of the experts, in turn feeds the cycle of criticism of the AIT, particularly when ill-founded credibility points are made.

The experts also discussed how and why the role of an expert within the RSD process is problematic. For example, they can be put in a difficult position by solicitors and IJs to meet legal tests; whilst at the same time, their status and reputation are put at stake with their credibility and academic rigour questioned by IJs. For example: 'Experts feel squeezed… by a fair proportion of solicitors who don't understand that we're not advocates and they lean on us, just to push it beyond the point where it should be pushed'.

Half of the interviewees feared that expert reports could become a thing of the past. For example, one individual stated: 'Well I'm sure the intention on the part of many parties is to squeeze experts out'. Some of the legal representatives interviewed also felt this could be a possibility in the future.

Another expert talked of the practical challenges facing experts: 'let's not forget that there are financial and time constraints on every report… there are a very high proportion of requests for

expert reports that involve a deadline of a week or two weeks away when one's already got a very full agenda with all sorts of stuff. I seem to be constantly racing the clock, that is a real problem and you end up making typographical errors and factual errors... There's not enough time, there's not enough money and the two are related'. Thus, the barriers of time and funding extend also to experts within the field of COI.

One expert also reported how he has suffered abuse by judges and HOPOs: 'I do find all of the hearings very stressful only because one is constantly waiting for the foolish, arrogant, unpleasant and vitriolic judges to start their nonsense, and one is vulnerable as an expert… and when you complain you get sidelined, ignored.' The expert continued: 'that's what experts require of judges, some sort of protection from manifestly unfair, unpleasant, offensive attacks. So there has to be some sort of guideline, there has to be as well some sort of avenue of redress for experts. We should not be expected to be slandered, libelled, humiliated, abused, without any fault of our views, what we said misrepresented grossly'. Thus, a need for higher levels of transparency and avenues for redress is reportedly required.

There was general agreement about the need for guidelines amongst solicitors and experts – or simply, the proper implementation of the Practice Directions. One expert's comments regarding the Practice Directions indicate the need for them to be properly communicated: 'I think CPR directions are good…having started this in '96 and '97 it wasn't until 2005 that a barrister sent me the CPR directions so there is a high likelihood that my reports were disregarded because I didn't have regard to the CPR'.

It was felt that some solicitors often give poor instructions, which in turn impacts on the determination process: 'I think usually the quality of instructions is pretty standard. ... Very few of the instructions I get, unless they have had a word with an experienced counsel, are specific enough because they don't know the country evidence very well. So they usually ask for the standard types of questions, which will relate directly to their reading of the refusal letter. So it excludes … certain relevant aspects of the country situation'.

This finding is also in accordance with the statement raised by some legal representatives that hiring experts in some cases is unnecessary. This partly stems from poor knowledge of country situations and thereon a lack of understanding about what information is already in the public domain and what issues an expert should and could specifically comment on.

Finally, one expert spoke of the need for feedback on how expert evidence is received in the AIT. 'Feedback to country experts [is] absolutely essential but nobody sends the material back, they don't tell you anything; they are under too much pressure. So country experts are not in a position to know how their reports were used unless they were set aside by the courts...Unless the barrister defends you in court you never know what the court or the HO says about your report and you may still be instructed, so it's a waste of legal aid money and a waste of time in relation to the client who you are being instructed on'.

Focus Groups:

In FG1, experts raised the point that the findings from expert reports submitted in CG cases should be incorporated into the COIS reports. This is particularly needed, they argued, when they are using new sources that are in the public domain that well reflect the country situation or when using COI to show that paragraphs within the COIS report are factually incorrect. The COIS department were open to the inclusion of new material but noted that "communication"

impeded their inclusion in the past.

FG1
EX2: Look if I write a report for a country guidance case it is massively footnoted, massively… I assumed that those reports would, in any case, be passed onto the COIS unit and again. … I spent, in that report, maybe about five pages showing how the sources and the COIS report were erroneous and misrepresenting, and were misrepresenting the case. (…)I was absolutely astonished when the next COIS report came out and those paragraphs hadn't gone; I didn't realise that the reports which are prepared for a country guidance don't come back to you people
EX1: …In my personal case I've had several errors that I've noticed for years in COIS and I pointed it out over and over when it's been said about the Iranian Kurds, a particular paragraph is just completely wrong and I've said look factually this is wrong and I've repeatedly said this and in over 3 cases in court. The adjudicators directed the Home Office presenting officer … but it's just factually wrong and there are several things like that within the COIS (…)
COIS1: (…) We do now receive country guidance outcomes on a regular basis and it gives us the chance to look into this (…) sometimes the communication doesn't always happen, it's in court, you know, they forget to tell us etc … if that failed you could tell us directly

An issue that also came to light in this focus group was a scepticism of experts and a perception that they may be biased according to a COIS representative. The discussion emerged following a question posed regarding hiring experts to translate material for COIS reports:

FG1
COIS2: … I mean it's my personal reluctance to do that, I just find it very very difficult actually going to somebody who's been employed as an expert witness and may well be an expert witness again … there will be questions about their objectivity.
EX2: But why? (…)
COIS2: … I'm talking about specific XXX countries where they, they don't always do it pro bono and they don't do it for necessarily because they believe in the strength of the case but for a variety of reasons and one of them is
CR1: Supporting the clients do you think?
COIS2: One of them is that they are actually paid a fee for producing the report (…) It's the political affiliation in so many cases…
COIS1: (…) In principle I think we would welcome information from any source that is disclosable and useful to us and once the parameters are clear and themselves, the issue of providing information and providing fees not, complicates things but we need to think about it more

Finally, one expert believed that there is an agenda amongst some HOPO units to purposively undermine certain experts in a bid to discredit them. With the diversity of judges in existence, this may in turn impact on the future quality of information.

FG5
EX1: … the background of this is that different presenting units have a little blacklist … and the results are kind of axes to grind basically and looking for ways to discredit particular experts… There's an attempt by parts of the Home Office to, … make the playing field less even… Some judges are very good at putting that in perspective but many are not … I think we need to look at the quality of that material first but not to undermine individuals. (…)
IJ1: (…) What I want to try and distinguish is what is improper conduct in the attitude towards it and what is proper conduct. Because advocacy is a bit rough and tumble and in a way … an expert is up there to be shot down, to have his views analysed and looked at in a great deal of scrutiny … if they are invalid challenges then in theory they ought to be susceptible to an appeal if the judge behaves improperly towards an expert evidence. [But] if they are valued challenges then one doesn't have anything to complain about
EX1: Fair enough but experts aren't told what the roles are in fact they're very implicit, there isn't any guidance, there isn't anything that would help an expert understand what it means…

In this same focus group, the lack of guidance for experts was also debated and a need for communication, a representative body, or training was highlighted.

The focus groups therefore supported many of the findings drawn out from the interviews regarding the value of experts; the scrutiny their reports undergo; a misunderstanding that they may be biased based on the fact that they are used by one of the parties to the adversarial proceedings; and a need for training and avenues for redress for experts.

CHAPTER 4 : OVERALL TRENDS AND ANOMALIES OF DATA

This section aims to highlight overall trends between focus groups and stakeholders, and draw attention to any anomalies of data that have been found. This will help to better understand the properties of the themes and the processes behind COI usage and perceptions of how others engage with this form of evidence. The section is broken down into:

- Differences between focus groups
- Differences across stakeholders
- Anomalies in the data findings

Differences between focus groups

Different dynamics were observed across the focus groups conducted. For example, in some of the focus groups, an "us" versus "them" attitude was observed. However, also observed was a genuine interest in how the other representatives of stakeholder groups engage with COI, with comments highlighting a lack of understanding of how others use it.

The strengths and weaknesses of the focus groups varied, in part by the make-up of the groups. FG1 and FG6 were possibly the most "positive" groups in terms of working together to understand the processes involved in using COI and brainstorming methods for improving usage. FG1 comprised of experts, COIS authors and COI researchers – therefore, these individuals (for the most part) do not have client contact and are removed from the direct decision making stage. The focus of discussions was on the theory and limitations of COI and methods of implementing COI production. FG6 was an UKBA-only focus group, where participants felt open and at ease to discuss the various barriers and facilitators to conducting COI research.

FG5 was a somewhat experimental group, with one representative from each of the 5 stakeholder groups involved. Here, one observed a great interest in each others' roles with much of the dialogue stimulated by the group itself rather than being led by the topic guides. FG2 and FG3 both held relatively equal numbers of legal representatives and UKBA decision makers. The focus on these discussions centred on the practicalities of the decision-making process as well as discussions on the barriers and facilitators to conducting COI research. A more adversarial climate was observed in these groups, with the different stakeholders not only interested in but also suspicious of each other's working practices.

Finally, FG4 saw a dominance of UKBA staff both physically in terms of numbers as well as dominating discussions. In this group and in FG5, where a COIS representative was present, one observes contradictions in data, for example, regarding levels of communication between UKBA staff or access issues, which will be explained below.

Differences across stakeholder groups

A trend observed amongst experts and COI researchers was an emphasis on the theory of COI and a need for the recognition of the limitations of COI particularly when used within the legal realm. They were also amongst the fiercest critics of the way COI is used within the RSD process and in particular in RFRLs. This probably originates from the fact that this is one of their principal methods of engaging with the details of a client's case. Furthermore, experts were the

harshest critics of COIS reports; shared a cynicism of the RSD process with the COI researchers; and called for heightened levels of transparency and accountability.

By contrast, in part, guided by their duty to their clients, legal representatives appeared to feel a personal sense of injustice when a case was handled badly, albeit by a fellow legal representative or by a decision maker. Thus, common themes emerging from data collected from this group included: disillusionment with the system; the existence of an "IJ lottery" and a diversity in the quality of all the key stakeholders; a feeling that there is a lack of cultural awareness and sensitivity amongst UKBA staff; and a belief that cases are often refused on credibility grounds, which do not reference or take account of COI. They stressed a poor usage of COI at the initial decision-making phase and felt that COI is used selectively to support decisions instead of informing them. They also recommended heightened transparency in the system, particularly with regards to CG cases.

Furthermore, it appears from the data that the more cynical the legal representatives are of the system in general, the less faith they have that any recommendations for good practice will ultimately change a thing.

IJs placed much emphasis on a need for training and the implementation of good practice amongst all stakeholders involved in RSD. They also concurred on the value and function of COI. However, differences were observed in their levels of understanding of different sources, notably of COIS reports, as well as in their levels of inquisition when dealing with unrepresented cases.

Differences were observed in the way COI is used at the various levels of the RSD process, even across individuals who have the same job role amongst UKBA staff. Furthermore, heightened levels of analysis were observed amongst the more senior people interviewed. However, there was, in general, agreement regarding the barriers to accessing and using COI; a complete faith in the COIS reports; and an adversarial approach towards COI.

The final difference across stakeholders was in their opinions of the RSD process as a whole. Legal representatives and experts recognized problems with the system to varying degrees from inefficient to politicized and unjust. However, UKBA staff did not comment on this, but rather tended to respond in a more defensive manner, and talking from a personal position of attempting to always make the right decision. Whilst IJs recognized there were problems with COI usage, many of their criticism and recommendations were not directed at the RSD process in general nor at decision-making, but rather at the individual practices of the other stakeholder groups.

