

FLYER - FOR COI (COUNTRY OF ORIGIN INFORMATION) WORKING PARTY SESSION ON THURSDAY 8 SEPTEMBER 2011 entitled: "JUDICIAL GUIDANCE ON COI: THE OLD AND THE NEW"

There will be copies available at the session of a paper prepared by the Working Party Rapporteur, Hugo Storey and Deputy Rapporteur Bostjan Zalar.

The aim of the session is to explore two questions:

(A) first, **does the IARLJ Judicial Checklist on COI –[PTO for text] - need revising?**

(B) second, **is there a need for a supplementary Checklist dealing with due process/procedural fairness?**

A. The current IARLJ Checklist (Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist} - has become a well-established ("soft-law") source of reference but it was drawn up in 2006. Since then there have been quite a few developments, most notably in Europe where, through EU law and the jurisprudence of the European Court of Human Rights in Strasbourg, very much the same criteria have become legally binding criteria ("hard law"). Such developments give rise to the question whether the IARLJ Checklist needs revising.

B. The question, "Is there is a need for a **separate or supplementary Checklist** dealing with COI and procedural fairness issues?" arises in this way. Despite various states throughout the world moving to adopt similar standards governing use of COI in examining individual asylum claims and providing for their judicial supervision, there are still important areas of executive decision-making on asylum claims where COI-related decisions are made with little or no judicial supervision: e.g. designation of certain countries as "safe". Where there is scope for judicial supervision of these, the main criteria applied by judges have to do with *procedural fairness* which the current Checklist does not address. Indeed, on one view it is very odd that we as IARLJ judges should have spent so much time poring over the details of COI-related criteria in the context of assessments made of individual asylum claims, without addressing the fact that often the decisive COI components to decisions -e.g. whether the country they come from is a listed "safe country of origin" – have been decided beforehand by the government at a purely executive level with the enabling legislation setting out few if any COI-related criteria the executive has to apply.

The COI Working Party session will hopefully explore some of the procedural fairness criteria that courts are now bringing to bear on COI-related executive decisions – e.g. right to a fair hearing; compliance with procedural rules; principle of transparency; duty to consult; equality of arms; duty to state facts accurately; duty to keep designations under periodic review; duty to give reasons; misuse of power; duty of human rights compliance.

The session will also discuss a project to develop such a supplementary Checklist starting with (a) drawing up a Questionnaire to be sent to all IARLJ members (Sept-Dec 2011); (b) using responses to this Questionnaire to draw up a draft Checklist (Jan-March 2012); (c) holding a seminar in London open to judges and NGOs etc. to discuss the draft Checklist (June 2011); (d) finalising the Checklist (September 2012).

PTO/...

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IARLJ Judicial Checklist (Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist)

The current IARLJ Judicial Checklist (Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist)¹ is in the form of 9 questions as follows:

“ Relevance and adequacy of the Information

- i) How relevant is the COI to the case in hand?**
- ii) Does the COI source adequately cover the relevant issue(s)?**
- iii) How current or temporally relevant is the COI?**

Source of the Information

- iv) Is the COI material satisfactorily sourced?**
- iv) Is the COI based on publicly available and accessible sources?**
- vi) Has the COI been prepared on an empirical basis using sound methodology?**

Nature / Type of the Information

- vii) Does the COI exhibit impartiality and independence?**
- viii) Is the COI balanced and not overly selective?**

Prior Judicial Scrutiny

- ix) Has there been judicial scrutiny by other national courts of the COI in question?”**

The Checklist is accompanied by an Explanatory Memorandum (not included here).

¹ Published (together with Explanatory Notes) in (2009) 21 International Journal of Refugee Law, 149- 166. It is also to be found on the IARLJ website and UNHCR’s Refworld.