Anomalies in the data findings

Poor Internet access was commonly reported to be one of the greatest barriers to accessing COI. Despite individuals agreeing on this point, it is difficult to pinpoint exactly what the problem with access is: purely technological; conspiracy to block information on purpose; poor research skills; or perhaps a mixture of all three?

In the interviews conducted with UKBA staff, there was common agreement that they would not use new sources. This is because if something is not an "approved source" cited in COIS reports or is not found as a direct link within the Intranet system, it requires permission from an SCW and/or a COIS staff member. For example, one individual stated: '… we're not allowed to go and do our own research for obvious reasons so you … go and have a look and you see if there's

anything that's likely to be found and then you can take that to COIS and say well I've found this, can I use it?' Another individual stated: 'So if I found something new, I wouldn't use it without checking it out first.'

However, when the fifth focus group discussed the issue of special requests, an anomaly was found. Whilst data from the one-to-one interviews and UKBA-only focus group found that there was a "list of approved sources", and the questionnaire data showed levels of Internet blocking, a representative from COIS in this group, staunchly disagreed. (S)he stated: 'No, absolutely not…. there isn't a list of approved sources… I'm not aware of any list of approved sources'.

Another anomaly of data emerged regarding levels of communication between UKBA information producers and internal users. In FG4, for example, UKBA representatives discussed the high levels and diverse means of communication between the COIS department and information users, for example through holding quarterly feedback forums. However, both the interview data and the UKBA-only focus group highlighted weak channels of communication, including a failure to take feedback points on board, an un-stimulating presentation by the COIS department and a varied response to special requests.

An interesting contradiction in the data was also that almost all interviewees agreed that they would not use or trust sources that do not reference. However, at the same time, there was general consensus, particularly amongst UKBA staff, that they would use USSD reports, even though some even noted its biased tone of reporting. However, this is something that reinforces the concept and effects of the information hierarchies with "established" sources not falling under adequate scrutiny due to the status it has achieved. This will be explored in greater detail in the Discussion section.

The anomalies identified in the data have been incorporated in the formation and understanding of the overall themes, which are outlined in the Discussion section.

CHAPTER 5 : DISCUSSION

Taking the results together, various thematic issues emerge that help us to identify the underlying processes that contribute to the usage of COI. They also assist in understanding how groups perceive the practice of others and the role of COI within the RSD process.

This section will discuss the following main themes, which have emerged from the data. For each theme, sub-themes will be presented that break down the processes at work:

a. Squeezing the sector
b. The refugee roulette: diversity and disillusionment
c. The UKBA labyrinth
d. Communication
e. Information hierarchies
f. Lack of transparency and accountability

a) Squeezing the sector

When examining the results holistically, it emerges that the RSD sector is being "squeezed". Time was identified as the biggest barrier to using, accessing and analysing COI amongst all stakeholders with no discrepancies in the data recorded. When considering all the results from the different data sets, the following are the most significant barriers:

- Time constraints in all stakeholder groups
- Funding constraints for legal representatives
- Resources for UKBA staff
- Technological/ Internet problems and bureaucracy for UKBA staff
- Time frames and a lack of formalised and implemented guidance and training for experts

The significance of the lack of time to conduct COI research needs to be situated within the wider framework of the RSD process, including political pressures; the adversarial structure; and financial constraints.

Political Pressures

Politically, UKBA is under pressure to improve "efficiency" and specifically to increase the rate and volume of their determinations, increase numbers of deportations and meet their targets in line with the "tipping the balance" policy.[36] UKBA states that: 'we will protect genuine refugees, but remove those who come to the UK for economic reasons and clog up our asylum system'.[37] In turn, their latest press release detailing facts and figures specifies the following "successes":

- *In December 2008 we successfully met our target to conclude 60% of new asylum cases within 6 months.*
- *Asylum intake is less than a third of the level when it peaked in 2002 (84,130).*
- *The UK Border Agency is continuing to address older asylum cases with more than 220,000 cases concluded to the end of September 2009. This is an increase of more than 22,000 since the end of May.* [38]

[36] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/publicperformancetarget/tippingpoint/firstquarter.pdf?view=Binary
[37] UKBA (2009) *Key Facts and Figures*, November 2009. Available at: http://www.ukba.homeoffice.gov.uk/aboutus/ourwork/keyfactsandfigures/sources/
[38] ibid.

Indeed, with a focus on strengthening borders, decreasing the numbers of individuals seeking asylum, increasing deportations, building more immigration removal centres and introducing more criminalising legislative rules such as section 2 of the 2004 Asylum and Immigration Act, it is fair to say that the asylum regime is becoming yet more increasingly restrictive and draconian.

In a culture that promotes the speedy processing of asylum claims, UKBA first instance decision makers work in a highly pressurized environment, involving time and targets, as well as the pressure to ensure "correct" decisions are made.

The experts interviewed stressed the target culture, the high turnover of staff, the low salaries and lack of research training amongst UKBA caseowners. All of these factors were seen as explanatory causes for the poor use of COI by caseowners and bad quality RFRLs. Indeed, it is suggested that a lack of time together with a lack of skills to adequately read through and understand lengthy country reports provides ideal circumstances for paragraphs of COI to be picked out of context and used opportunistically in support of a decision.

The questionnaire data showed that the caseowners who stated their ideal time for conducting COI research, estimated that on average it would be 7 hours 42 minutes. By comparison, the average time individuals spent on a case in total, (including all the administrative duties, interviewing and so forth), was just over 15 hours of which 22% would be spent on COI research (3 hours 18 minutes). Thus, the ideal time is over double what they currently spend.

Given the lack of time, a reliance on centralized information sources (such as COIS reports and key documents) is quicker and easier to navigate than extensive sources of COI available in the public domain. Furthermore, such an environment is not conducive to properly assessing the evidence at hand and attaching weight or undertaking source assessments. This is also why, for example, some caseowners state they do not have time to conduct COI research prior to interview, which in turn impacts on the quality of questions posed.

For UKBA caseowners, one can see why the OGNs may be employed usually as the first port of call – the information is succinct, categorized, provides guidance, and points to "key paragraphs" of the COIS reports. However, one cannot underestimate the political dimension to these papers nor the selective nature of the COI contained in them, and the effect this may have in deciding the case in hand and the use of 'supportive' COI that ensues.

For example, following the promulgation of the Country Guidance case on Zimbabwe *RN*[39] on 19th November 2008, the Home Office Country Specific Asylum Policy Team (CSAPT) updated their Zimbabwe OGN on 1st December to reflect the conclusions of the new case law. However, on 24 March 2009, CSAPT produced a new OGN which departed from the conclusions in RN and replaced the previous main category (3.6) "Those unable to show support for or loyalty to ZANU-PF" with "MDC supporters, human rights defenders and other perceived opponents of ZANU-PF" thus narrowing those categories of persons at risk.

Furthermore, with the time pressures and constraints of the job as well as the negative political context, one observes a high turnover of staff together with a non-questioning of the system and "taking the party line". With a multitude of asylum policy instructions, the existence of OGNs and the categorization of claims, the processing of asylum claims has a mechanical and

[39] RN (Returnees) Zimbabwe CG [2008] UKAIT 00083 (19 November 2008) http://www.bailii.org/uk/cases/UKIAT/2008/00083.html

dehumanizing aspect to it. In one sense, this is manifested in a misapplication of COI.

Poor initial decision-making and a suspicion of a "refusal culture" were noted amongst most of the legal representatives and experts interviewed. 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.

Finally, it is important to also note that there is a concern that particularly in cases within the detained fast track, levels of COI research may suffer. This is not only due to severe time constraints but also because fast track cases are often deemed not to be "complex". However, good usage of COI is absolutely essential within this process.

The practical implications of the adversarial structure on COI provenance and consideration at appeals

Structurally, at the appeals level, the lack of time and the adversarial system create further consequences. Experts feel as though they are being "squeezed" out of the RSD process through attacks on their credibility by HOPOs and IJs as well as by poor guidance from solicitors.

Furthermore, IJs are also under pressure to write their determinations under time constraints, and as raised in one of the focus groups, within a culture that is not favourable towards adjournments. This is problematic because adequate time must be afforded to legal representatives to submit further COI, if the COI provision was deemed to be inadequate and did not shed sufficient light on the complex issues at hand.

Within an adversarial system, one observes a tendency to oppose – a tendency to contest "fact" with "fact" with different versions of the "truth" presented by either side. In turn, this creates tension between the way the different stakeholders, often guided by their own professional duties, approach COI. This can come at the expense of providing COI that attempts to approximate an objective reality. Indeed, the adversarial structure makes the parties to the dispute in the asylum cases uphold hardened positions on their case, including on the COI aspect of a case when it is totally unwarranted. In turn, this prevents the emergence of a consensus on the COI aspect of many cases.

Financial Constraints

Financial constraints affect all parties in the RSD. Legal representatives, in particular, are being increasingly squeezed by the Legal Services Commission (LSC) under the 'Unified Contract' introduced in 2007. This provides for a fixed fee to be paid for each stage of a case, (i.e. for preparation of an application and for preparation of the appeal). The fixed fee will be paid regardless of how much or how little actual preparation time is spent. The questionnaire data shows that the average ideal length of time a legal representative would spend researching COI would be 4 hours 48 minutes. Under the Unified Contract, the more time spent on a case, the lower the hourly rate. So the incentive is to spend less time on each element of preparation, including consideration of the country material.

The cuts really started to bite in April 2004, when the LSC introduced a new funding framework for legal work in the field of immigration and asylum. In summary, this created a new contract specification for those undertaking legally aided asylum and immigration work. Capped fees for individual cases and a "performance indicator" that required practitioners to meet a 40% success rate in their cases were introduced. The impact of this, coupled with the longstanding refusal of the LSC to increase its hourly rate to take account of inflation, a practice which continues to this day, were felt widely. It was possible to apply for an extension of funding to go beyond the cap but these involved a lot of unpaid administrative work and were often refused by the LSC.

Increasingly, experienced providers began to pull out of doing publically funded work. Lack of access to quality legal advice has caused or contributed to the refusal of asylum claims when protection should have been granted, leading to destitution for those wrongly refused asylum who are nevertheless unable to return home due to continuing fear of persecution. [40] Indeed, due to the restrictive controls the LSC exercise over practitioners, particularly in respect of the very harsh merits test that has to be applied before legal aid can be granted to represent asylum seekers at appeal, they have been labelled the "gatekeepers of justice" [41] as representatives battled to negotiate the tight time frames, the bureaucratic process of seeking extensions, whilst maintaining successful outcomes rates.

"Reforms" since have exacerbated the situation even more. The graduated (i.e. fixed) fees scheme applies to all those asylum claims lodged with the Home Office on or after October 1st 2007. The graduated fee scheme allows practitioners to apply for their preparation time to be paid at an hourly rate only if the preparation time exceeds three times the fixed fee. However, as is usually the case, if the work takes longer than the fixed fee allocation but less than the three times band, no flexibility is offered. The case is then run at a massive loss to the firm because all the work done over and above the fixed fee is effectively done on a pro bono basis. The Unified Contract has come under scathing attacks for being misconceived and inadequate. Furthermore, the new bid round, whereby firms have to bid again for a new contract starting in October 2010 is currently underway. Even the LSC has recognized that significant numbers of advice providers will not be eligible to bid. The Law Society forecasts these further reforms will exacerbate the negative impacts felt following the 2007 changes. This includes a decrease in the number of solicitors providing legal advice; poorer quality advice; and increased numbers of asylum seekers denied representation and justice.[42]

As Edward Nally, Law Society president stated in 2005, following the crippling reforms: "Asylum solicitors are already among the lowest paid in the profession. I fear many of them will stop doing this work if there is a risk they might not get paid. We think many good immigration and asylum solicitors will be driven away from publicly funded asylum work". [43] Indeed, the Law Society observed a steady decline in the numbers of solicitors' offices undertaking legally aided asylum and immigration cases, dropping from 302 to 264 between September 2005 and February 2006. Between 2003 and 2006, there was also a 24% drop in the number of immigration matters commenced by LSC contract holders.[44]

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[40] Greater London Authority (February 2005) *Into the Labyrinth: legal advice for asylum seekers in London.*
[41] Asylum Aid and Bail for Immigration Detainees (April 2005) *Justice Denied: asylum and immigration legal aid – a system in crisis.*
[42] The Law Society (04/02/09) *Civil legal aid plans will shrink pool of solicitors providing access to justice.*
http://www.lawsocietymedia.org.uk/site.php?s=1&content=35&press_release_id=1046&mt=34
[43] The Law Society (23/03/05) *Politicians join Law Society in condemning Government's new asylum policy*.
http://www.lawsocietymedia.org.uk/site.php?s=1&content=35&press_release_id=702&mt=34
[44] McClintock, J. (2008) *the LawWorks Immigration Report: Assessing the Need for Pro Bono Assistance*. London: LawWorks.

This is supported by the Independent Asylum Commission's 2008 report which found that there is a lack of legal advice for individual asylum seekers during their initial interview leading to unjust decisions; there is a shortage of solicitors to represent appellants; and that the legal aid cuts have led to an increase in appellants appearing unrepresented.[45]

The current position is that the quality of asylum advice is immensely varied: whilst some practitioners are enormously skilled, others lack training and knowledge. 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. As noted in the Results section, the lack of time under the funding regime means that some individuals conduct COI research in their own time. This not only compromises the quality of case preparation with respect to COI research since it is entirely dependent on the sustained good will and ability of the practitioner to work out of hours, but also adds to the disillusionment some individuals feel with the system.

COI is only one aspect of the preparation or determination of an asylum claim that is affected by financial constraints. As noted by one legal representative, the system has such a variance in quality that the taking of an adequate witness statement is not even guaranteed. 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. Thus, the great reliance on COIS reports, for example, is not necessarily related to their quality but indeed, the larger context of funding constraints, lack of time and a deficit of skills.

The legal aid funding regime arguably compounds not only the quality of advice but also the quality of COI usage, because individuals do not have adequate time to conduct research.

b) The refugee roulette: diversity and disillusionment

Variance in quality:

The second theme identified from the research relates to the differential levels of quality and expertise within the RSD system. Given the huge variance in the quality of individual actors within each of the stakeholder groups, namely legal representatives, UKBA staff, IJs and experts, the RSD process can almost be seen as a lottery in terms of the predicted and actual outcome of any individual case.

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.

[45] Independent Asylum Commission (2008) *Saving Sanctuary*. London: Independent Asylum Commission

Variance in initial decision-making:

The government has faced significant and well-founded criticism regarding inconsistency in its decision-making. For example, the Independent Asylum Commission found an unacceptably poor standard of initial decisions. Specific findings included inconsistency in the quality of first instance decisions; an inappropriately high workload for NAM caseowners; an inadequate understanding of the circumstances facing asylum seekers and a disproportionately high rate of success of cases at appeal indicating poor initial decision making. [46]

The Commissioner went on to state: 'The UK Border Agency decision makers do not always have access to up-to-date and relevant Country of Origin Information (COI), nor apply it appropriately to each case to help them make good decisions'. [47]

The statistics of initial decision-making also suggest that the quality is indeed poor. The latest Home Office statistics for the third quarter of 2009 show the following: [48]

- The number of applications for asylum, excluding dependants, was 24 per cent lower in Q3 2009 (5,055) compared with Q3 2008 (6,685).
- In Q3 2009, 7,240 initial asylum decisions were made, excluding dependants, an increase of 38 per cent compared with Q3 2008 (5,230).
- 79 per cent of initial decisions were refusals, 12 per cent were granted asylum and 9 per cent were granted Humanitarian Protection or Discretionary Leave.
- The proportion of appeals dismissed was 64 per cent in Q3 2009, whilst 31 per cent of appeals were allowed.

Thus, while 79% of initial claims were refused, 31% of appeals were allowed. This is a very high rate, particularly given that some asylum seekers go to court unrepresented.

As part of its supervisory role, UNHCR has undertaken a quality initiative project analysing first instance decision-making and working with the Home Office to make improvements. Since its first report was published in February 2005, repeated complaints have been made regarding the use of COI in decision-making. This includes an inadequate application of COI, use of speculative arguments in RFRLs, reliance on standard paragraphs, often not tailored to the individual, a failure to analyse evidence and attach weight, and the misapplication or misinterpretation of Convention principles. [49]

Research conducted elsewhere supports these findings. For example, having analysed 83 RFRLs, IAS found evidence of COI not being used at all; inconsistency in the use of COI and the understanding of its function; a consistent pattern of under-use; poor referencing; inaccurate use; use of outdated or undated COI; and the use of standard paragraphs. [50]

Furthermore, in a study based on the examination of 200 RFRLs, Trueman demonstrates how decision-makers attempt to discredit claims rather than establish their substance; subjective assertions are made; and decisions are often based on inaccurate or distorted country information. [51]

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[46] Independent Asylum Commission (2008) *Saving Sanctuary*. London: Independent Asylum Commission.
[47] Ibid
[48] Home Office. *Control of Immigration: quarterly statistical summary, United Kingdom: July-September 2009.* Available at: http://www.homeoffice.gov.uk/rds/immigration-asylum-stats.html
[49] For copies of all the UNHCR Quality Initiative Project reports and the Minister's responses, see: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports
[50] Immigration Advisory Service (2009) *The Use of Country of Origin Information: Critical Perspectives.* London: Immigration Advisory Service.
[51] 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.

Despite the results gathered for this publication indicating that there has been an improvement in the quality of RFRLs in recent times, the findings also suggest that this area still remains hugely problematic. Training, monitoring, greater time and resources, as well as full Internet access could all however facilitate improved usage of COI at the initial decision-making phase and contribute to higher quality initial decision-making.

Variance at appeals:

The results of the data gathered from legal representatives, experts and UKBA caseowners highlighted an "IJ lottery". Interviewees commented on how divergent conclusions and decisions could be reached, depending purely on the IJ one stands before. This is of grave concern. In particular, attention was drawn to a minority of judges who reportedly routinely dismiss claims unfairly.

One of the effects this has on COI research is that this can encourage the use of unreliable sources, such as Wikipedia, amongst legal practitioners. This is because it is felt that appeals are a "desperate last attempt" and depending on the IJ within the "IJ lottery", poor source selection may not even be noticed.

Given the variance in the quality, knowledge and analysis skills amongst IJs, the approaches to COI can be tactical in order to play the "refugee roulette" effectively. For example, as explained in the result, one legal representative explained how (s)he employs COI strategically, not using all of it in the first appeal, in case the case is heard by an IJ who is "not open to persuasion".

One of the reasons for the differential quality of judicial decision-making was attributed to a need for greater training. Indeed, amongst the judges interviewed, only 1 out of the 5 knew of the IARLJ guidelines, which detail a good practice approach and a checklist for dealing with COI. [52]

Experts also noted divergence in the quality of Immigration Judges. In particular, attention was drawn to a need for training in research skills and the evaluation of methodologies of data collection. It was noted by some experts that a misunderstanding of statistical data methods and data gathering techniques existed amongst some IJs and that this in turn impeded their ability to objectively assess the quality of sources.

Another reason proposed for inconsistent decision-making was the subjectivity involved in the process. According to the legal realist tradition, [53] interpreting the law involves a level of subjectivity – notably, the values and beliefs of the individual judges. This was a recurrent finding from the data gathered, in part, from legal representatives, experts and one UKBA caseowner. Therefore, one must account for the variables of individual values, beliefs, experience and training in order to understand the "IJ lottery". All these factors impact on how IJs interpret COI and may also affect plausibility assessments.

[52] International Association of Refugee Law Judges (IARLJ). Country of Origin Information – Country Guidance Working Party (2006) *Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist* (a paper presented at the 7th Biennial IARLJ World Conference, Nov. 2006).
[53] Linde, HA (1972) 'Judges, Critics and the Realist Tradition'. *Yale Law Journal,* Vol.82, No.2, pp.227.

Perceptions of an unjust RSD process – the refugee roulette:

The RSD system (and its constituent parts) were described by some of its critics as "political", "irrational", "illogical", "nonsensical" and "unfair" where it is a "survival of the fittest" as to whom will receive refugee status. These are damning perceptions of a legal process, where all parties involved work within a system committed to justice.

Indeed, amongst legal representatives, it is often a perception of injustice that drives much of the feelings of cynicism about the system as well as a commitment to uphold the rights of individuals seeking asylum. Amongst experts, a personal and political injustice is felt. This is derived from suspicions of or attacks on their personal and academic credibility; a feeling that the politicisation of some of the information relied upon in RSD is not questioned; and finally that the Home Office's political aim of shrinking asylum numbers is a driving factor within decision-making.[54]

The cynicism observed amongst legal representatives and experts about the entire RSD process, is not only derived from the variance in the quality of decision making per se, but also a (perceived) variance in political outlook. The role subjectivity plays within the determination process and within the approach to COI means that there is inevitably a political undercurrent when an individual deals with an asylum claim.

It is therefore important to note that using information necessarily involves an interpretative step and thereon a level of subjectivity. The role subjectivity plays can be observed in some refusals that are based on credibility issues and the alleged implausibility of an individual's claimed fear or risk of persecution. Good highlights that there are cases where this may be due to cultural misunderstanding or cultural subjectivity. [55] Claims may not seem credible when considered within one's own Eurocentric sociocultural or political context or there may be difficulties in assessing the cultural significance of facts.

Furthermore, due to the nature of the origins of knowledge, all information production is also arguably political. Indeed, the idea of politics influencing information production and usage was a common finding. For example, members of 3 of the 4 stakeholder groups believed that there was a relationship between COIS reports and a political agenda. Given this and the fact that COIS reports are the primary and often the exclusive source used in initial decision making and are arguably one of the most relied upon sources in the AIT, many individuals expressed considerable scepticism about the objectivity and fairness of an RSD process which relies on such "knowledge".

However, in some cases the politicisation of information was misunderstood. For example, it was noted that experts are seen as biased by a member of the COIS department, simply based on the fact that they often present evidence on behalf of the appellant. Undeniably, there is variance in the quality of experts, but to mistrust all experts on this basis is simply unreasonable and unwarranted. Furthermore, a mistrust of reports produced by UNHCR and NGOs was observed amongst some UKBA staff, who considered the information contained therein to be guided by policies that UKBA does not necessarily agree with or follow.

[54] However, it is important to also note that experts' views may be slightly influenced by the fact that they usually are only part of the RSD process at the appeals stage and therefore only see RFRLs rather than grant letters. Furthermore, as noted in the results section, the worse one's experience at the AIT has been, the more critical of the system, experts tended to be.

[55] Good, A. (2003) *Professional Liars? Uses of Anthropological 'Objective Evidence' in British Asylum Appeals*. Manchester: ASA Decennial Conference, July 2003.

Thus, whilst some of the legal representatives and experts interviewed talked of the partiality of COIS reports and its intricate links with UKBA's asylum policies, some HOPOs criticized NGO reports as "biased". Thus, disillusionment is felt by all players within the "refugee roulette", since all are perceived to sit on one side of the fence or another.

Politicisation of decision-making:

Also noted was a politicisation of the use of COI and of decision-making as a whole. Indeed, that refusal letters contain speculative argument, misquoted COI, selective COI and COI taken out of context, fuel these perceptions despite the fact that in theory the system need not be adversarial at the initial decision making phase.

Some of the experts and legal representatives interviewed also spoke of a "refusal culture" as noted in the results. One expert, when describing the poor use of COI at the initial decision-making stage stated that: 'the idea is to say no to everyone as a matter of principle'. In part, this was also attributed simply to time and a political pressure to meet targets, as justifying a grant often will take more time.

The perceived or real politicisation of information and decision-making impacts on the cynicism with which some individuals view the 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.

In a Guardian article in 2008, experts commented on the politics of decision-making, drawing attention to a belief that the "refusal culture" also extends to the AIT. One Middle East specialist stated: "Impartiality is a non existent concept… The political agenda to reduce the number immigrants tends to colour the view of those who are sitting in judgement". Another retired expert added, "there has been a desire by the adjudicators to fall in line with the government's anxiety about asylum". [56]

The existence of OGNs within the RSD process is also problematic as it encourages a conflation between policy and decision-making. The COI contained within the documents is not subject to any independent scrutiny and is arguably selected on the basis of it being "favourable" to or supportive of the given policy position on broad categories of asylum claimants for any particular country. In the context of a politicized "refusal culture", caseowners are guided by a top-down policy that at the very least seeks to homogenize individual asylum claimants and fit them within conveniently drawn categories that deny their individual experience and the individuality of their claim, but also arguably seeks to limit numbers of successful applicants. As stated earlier, the OGNs can too often act as a "short cut" for caseowners in accessing COI and in reaching a decision about individual cases, making them and their COI content all the more controversial.

Although UKBA caseowners are uncritical in their use of OGNs, their continued existence and the widespread reliance on them should be questioned, as should the fact that they contain COI which is selective and not subject to impartial scrutiny.

Above all policy considerations should be removed from the decision-making process on asylum claims in order to ensure an objective and fair case-by-case appraisal of individual claims, as required by the Refugee Convention.

[56] Hirsch, A. *The Guardian.* 27/10/08. Available at: www.guardian.co.uk/education/2008/oct/27/alan-george-libel-case

Cynicism towards the RSD process

Whilst it was generally agreed that implementing good practice of the use of COI could encourage better decision-making, some individuals highlighted that whilst in theory this should be possible, in practice it is problematic because this also requires political will.

For example, one practitioner believed that COI plays a certain role within the RSD process: 'Well it's a way that the Home Office can try and legitimise their refusals'. Thus, COI is perceived here to be a tool of "objective" evidence used to mask the subjective processes at play.

Alongside disillusionment with the system, a sense of powerlessness amongst some legal representatives also exists. For example, one legal representative spoke of the system being stacked against asylum seekers as reflected in CG determinations. This sentiment together with the feelings amongst some of the experts that they are being "squeezed out of the system", indicates a pessimistic perception of the RSD process.

Finally, one observes a sense of disillusionment towards the RSD process amongst some of the UKBA staff too, which has arisen from individuals who abuse or are perceived to abuse the system. In one multi-stakeholder focus group discussion, the idea of a "refusal culture" was debated in the context of discussions on how cynicism within UKBA can develop. The discussion highlighted a need to take an almost mechanical approach to decision making as a self-defence mechanism against "being lied to". The impact is manifested (or perceived to be) in the form of the dehumanization of asylum seekers in the processing of claims.

c) The UKBA Labyrinth

Using the findings from UKBA staff and the other stakeholders, this section seeks to explore inside the UKBA labyrinth in order to identify the processes underlying the use, access and analysis of COI amongst UKBA staff. Based on the results, certain key issues come to the fore:

- The use of one-dimensional knowledge
- Centralising the management of information usage
- Bureaucracy and the isolation of knowledge
- Adversarial method of use of COI

The use of one-dimensional knowledge

The majority of the UKBA caseowners/ caseworkers interviewed stated that they do not use the COIS report alone as their form of COI. However, often it is quotations from COIS reports that are cited in RFRLs. Moreover, when asked to list what sources individuals used in the questionnaires, whereas legal representatives listed a diverse and large number of sources, UKBA staff overwhelmingly cited COIS and USSD reports as their top two sources.

Furthermore, the questionnaire results also showed that 54% of UKBA staff believed that an individual report can cover all specific research needs "for the most part", compared to only 14% of legal representatives. By contrast, 48% of legal representatives believed that such a report can "rarely" or "never" cover such specific requirements, compared to only 10% of UKBA staff. Indeed, the COIS department only receive 1600 special requests per year, which compared to the

number of asylum claims per year is worryingly low.

Given that no one definitive report can cover every event or every claim, these results, particularly amongst initial decision-makers, is of concern. This is particularly because the COIS specific research service is evidently underutilized, receiving approximately only 1600 requests per year. Despite attempting to cover the majority of asylum claims, it is important to highlight that these reports do not allow the level of complexity necessary to gain a holistic understanding of a country or an individual claim.

As touched upon earlier, the way COIS reports are written and presented can almost encourage misinterpretation. This is not only because things may be factually incorrect but rather because the reports lack any sort of measured assessment with contradictory arguments not explained and simply left open to interpretation. Thus, individuals can approach the information within the report selectively.

Although, not disputing the positive elements of having a report written in such a way that it is left open to interpretation, one must also consider the negative impacts too. Given the pressures of time that caseowners are under, together with a lack of skills identified through some of the data collection, having information presented in such a fashion can be dangerous. Information can be misunderstood or taken out of context. Furthermore, given one caseowner's admission that "key paragraphs are relied upon again and again", there is also a concern that information is recycled without proper consideration of the specifics of the case in hand.

Of concern is that at the initial decision-making phase, caseowners are, for the most part, relying on the COIS report. This then feeds into the RSD process at later stages because the RFRLs are used by HOPOs to form the basis of their arguments. Only one UKBA appeals worker noted that they would check the initial use of COI and cross-reference the accuracy in the RFRL in the interviews. This is of concern given the inaccurate use of COI noted in the results and in the reports mentioned earlier.

Centralizing the management of information usage in decision-making [57]

Information access is centrally managed for UKBA staff, for example by the COIS service, CSAPT or the Presenting Officers Research Unit. As stated earlier, material is provided through the Horizon Intranet system, where UKBA's own products such as COIS reports or key documents are made available together with certain links to external sources.

As the results from the questionnaires highlight, the most commonly cited barrier to access was the Internet and its associated technological problems and/or restrictions. It is therefore fair to assume that this limits the amount of research conducted using sources outside those offered within the Intranet portal service.

Particularly with regards to COIS reports, itt is important to note that simply incorporating diverse sources does not signify objectivity or reliability. Whilst the COIS department of the Home Office espouses that its research does not aim to analyse, one cannot deny that in the mere selection of material, an interpretative step is required. Through selection and the 'cutting and pasting' process, nuances are made and 'objectivity' is compromised. The information within compiled reports, when selected for and used within the determination process, present and represent a

[57] This sub-section draws on: Tsangarides, N. (2009) The Politics of Knowledge: an examination of the use of country information in the asylum determination process. *Immigration, Asylum and Nationality Law Journal, Vol.23, No.3*.

distorted snapshot view of reality that fails to capture historical contingencies and multiple identities in existence in countries of asylum seekers' origin. This highlights a key limitation of compiled reports in the systemisation of COI and categorization of asylum seekers.

It is important to recognize that the information contained in the COIS reports betrays a perception of the world shared by those producing it. Thus, in the world of simplifying the RSD process and categorizing claims of asylum seekers, the report presents information in a highly schematized fashion, with all encompassing section headings such as 'women'. Through reductionism and objectification, in addition to the categories of risk laid down in CG cases, certain "types" of refugees are produced – ones that fit directly under the headings and whose claim matches the background evidence and predetermined categories.

Organising knowledge in such a way as to make it the most "legible" form of information for UKBA caseowners, not only ensures the use of one-dimensional knowledge, but also allows for the increased possibility of the centralized management of decision-making and what information is used within the decision-making process.

Bureaucracy and the isolation of knowledge

As stated earlier, in order to make a special request for information, the individual must first exhaust all search possibilities, and then ask the senior caseworker whether they can indeed put in a request. This bureaucratic step can arguably be seen as an off-putting factor given the pressures to work within tight time-frames.

The bureaucratic division of labour amongst UKBA staff presents an "isolation of knowledge" where different groups of individuals are responsible for different areas and have differential forms of access to COI.

However, with knowledge located in different and isolated pockets of UKBA, one consequence is that assessing the reliability of sources is deferred. Results show that this stemmed from a lack of authority; the status quo; and lack of skills. For example, caseowners explained how the use and analysis of "new" sources is not undertaken without consultation and approval from the COIS department. Thus, there is a lack of personal initiative and disempowerment created through the division of labour. This in turn could arguably dissuade caseowners from conducting further research, future analysis or finding new sources.

Indeed, one UKBA staff member talks about the need to follow "the party line" in explaining the situation, suggesting a non-questioning of roles and senior-level decisions. The results from the interviews with UKBA staff also highlight a lack of awareness about how others within UKBA use COI. For example, one HOPO stated: '… my knowledge of how much it's used before a decision is actually made is limited. I'm not sure [how] to what extent caseworkers or caseowners rather would look at objective information before they interviewed somebody for example'. This suggests that the isolation of knowledge is also intricately linked to a blind faith in the system without awareness of others' practices.

Furthermore, it is important to note that a lack of awareness of how others use COI as well as the fact that each individual has a distinct job role with a limited remit means that a lack of accountability is somehow entrenched within the culture.

The division of labour leads to disempowerment and the isolation of knowledge. For example, one observes the development of a lack of agency firstly through deferring to the COIS department

about analysis, and secondly a feeling that they cannot analyse information, for example, due to a lack of skills.

The isolation of knowledge is mutually reinforced by the centralization of information – for example, the reliance on COIS reports and other centrally produced information as well as the inability or lack of usage of new sources. This is all combined with "taking the party line".

Adversarial method of use of COI

The method of use of COI in the RSD process amongst the UKBA staff interviewed demonstrated an adversarial use of knowledge, at both the initial decision-making and appeals stages.

One of the findings from the interview data was that COI is sometimes used to support decisions rather than form the basis of them. Rather than COI being used to assess a claimant's credibility, for example, it seems that COI sometimes is used to back up decisions made prior to COI consultation. In this way, the use of COI becomes distorted to fit end goals.

When looked at from this perspective, one can understand why there is less analysis of COI. As reported in the results, one caseowner explained: 'I think for doing asylum decision work, it's more about using the country information to either back up one of your arguments or to argue against a point an applicant has made. So it's not really analysing it as such'. Furthermore, another interviewee explained how COI has its limitations when making credibility assessments: 'In terms of whether someone is telling the truth it's often a judgment call based on your experience of that person and of different claims'.

Thus, the role subjectivity can play in the use, non-use, selection and interpretation of country information cannot be underestimated. Of concern is the fact that COIS reports are written in such a way that they are open to interpretation. Although this undoubtedly has its benefits, without adequate training and research skills, its use can be problematic. This is particularly the case if some individuals use COI to support rather than inform their decisions.

An UKBA caseowner commented on whether COI can be objective in an adversarial system: 'I mean, to me that is the… fundamental problem…is that you have a huge enormous report where there are so many different types of information coming in. Quite a lot of the time you can pick whatever you want to back up your argument, rather than it being, ok this is the way it is. The world is not black and white, the world is grey'. This quote shows the space for subjectivity in interpreting and using information, which therefore must be approached with caution.

An adversarial approach is also taken with diverse forms of COI in order to discredit certain sources. For example, an UKBA caseworker explained that one form of discrediting sources is to challenge the reliability of sources from the Internet whilst HOPOs challenged the validity and balance of NGO sources.

Thus, within an adversarial system, the possibility of ever achieving "objective" information becomes ever more problematic. This adversarial use of COI means that as a sector, individuals continue to move even further away from attempting to objectivity. COI that is neutral or does not advocate one side or another will not come to the fore. Thus, without independent documentary provision being provided on a case-by-case basis for all parties, the usage of COI will arguably continue to remain problematic.

d) Communication

One of the striking themes to emerge from the results is a lack of communication and dialogue between and within the various stakeholder groups. As a result, the impact is felt in perceptions or misconceptions of the other groups, often with hostilities developing. Secondly, a sense of isolation emerges reinforcing the disempowerment that some individuals within the stakeholder groups experience. This is despite multi-stakeholder engagement facilitated by the IND and UKBA for the last twelve years ostensibly to encourage better communication.

Lack of communication within UKBA

As stated earlier, one observes an isolation of knowledge within the bureaucratic structures of UKBA. This is not only between, for example HOPOs and caseowners as previously outlined, but also between the information producers and users. Although channels of communication exist in theory, for example, through feedback forums and special requests, in practice, communication is limited.

The COIS department do not have any insight or knowledge as to how their information is used so do not see, for example, their use in grant or refusal letters. Indeed, one individual from the COIS department explained how a "Chinese Wall" separated COIS from the decision-makers in FG1, except for the feedback forum. However, as a group of caseowners explained in FG6, the channels of communication are not strong at all, with feedback comments not necessarily taken on board and presentations reportedly being non-engaging.

Furthermore, caseowners heavily rely on the COIS department, particularly for special requests, using new sources and to conduct source assessments. However, with the poor communication and evidence of a variance in the quality of special requests, this reliance is of concern.

Due to the interpretative nature of COIS reports, it is fundamental that heightened communication develops. As per the recommendation in UNHCR's 2nd report to the Minister, the COIS department should be gauging caseowners' comprehension of the latest information.[58] This could ensure better application of COI and a greater understanding of how to apply relevant COI that is specific to the case in hand.

The COIS department however seems to be in a difficult position pulled on the one hand by satisfying the demands of the then APCI, (now subsumed under the Office of the Chief Inspector as the IAGCI), whilst on the other, responding to the needs of caseowners and the demands of senior management.

Experts & Legal Representatives

There appeared to be a lack of adequate communication between legal representatives and experts. This entails a failure on the part of legal representatives to communicate the Practice Directions and how the expert evidence is received in the AIT to experts, as well as both parties not abiding by instructions.

By contrast, some legal representatives spoke of their frustrations with some experts who overstep their role as an expert when writing reports, or go beyond their remit. Other legal

[58] UNHCR Quality Initiative reports and the Minister's responses, see:
http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/

representatives spoke of an over-use of experts in some cases, where it simply is not necessary.

However, once again this points to the differential levels of quality that exist in the system. Those legal representatives with little experience of instructing experts and limited country knowledge may be instructing experts poorly and unnecessarily. When poor instructions are received with the wrong questions being asked or key facts not being explored, an expert may well highlight that one is taking the wrong approach to the case in hand. Equally, with the varied standard of experts in existence, inexperienced experts who have no knowledge of the Practice Directions may not know the limits of their role or the appropriate language and formatting they should employ.

Most of the experts interviewed agreed on the need for training for experts. Such training should cover how the AIT and the RSD process function; how expert evidence is treated and what happens to reports in the adversarial setting; explanations of the Practice Directions; an outline of the duty of experts; and the limitations of their role.

Information Producers

There is also a lack of communication between experts and other "information producers", namely the UKBA COIS department. The failure to take on board the lessons and sources of COI emerging from CG cases, is a point for grievance amongst some experts. This is particularly the case when so much time and resources have been put into proving a particular point in the COIS report is wrong or if the sources contained within it are "erroneous and misrepresenting".

For example, in the Iran COIS report, there is a paragraph that talks about a park in Tehran where homosexuals can meet. This paragraph is regularly relied upon in RFRLs in Iranian homosexuality cases to refuse a claim for protection. However, this same paragraph was thrashed out in CG cases with the translation of the Iranian law on homosexuality proven to be incorrect by the experts at the Tribunal. However, this point still has not been rectified and exists in the Iran COIS report of August 2009 in paragraph 21.46. [59]

There is evidently a need for heightened communication between experts and the COIS department in order to ensure that the best possible information sources are incorporated and reflected in the reports. [60] Furthermore, the results proposed a "feedback loop" from CG findings into the COIS reports, when a piece of information has been found to be clearly wrong or out of date. Taken further, COIS reports would benefit from attending all CG hearings, listening to the expert comments, making direct links with country experts and widening their source bases in order to strengthen their reports.

Legal Representatives and UKBA staff

There can be a lack of communication between legal representatives and UKBA caseowners, for example, delivering the relevant information at the correct time. However, individuals from both groups commented on the benefits of the Solihull pilot with regards to higher levels of communication assisting in COI research and case management.

[59] UKBA, *Iran COI Report,* August 2009 http://www.homeoffice.gov.uk/rds/country_reports.html

[60] This is consistent with UNHCR's recommendation that the COIS department should invite external country experts. In their 3rd report to the Minister. http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports/

The Solihull Pilot emerged out of a proposal developed by UKBA and the LSC in March 2006 that sought to improve asylum decisions. The Pilot would allow claimants access to quality advice from legal advisors from the earliest stages of the asylum process. This involved a more interactive role for the legal representatives. All material facts and relevant evidence was to be available to the decision-maker prior to forming a decision.

An evaluation conducted in October 2008 found that the Solihull Pilot procedure had been successful based on a number of key success indicators: [61]

- Case conclusion targets met (cases where the applicant is integrated or removed within six months): In the third and fourth quarters, 58% of cases were concluded within a six month timeframe.
- Cost savings: Considerable potential savings in NASS, AIT and LSC costs have been identified in direct relation to the lower allowed appeal rate achieved in the Solihull Pilot.
- Faster, higher quality and more sustainable asylum decisions: where the Solihull Pilot procedure was followed, overall this was met.

The results relating to sustainable and quality asylum decisions are of particular interest. The reasons for the success included:

- More focused interviews lead to shorter interview times
- Faster recognition and integration of refugees
- More sustainable negative decisions with lower appeal allowed rate [62]

Furthermore, the evaluation found that: 'If this lower allowed appeal rate was replicated throughout the country there would be a tremendous saving to the "public purse"'.

Finally, communication was a crucial part of the success identified in the evaluation. Caseowners all stated that having all the necessary evidence before a decision helped them make well-reasoned decisions.

Indeed, this is something identified from the data collected in this research with legal representatives and UKBA caseowners. Due to the less adversarial nature of proceedings, there is heightened communication regarding the use of COI and which parts of an individual's case should be focussed on. Individual caseowners also explained how communication assists the decision-making process because the representative is providing country information directly and discussing the evidence with them, forcing greater levels of engagement for both parties. Moreover, this heightened engagement and communication arguably also prevents the dehumanizing of the asylum process, a concern raised by respondents who felt a pessimistic attitude towards the RSD sector.

[61] Aspden, J. (2008) Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission. Available at: www.parliament.uk/deposits/depositedpapers/2009/DEP2009-1107.pdf

[62] This element was met with a significant and sustained improvement in the period when the Solihull Pilot was properly operational. The Appeal Allowed rates in quarters three and four in the Solihull Pilot were half of those in Leeds and significantly less than those in the Solihull non-pilot cases.

e) Information Hierarchies [63]

The key issues derived from the results of the data with regards to sources are:

- ➢ Diverse opinions on some of the key sources employed within the RSD process, including COIS and USSD reports
- ➢ Scepticism of "human rights" reports such as Amnesty International amongst UKBA staff
- ➢ Some sources have a political element to them, which should be borne in mind when utilising them
- ➢ The greater the belief in a source's quality, the lower the levels of analysis undertaken
- ➢ A hierarchy of sources exists

In turn, this section seeks to discuss and scrutinize the development of the "information hierarchies". It will do so by examining the following themes:

- ➢ The development of information hierarchies
- ➢ The power/ knowledge nexus
- ➢ The clash of disciplines

The development of information hierarchies

Over the years, as the number of sources being used has grown with the generation of guidelines, COI itself has become a constructed field of knowledge. The results showed that there was, by and large, general agreement that a hierarchy of information exists, with some information sources being more readily accepted than others. Indeed, with the development of the new field of COI, albeit in its embryonic form, has sprung an accompanying discourse that generates a particular system of representation and defines the objects of knowledge, with the establishment of accepted sources and information hierarchies.

The hierarchies of knowledge that have developed have been created and are being sustained by the institutions that employ, assess and place weight on them when making decisions. This invariably means the Home Office initial decision makers and IJs at the AIT. Within this hierarchy of information, the sources most commonly used and relied upon include those produced by UKBA's COIS, the USSD, Amnesty International and Human Rights Watch. Of those who listed which sources were given more weight in the RSD process, the two most popular and indeed the only significant sources cited were firstly, the Home Office COIS reports and secondly, the USSD reports.

In contrast to the more accepted, unpublished sources, reports from little known NGOs or individual testimonies are used less frequently and are subject to higher scrutiny. However, it is interesting to note that testimonies, information from local informants or reports by small local NGOs that are included within compiled published reports immediately gain status and legitimacy through their very inclusion in those reports. Thus, the credibility of the organisation rather than the original source is what is concentrated on. In turn, the necessary criteria for what constitutes 'public domain' material should be examined and analysed in its full light.

[63] This section draws heavily on: Tsangarides, N. (2009) The Politics of Knowledge: an examination of the use of country information in the asylum determination process. *Immigration, Asylum and Nationality Law Journal,* Vol.23, No.3.

As sources become more "established" and relied upon, and the hierarchy becomes more ingrained, there are lower levels of analysis, less scrutiny and less application of new sources. As one barrister explains: '… people treat these reports [COIS reports] as if they were more than they really are…. Ultimately all they are an opinion about what happened… They're not gospel.' The selection and usage of COI has become a somewhat mechanical process with a failure amongst some decision makers, presenting officers and legal practitioners to cast a sufficiently analytical eye over presented materials, particularly those perceived to be "established". Indeed, there is a need amongst all stakeholders to challenge the hierarchies that have developed and remain aware of the politics of all information.

It is important to note that there are many contradictions with regards to having and believing in a hierarchy of sources. Firstly, a common finding across legal representatives, UKBA staff and IJs was a scepticism of sources that do not reference, with the consequence of them largely not being used. However, these same people then stated they would rely on USSD reports even though they do not reference because it is an "established source".

Secondly, despite the legal representatives who were interviewed having exceptional research skills and country knowledge, some said they would use any source, regardless of its reliability, such as Wikipedia. This is because at the appeals stage it is a desperate last attempt and because some even see the process as a lottery.

Finally, as explored earlier, one IJ explained that there is a reliance on compiled "established" reports to incorporate diverse materials and assess the sources included such as testimonies. Through inclusion in a compiled established report, legitimacy is gained. However, this draws attention to the timely TK determination (TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049 [64]) that forewarned of the dangers associated with labelling COI as "objective evidence" as it misleadingly may encourage a lack of scrutiny. Whilst one can attempt to approximate an objective reality by using multiple and diverse sources of COI, an important observation has been made in the TK judgement. The principle of scrutiny must be applied, particularly to compiled reports, and when there is an exclusive reliance on what are considered "established" reports.

Power/ Knowledge Nexus

An important point that emerged from the data was the power of judges in determining the value of sources and thereon the hierarchy of information. However, alongside this, was also a complaint that IJs are not adequately trained on COI research and methods of analysing data that primarily comes from the field of social science.

Experts noted the poor understanding amongst IJs of research skills, data gathering and statistics. For example, one expert explained how in regions such as the Middle East, most statistics such as GDP or GNP are meaningless because so much is a shadow economy or unrecorded and thus is not a useful guide. Another expert gave the example of an IJ relying on the lack of reporting on deaths of a particular ethnic group as an indication that it was safe to return.

[64] http://www.bailii.org/uk/cases/UKIAT/2009/00049.html

Indeed, there appears to be a popular misconception that if a source is published, it is somehow more 'real'. For example, this is demonstrated by the fact the compilation itself provides a legitimacy to sources that may not be relied upon if presented alone. Whilst 'rationality' and 'scientific' knowledge is favoured within the discourse of COI, other forms of knowledge, such as the indigenous or the unpublished become subjugated and labelled as inferior. This deterministic process of maintaining the hierarchy of knowledge thus extends a particular kind of information hegemony.

The selection of sources employed and relied upon routinely can be seen as a site of power and knowledge dominated and sustained by a certain discourse. [65] One needs knowledge to exercise power and at the same time, in producing knowledge, one makes a claim for power. The discourse of COI and its inherent information hierarchies can thus be seen to have been produced by power and also reproduce power relations within the world it describes, interprets and is used.

Through the distortion or creation of 'truth', claims for objectivity can be naturalized and thereupon decision-making is more easily legitimized. As Sweeney states:

> 'The real difference between the asylum seekers' evidence and the Home Office reports is that the former must be assessed by the immigration judge, whilst the latter is already deemed 'true'. This tips the scales in favour of the 'objective' evidence and, at the same time, reduces the scope of the immigration judge actively to engage with both sources. In other words, once again, the supplied 'objective' evidence that immigration judges merely present is allowed to outshine evidence that requires interpretation and analysis by them'. [66]

Thus, active decision making is downplayed 'in favour of apparently allowing the facts to speak for themselves'. [67]

'Truth', for example, is thus constructed and kept in place by a wide range of strategies, which support and affirm it, rather than interrogate it. For example, this is expressed through the creation of the Advisory Panel on Country Information (APCI), [68] a body set up by statute in response to consultations and pressures by opposition MPs to establish an 'independent documentation centre'. This documentation centre did not materialise and instead the APCI was created to provide independent advice and comments on the COI produced by the Home Office. Despite offering a level of transparency, the panel has various limitations: its recommendations are not binding and not all reports are examined as will be explored in the next section. [69]

Furthermore, there appears to be a common misunderstanding regarding the scope of the APCI's work, namely that its level of scrutiny of reports is significantly higher than it was. Yet what this misunderstanding highlights is the legitimacy that the APCI's existence lends to the COIS reports adding weight and power to them. Other means by which the construct of 'truth' is held in place include the introduction of Practice Directions and other professional guidelines, and even through the accessibility of information.

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[65] Foucault explains that 'the criteria of what constitutes knowledge, what it is to be excluded, and who is designated as qualified to know involves acts of power. See: Foucault (1971) cited in Pottier, J (2003) 'Negotiating Local Knowledge: An Introduction'. In: J. Pottier, P. Sillitoe and A. Bicker (eds. 2003), *Negotiating Local Knowledge: Identity and Power in Development.* London: Pluto, pp. 1-29.

[66] Sweeney, J.A. (2007) 'The lure of 'facts' in asylum appeals'. In: S. Smith (ed. 2007) *Applying Theory to Policy and Practice: Issues for Critical Reflection.* Aldershot: Ashgate. Ch. 2, pp. 25-26.

[67] Ibid. pp. 26.

[68] The 2002 Act laid out the government's plans to set up the APCI in s.142 as a monitoring facility of Home Office COIS reports. For more information, see Yeo, C. (2005) 'Country Information, the Courts and Truth', *Immigration Law Digest,* pp.26-28. The 2007 Borders Act created the post of the Chief Inspector and the work of the APCI has now been transferred to the Inspectorate. The precise nature, scope and remit of the APCI are currently being reviewed by the Chief Inspector.

[69] For a list of all the documents reviewed, see http://www.apci.org.uk/reviewed-documents.html (Date accessed 08 May 2009).

All of these mechanisms influence what types of knowledge are favoured and how this knowledge should be presented. In turn, all stakeholders become necessarily involved in the production and sustaining of the discourse because they are both players and implementers.

Clash of disciplines

COI incorporates knowledge from a variety of disciplines and sources, which for the most part, are not written with the RSD process in mind. Hence, there are significant research gaps in COI literature, with limited information available on specialised topics such as internal relocation. Furthermore, as stated earlier, this also provokes tension because these diverse origins present divergent modes of thought, mandates, and approaches to information production. Subsequently, attempting to create and implement criteria for an ideal standard of COI is problematic. Moreover, it means that there is a lack of consistency between the materials employed within the system, leading to a lack of coherence in the approach to and levels of analysis.

One of the findings from the data was that there is a disjuncture between expert knowledge and meeting legal tests. Indeed, there is a clash of disciplines between the law and social sciences with differing conceptions of "fact", truth" and "objectivity". This is illustrated, for example, when experts are asked to describe the threats posed by a non-state actor, the risks associated with internal relocation and questions surrounding a sufficiency of protection, in a particular language.

Experts, for example, are frustrated by what appears to be a limited or Eurocentric view amongst IJs, on the complexities of state structures or the functioning of society at a micro level. Furthermore, as Good explains the philosophical underpinning of the law is found to be extremely problematic amongst social scientists, particularly with regards to COI. He states: 'None the less, its positivistic overtones do seem to reflect a general failure by all parties – the appellate authorities, legal representatives, and above all, the Home Office – to recognize the contextualisation and subjectivity to which all knowledge is subject'. [70]

Within the RSD process, certain actors dictate what knowledge is more "valuable" than others through the information hierarchies– thus, one observes an ordering of knowledge for what is deemed to be reliable and important to RSD, with certain forms of knowledge relied upon or scrutinized more. [71] Indeed, in the case of experts, their evidence comes under heavy scrutiny by presenting officers and Immigration Judges. Reasons for discrediting expert evidence often involve a failure to abide by the Practice Directions, namely for not presenting a balanced viewpoint, perceived bias, and comments relating to credibility. Furthermore, in part due to the perceived inequality of arms [72] derived from the fact that experts are ordinarily used in support of the appellant, there have been accusations against and fears amongst experts of being perceived as a hired gun.

Whilst recognizing that there exists diversity in the quality of experts, it is important to note that personal attacks on the credibility of experts are reported as being commonplace, with a feeling amongst some that they are being squeezed out of the RSD process.

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[70] Good, A. (2004) 'Undoubtedly an Expert'? Anthropologists in British Asylum Courts'. *The Journal of the Royal Anthropological Institute,* Vol. 10, No. 1, pp.124.

[71] In the 'order of discourse', Foucault argues that discourse is able to be controlled and regulated with individuals or groups re-classified and excluded. See: Foucault, M. (1971) 'Orders of Discourse' *Social Science Information*, Vol. 10, No. 2, pp. 7-30. Foucault, M. (1981). See also, Foucault, M. (1970) 'The Order of Discourse' In: R. Young (ed. 1981) *Untying the Text: A Poststructuralist Reader.* London: Routledge, Ch. 3.

[72] Barnes, J (2004) 'Expert Evidence – The Judicial Perception in Asylum and Human Rights Appeals', *International Journal of Refugee Law,* Vol. 16, No. 3. Barnes explains that presenting officers do not have the qualifications to challenge expert reports and how the Secretary of State does not commission expert reports on the grounds of public cost. As such there is not equality of arms in asylum and human rights appeals, unlike in other areas of litigation, and this is why it is imperative that CPR directions are fully observed.

This has been supported by Good who highlights the accusation made by Heydon and Ockleton in 1996 that expert witnesses are 'close to being professional liars'. Good states that the attacks faced by experts on their integrity '… in turn can serve to rationalise their progressive exclusion from processes of judicial decision-making'. [73]

The control that the judiciary has with regard to accepting expert evidence together with the Practice Directions that define the duty of experts tips the balance in favour of the legal realm. Indeed, Good argues that the scrutiny that experts face and the pressure they are under to adopt a scientific methodological approach to presenting their information is in order 'to maintain its hegemony over the scientific and technical professions from which experts are drawn'. [74] Using the example of the use of hypothetical questions, Good states that experts are 'manoeuvred into commenting on a version of those facts constructed by the examiner' which means they are handing over power and control. Indeed, once there exists a professional monopoly over knowledge or an organized form of knowledge, there is a claim or an ability to exclude or subjugate other types of knowledge.

The newly constructed field of COI therefore contains a hierarchy of sources created and sustained by the more powerful stakeholders. However, fields of knowledge are dynamic and it is hoped in the future that the information hierarchies will be questioned, challenged and ultimately dissolved. The overarching criteria for selecting and relying on sources should not be because they are "established" but rather because they are relevant to the case, specific to the given facts of the case, and reliable in their content. In turn, this requires a use of COI, which is highly individualised, by all stakeholders involved in the RSD process.

f) Lack of transparency and accountability

A common theme amongst the legal practitioners interviewed was a lack of transparency in the asylum system. This encompasses the limited function of the former APCI; the absent code of conduct amongst HOPOs; the lack of respect and avenues for redress for experts; the "IJ lottery"; poor referencing in the COIS reports; the method of selecting CG cases; and the poor standards of legal representatives.

Particularly given the diverse quality of all stakeholders within the RSD process, there appears to be a great need to identify poor performers in each of the different stakeholder groups. The clientele in the asylum system tend to not be repeat clients as well as being sometimes vulnerable and often unfamiliar with the legal process. On top of this, the process is extremely complicated with the different appeals system. Therefore, one cannot rely on the clientele to make complaints or report offenders.

Furthermore, a solicitor and a COI researcher also explained the lack of transparency in judges' determinations. Apart from in CG cases, where judges set out the general country context, they generally do not tend to say in their determinations what sources their information comes from. Thus, it is difficult to ascertain what information was read, considered and relied upon.

As stated earlier, another issue of accountability that emerges from the data is that there are no avenues for redress for experts, albeit in the form of an entity or a person.

[73] Good, A. (2003) pp. 11.
[74] Ibid. pp. 10.

Thus, IJs are seen by some to experience a level of impunity, particularly when there are episodes where personal politics affects an IJ's treatment of evidence. For example, one expert was criticized for describing Israel's action in the West Bank as "colonisation" instead of the IJ's preferred word "occupation".

There were also complaints against the practices employed by HOPOs by both legal representatives and experts. For example, one legal practitioner noted the adversarial culture of HOPOs not conceding cases when they should. Secondly, an expert spoke of the way in which HOPOs commonly handle COI, misrepresent information and are "intellectually dishonest" within the adversarial system.

Whilst for IJs and UKBA staff, the existence of the APCI strengthened their belief in COIS, legal representatives remained more sceptical. Furthermore, unlike UKBA staff, they had greater understanding of the role, function and indeed, limitations of the APCI. A recent IAS report has highlighted some of the problems associated with the APCI. Key findings include a lack of formal criteria in the selection of country reports for review; a lack of transparency in the appointment of country experts; and an inadequate monitoring mechanism for the implementation of the expert recommendations. [75] The IAGCI must therefore ensure a more rigorous and systematic scrutiny of all UKBA information produced for caseowners, including the OGNs, particularly given the heavy reliance on these products. An analysis of the usage of COI falls outside the remit of the IAGCI but should be examined by the Office of the Chief Inspector as outlined in the Recommendations.

Thus, 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 RSD process and the variance in the quality within each of the stakeholder groups. Current channels for transparency, in the form of the APCI or IAGCI, or within decision-making, are not stringent enough to combat the poor use of COI, divergent quality at the first instance decision-making, nonsensical RFRLs or the "IJ lottery".

[75] Immigration Advisory Service (2010) *The APCI Legacy: A Critical Assessment.* London: Immigration Advisory Service.

CHAPTER 6 : CONCLUSION

The value of COI in the RSD process is undeniable, yet despite it being a crucial aspect in the assessment of any individual claim, it is both poorly used and underused. Whilst recognizing a level of improvement in recent years, UKBA staff, in particular, were criticized for a selective use of COI, which was also commonly inaccurate, irrelevant, unreferenced, out of date, unbalanced or simply incorrect. Examples of the poor usage of COI by both legal representatives and UKBA caseowners/ caseworkers include a lack of relevance to the claim, a failure to analyse materials and poor presentation.

Whilst legal representatives and UKBA staff used COI, information and sources they rely upon is rarely analysed, if at all. This indicates a skills deficit, a lack of time, and a reliance on the "established" reports that have had their status elevated by the "information hierarchies" that have developed. Amongst UKBA staff these two factors are also influenced by the centralisation and isolation of knowledge within UKBA; poor Internet access; and a need for proper training and time to fully engage with this form of evidence.

Results show that there is diverse usage of COI not only across the different stakeholder groups but also within each of the groups. This inconsistency is reflective of the variance in the skills, motivation, resources and expertise of individuals that exist within each of the stakeholder groups.

The data has identified skills deficits and thereon a great need for training amongst all stakeholders, on both the production and usage of COI. Moreover, greater communication is required within and between the diverse groups in order to facilitate good practice and knowledge exchange.

The results also demonstrate that the (poor) usage of COI is related to the wider context of the RSD process: namely, that its use is influenced by political agendas, the financial constraints imposed by the LSC, time pressures and workloads.

Indeed, the asylum sector is one that is being squeezed financially and politically and this affects all players within the RSD process. The effect of this is inconsistent standards in general as well as poor quality decision-making at the initial stage. The fact that 31% of appeals were allowed between July and September 2009 is demonstrative of the fact that far too many wrong initial decisions are being made.

Indeed an observation that was repeated throughout the course of this research, was that the RSD system in the UK is comparable to a "refugee roulette" due to the variance in quality of decision making at all levels and of representation available to the asylum seeker.

The production and use of COI must be seen within its socio-political origins and the political context in which it is being used. Whilst it was generally agreed by respondents in this study that good practice could encourage better decision-making, individuals were sceptical that such a direct link could be made. This appears to be symptomatic of the disillusionment with which the RSD system was viewed.

Poor decision-making, nonsensical RFRLs, an adversarial use of COI and the politicisation of information all create a negative perception of RSD. This perception is accentuated because of

the lack of monitoring, transparency and accountability of decision-making as well as the cynicism and sense of resignation from all actors that change is not possible.

However, it is important to note that during the course of this project, IAS has trained over 300 individuals including legal representatives, UKBA staff, immigration judges, experts and asylum seekers on how best to use COI. All groups welcomed the training, demonstrating a willingness to improve practice and a desire to strengthen their knowledge base.

In conclusion, improvements in the usage of COI 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 RSD 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 a 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 RSD is fundamental.

CHAPTER 7 : RECOMMENDATIONS

All the data collected generally underlined that employing good practice usage of COI would encourage better decision-making. However, there was some cynicism attached to this proposal. For example, one expert stated: 'Well, you're only going to get some progress where there is political will to address the issues. And the will is not there at all. It is retreating'.

The recommendations emerge from both direct data collection in response to questions regarding examples and suggestions of good practice as well as from the themes identified from the data in general. Recommendations are presented by stakeholder group. In line with the findings from this research, the recommendations focus on three main areas:

- Specific examples of good practice to improve usage
- Training in the most problematic areas
- Heightened transparency and accountability

Establishing a framework of quality criteria:

When asked what elements should make up a framework of criteria for what constitutes COI, the following suggestions were made amongst interviewees:
Up to date; as factual as possible within its proper historical context; referenced and retrievable; balanced; reliable; objective; written by an organisation rather than an individual; succinct; academic quality of the research.

It was noted that a checklist could be useful for general pointers but it should not be too prescriptive. Some also warned that such an exercise could become a bureaucratic feature, tick box exercise or not allow for unforeseeable eventualities. This is also because of the extensive guidelines already available and also the multitude of asylum policy instructions that UKBA caseowners should follow. Moreover, creating a framework was seen as something that could be dangerous and exclude useful sources as it is difficult to achieve universal standards. Instead, an independent documentation centre was seen as preferable, particularly amongst legal representatives, experts and 2 of the 5 IJs interviewed. For example, one expert stated: 'It's a problem that all this information goes into that adversarial system and it is unsatisfactory that there isn't a mechanism to resolve disputes between different types of COI and experts to the benefit of the claimant, the Canadian model perhaps where it is not adversarial.'

Independent documentation centre:

Given the vast COI available in the public domain as well as the inevitable politicisation of information production and usage within an adversarial system, it is recommended that the UK adopts an independent documentation centre. This centre would be responsible for collecting information, compiling reports, conducting FFMs and producing the highest quality COI. Further, through conducting in depth analysis and completing case specific research requests, RSD stakeholders will observe a far superior, systematic and individualized use of COI.

As the Solihull Pilot is demonstrating, heightened communication and the provision of all the necessary information prior to decision, encourages better decision-making. The sector is currently being "squeezed" and one of the impacts of this is poorer usage of COI. With all parties to the appeal using such a service, the establishment of an independent centre could ensure consistency in one aspect of the RSD process as well as restore a faith, which is currently dwindling, in the system.

Good Practice Usage for UKBA staff:

When to use COI

- ➢ Conduct COI research at all stages of the RSD process, including prior to interviewing
- ➢ Use COI prior to interview in order to form the basis of your line of questioning and to ask specific questions
- ➢ Use COI to assist you in your decision-making and not to support a decision that has already been made
- ➢ Give serious consideration to any COI that may be submitted by legal representatives before making a decision and rely on both submitted COI as well as COI available to you to arrive at a reasoned decision
- ➢ Encourage claimants to situate their experiences within the current country context
- ➢ A place of internal relocation must always be identified on the basis of up to date COI, and should be communicated to representatives

How to select COI

- ➢ Only use specific and relevant COI tailored to the claim
- ➢ Only use information that is available in the public domain
- ➢ Include all COI relevant to the claim that reflects the background information in bundles
- ➢ COI should be up to date unless trying to establish events in the past for corroboration
- ➢ COI usage should take into account the relevant and most up to date case law
- ➢ Consider the validity of CG cases where appropriate; this can be done through distinguishing the client's case on the issue and presenting different and more up to date COI
- ➢ Bear in mind the social and political context of information production when selecting and assessing sources
- ➢ If COI is not found on a specific aspect of the claim this does not mean that such events did not take place. Place the lack of information in context and consider whether the country in question has a lively press; if the subject is widely reported on; and whether human rights monitoring takes place freely in the country

Research skills

- ➢ Use a variety of sources to build up a picture; do not rely on standard annually produced generic country reports alone
- ➢ Use a variety of sources from diverse types of COI producers (for example, government sources, specialist NGO reports and news articles) for corroboration and to ensure reliability
- ➢ Conduct source assessments: verify information from other sources/ compare sources as information can be conflicting
- ➢ Examine reliability of sources through considering data collection techniques and methodology
- ➢ Look at original sources that are cited in compiled reports for more information and context; this will include sources such as national news reports and reports of specialist NGOs working in the country of origin

- ➢ Be original and inventive about how you conduct your research and be open about your research results. If a specific aspect of the claim is not reported on, more general information might assist. For example, general corruption levels may assist in assessing if a bribe took place.

Presenting COI

- ➢ Avoid making speculative arguments or subjective assertions in RFRLs
- ➢ Never cite OGNs as a source of COI
- ➢ Accurately reference all COI cited in RFRLs
- ➢ Present data clearly in bundles: indexing, summary of main issues, highlighting key points
- ➢ Guide immigration judges through bundles carefully, highlighting information that is relevant to the specificities of the claimant's case.

Using COIS products

- ➢ COIS reports should not be seen as exhaustive/determinative of the situation in a particular country: always supplement with more recent evidence than the latest COIS reports
- ➢ Do not rely on COIS unquestioningly: check the context and validity of sources cited in the COIS and look back at the original sources
- ➢ Check the special requests online library
- ➢ Use the special request service regularly and particularly when information is lacking
- ➢ If there is a delayed turnaround in receiving a special request, ensure that your decision is postponed until the information is received
- ➢ Communicate research gaps to the COIS department
- ➢ Keep abreast of up-to-date country developments and new case law

Training Needs Identified for UKBA Asylum Staff:

Research skills

- ➢ Source Identification and Assessment
- ➢ Analysis skills: for example, how to compare and contrast sources, and weigh up contested COI
- ➢ Thematic research and knowledge, for example, claims involving trafficking, children and sexuality
- ➢ Internet Skills

Background COI skills

- ➢ Background on the function and limitations of COI
- ➢ Background on the mandates and methodologies of key organisations and reports
- ➢ Country specific information: overview of a country; causes of conflict; main actors of persecution; main types of claims; where to look for information

General

- ➢ Cultural competency training
- ➢ Consider that all decision makers undertake legal accreditation

UKBA COIS Department:

Guidance

- A statement on the limitations of COIS reports should be listed at the start of each document together with the existing disclaimer: this should include areas of research that are missing
- Introduce a guidance note at the start of each COIS report on the best way to use it
- If insufficient information is available or if it is difficult to locate COI on a particular issue, then this should be stated, so as not to give the impression that a lack of information indicates that such persecutory treatment does not exist
- Undertake further training on research skills

Communication

- Introduce a "feedback loop" from expert evidence accepted in CG cases
- Where the COIS reports have been found to be factually incorrect or misrepresent the country situation in any given CG cases, appropriate changes should be executed immediately
- The same should apply to recommendations suggested by the IAGCI, whereby changes to the reports should be implemented immediately and a new report made publicly available
- Increase communication with experts and COI producers to strengthen report contents, in addition to the current IAGCI monitoring work. This should include communication with experts who are instructed by legal representatives
- Increase and facilitate more meaningful communication with UKBA information users: for example, formalise the feedback forum process through incorporating people's views not only through the forum but also through email communication. All recommendations from UKBA users should be compiled into a document quarterly with feedback as to whether recommendations will be implemented

COIS Content

- Increase the frequency of COIS reports for countries producing large numbers of asylum seekers
- Specific further research for claims involving gender, religion, sexuality and ethnicity is required in the COIS reports
- Specific thematic research, for example, on children and trafficking is required
- Specific thematic research that is relevant to the country in question is required, such as child soldiers in countries where there are armed conflicts
- Provide increased information on culture and society
- Provide links indicating where to find further information on non-state actors such as insurgent groups and explain the limitations of such information on them
- Improve searching ability within special requests library
- Do not include hearsay comments from Embassy officials or FCO staff in reports
- All material in COIS reports and special requests should be publicly available, for example, FCO reports or correspondence
- FFMs should only be conducted by independent and skilled researchers with a clear methodology and mandate

- ➢ Consider researching and building up a dossier of new sources that are specialist, provide in-depth information on specific issues or themes rather than rely on sources that provide broad macro reports

Head of UKBA asylum:

Resources

- ➢ Ensure that the COIS department has enough resources to provide the case-specific research service to all its caseowners; boost capacity in order to provide a wider service
- ➢ Encourage caseowners/caseworkers to make use of the special request service, drawing attention to the importance of case specific research
- ➢ Good practice COI guidelines should be incorporated into the Asylum Policy Instructions
- ➢ Provide unrestricted Internet access

Training

- ➢ Introduce a two-day course on COI production and usage for all caseowners/caseworkers
- ➢ Introduce regular half-day courses/ seminars on the main countries of asylum (see above section on training for details)
- ➢ Address all other areas of need as identified above

Transparency

- ➢ Allow the country information content of OGNs to be subject to scrutiny by an in dependent body, preferably via the IAGCI under the Office of the Chief Inspector of the UKBA
- ➢ Grant letters should be publicly available

Working Culture

- ➢ Rebalance speed and quality: decision makers should have their case load adjusted to ensure enough preparation time to make an initial decision
- ➢ Ensure that the message of quality overrides targets in all communications to UKBA decision makers
- ➢ Extend the Solihull pilot and encourage the heightened communication with legal representatives

Chief Inspector of the UKBA:

- Investigate the costs of outsourcing COI research to an independent documentation centre
- Scrutinise the COI content within OGNs
- Consider not allowing any COI content within OGNs as this may encourage better use of COIS products and less use of standard paragraphs in RFRLs.
- Assess the quality of special requests
- Inspect the usage of country information in first instance decision-making
- Undertake a review of the methodology used in the COIS reports and FFMs
- All communication between the Chief Inspector and UKBA should be made available in the public domain
- Incorporate the recommendations to ensure sound monitoring of all COIS products as per the IAS report (2010) The APCI Legacy: A Critical Assessment.
- Monitor RFRLs and consider: do they make use of COI specific to the claim? Are there speculative arguments or subjective assertions being made? Are there trends indicating the use of standardised paragraphs and if so, are these also found in the OGNs?

Good Practice Usage for Legal Representatives and Advisors:

When to use COI

- Conduct COI research at all stages of the RSD process, including prior to inter viewing
- Use COI prior to interview in order to form the basis of your line of questioning and ask specific questions
- Ensure you take detailed instructions from your client
- Encourage clients to situate their experiences within the current country context
- Ensure UKBA has designated the place of internal relocation and investigate the relevance and reasonableness of such a proposal. This involves using site specific and up to date COI
- Refer to witness statements and RFRLs to draw out key issues for COI research
- Develop a research strategy and approach COI research logically - proving that events took place; corroborating information; drawing comparisons amongst others with similar profiles; etc.

How to select COI

- Only use specific and relevant information tailored to claim
- Only use information that is available in the public domain
- Include all COI relevant to the claim that reflects the background information even if some information is not supportive
- Information should be up to date unless trying to establish events in the past for corroboration
- Bear in mind the social and political context of information production when selecting and assessing sources
- COI usage should take into account the relevant and most up to date case law

- ➢ Consider the validity of CG cases where appropriate; this can be done through distinguishing the client's case on the issue and presenting different and more up to date COI
- ➢ If COI is not found on a specific aspect of the claim this does not mean that such events did not take place. Place the lack of information in context and consider whether the country in question has a lively press; if the subject is widely reported on; and whether human rights monitoring takes place freely in the country

Research skills

- ➢ Use a variety of sources to build up a picture; do not rely on standard annually produced generic country reports alone
- ➢ Use a variety of sources from diverse types of COI producers (for example, government sources, specialist NGO reports and news articles) for corroboration and to ensure reliability
- ➢ Conduct source assessments: verify information from other sources/compare sources as information can be conflicting.
- ➢ Examine reliability of sources through considering data collection techniques and methodology
- ➢ Look at original sources that are cited in compiled reports for more information and context; this will include sources such as national news reports and reports of specialist NGOs working in the country of origin
- ➢ Analyse UKBA's use of COI and ensure COI correctly reflects the original source and country situation
- ➢ Verify the extracts cited in RFRLs and check the context from which they have been cited to ensure they accurately reflect the country situation
- ➢ Look out for and acknowledge the reliability/ bias of sources

Presenting COI

- ➢ Present data clearly in bundles: indexing, summary of main issues, highlighting key points
- ➢ Guide immigration judges through bundles carefully, highlighting information that is relevant to the specifics of your client's case

Using compiled reports

- ➢ No compiled reports, including COIS reports, should be seen as exhaustive/determinative of the situation in a particular country: always supplement bundles with more recent evidence than the latest COIS reports.
- ➢ Do not rely on COIS unquestioningly: check the context and validity of sources cited in the COIS and look back at the original sources

Instructing experts

- ➢ Conduct initial country research and narrow down the issues specific to the claim before instructing experts
- ➢ Refer to and abide by Practice Directions when instructing experts
- ➢ Give experts clear instructions. If they are unfamiliar with the process explain their duties and how their evidence is used, and ensure they are aware of the Practice Directions
- ➢ Give feedback to experts about how their report was received
- ➢ Refer to Mark Henderson's Best Practice Guide for further guidance

Other good practice

- Organise your COI by country and theme; keep a list of sources you use; keep copies of bundles for future similar cases and then contrast them with up to date information when you have a new case
- Share relevant COI and new sources amongst colleagues
- Keep abreast of up-to-date country developments and new case law
- Refer to IAS country specific training packages (see Bibliography for good practice guides)

Identification of Training Needs for Legal Representatives and Advisors:

- Research skills – for example narrowing down searches; obtaining more relevant materials; thematic searches; identifying issues for research from case law.
- Source assessment skills
- Thematic research skills and information, in particular on trafficking issues
- Country specific research information: overview of a country; causes of conflict; main actors of persecution; main types of claims; where to look for information
- Instructing experts
- Presenting data clearly
- General COI course: how best to use it; its purpose; background on mandates and methodologies of key organisations and reports

Immigration Judges and the AIT:

General

- ➢ Consider stating what source materials were submitted and which sources were considered, relied upon and not relied upon in all determinations
- ➢ IJs should not consider the OGNs as these are UKBA policy documents that should be separate from independent decision-making
- ➢ Ensure UKBA has designated the place of relocation before hearings commence
- ➢ Pay great attention to site specific and up to date COI when considering the reasonableness of internal relocation.

Guidelines and training

- ➢ All Immigration judges should read and implement the IARLJ guidelines
- ➢ Undertake training on research methodology
- ➢ Implement and refine guidelines on the treatment of expert evidence
- ➢ Higher levels of inquisition in unrepresented cases
- ➢ Undertake training on COI – how to approach this unique form of evidence and conduct source assessments

Monitoring and transparency

- ➢ Increase transparency in the selection of IJs for CG cases
- ➢ Use a transparent process in the selection of countries and issues designated as CG cases
- ➢ A systematic approach to constantly review CG cases should be introduced
- ➢ Remove "expired" CG cases from the AIT website
- ➢ Regularly update the AIT with new CG cases

AIT Legal and Research Department

- ➢ Cease to provide OGNs to IJs
- ➢ Consider providing background on mandates and methodologies of key organisations and reports

Experts:

- ➢ Read and implement the Practice Directions
- ➢ Communicate to legal representative if instructions are unclear or inadequate or if the questions are posed in too leading a manner
- ➢ Communicate directly with COIS and strengthen relations – feedback directly any problems in the COIS report to the COIS department; recommend sources to them
- ➢ Consider publishing documents on key findings following CG cases
- ➢ Undertake training – on the Practice Directions; how the AIT functions; what happens to expert reports; and how their expert evidence is used within the RSD process
- ➢ Develop expert organisations where individuals can share good practice, experiences at the AIT and lobby for better treatment
- ➢ Lobby for avenues for redress and make complaints when treated unfairly
- ➢ Ask legal representatives for feedback on how report was received at the Tribunal

COI Professionals:

- Lobby for an independent documentation centre
- Produce CG case summaries, identifying key areas for future COI research for all the main risk countries
- Thematic COI production: Internal armed conflict; internal flight alternative; LGBT issues; and trafficking are all pressing issues where thematic research would be welcomed
- Specific research for claims involving gender, minors, religion, sexuality, ethnicity and trafficking
- Creation of a comprehensive and regularly updated issue referenced database sorted by theme
- Development of country specific training packages
- Creation of an up-to-date expert listing. Information should cover contact details, country of expertise, specific thematic/ regional areas of research and fees
- Creation of an up-to-date local/ national NGO listing

UNHCR:

- Conduct a thematic review of COI usage and initial decision making, specifically assessing if COI is used to support or form the basis of UKBA decisions; levels of Internet access; levels of communication with COIS and whether that impedes their research
- (Continue to) work with UKBA's Learning and Development team and Quality Assurance department to examine usage of COI
- Continue to monitor UKBA in general but specifically RFRLs, particularly the use of OGNs and the use of speculative arguments

LSC:

- Greater funding allocation that takes into account the time required to conduct COI research together with all the other aspects of managing a case.
- Allow increased flexibility for legal practitioners to extend funding where necessary
- Provide training for RCOs to educate asylum seekers on their rights and what they should expect from their legal representatives

Further Research is recommended on:

- Cost benefit analysis of an independent documentation centre
- Impact of the LSC funding on levels of analysis and quality of COI research
- The "IJ lottery": whether it exists and identifying trends
- Continual monitoring of use of COI in RFRLs

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