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A Commentary on the use of quantitative assessments to determine risk in Country Policy and Information Notes (CPINs) issued by the UK Home Office

This commentary is based on Asylum Research Centre (ARC) Foundation’s experience of reviewing the use of Country of Origin Information (COI) in Country Policy and Information Notes (CPINs) produced by the UK Home Office.¹ It is complemented with legal analysis provided by [Dr Christel Querton](#) based on over ten years of working in the asylum sector.

CPINs include COI and provide an assessment of that COI for use by Home Office decision-makers in the refugee status determination procedure to determine international protection and human rights claims for specific profiles of applicants. They are often the only COI document Home Office decision-makers consult before making a decision in asylum and human rights applications.

Over the course of the last 18 months two trends deriving from a focus on quantitative assessments have been observed, notably increased reliance on:

1. Statistics and prevalence rates in the assessment sections of CPINs to:
 - 1.1.1. assess whether discrimination amounts to persecution or serious harm; and
 - 1.1.2. question the relative severity and risk of harm.
2. Where no or limited COI is found, general assessments questioning the severity and/or the extensiveness of particular human rights violations.

The following CPINs have been selected as illustrative examples for this commentary, but more are likely to exist among the 180+ published CPINs currently available on the Home Office’s website:

Sexual Orientation and Gender Identity and Expression (SOGIE) CPINs

- [Ghana: Sexual orientation and gender identity or expression, May 2020](#)
- [Iraq: Sexual orientation and gender identity and expression, September 2021](#)

Sexual and gender-based violence (SGBV) CPINs

- [Bangladesh: Women fearing gender-based violence, June 2020](#)
- [Namibia: Women fearing gender-based violence, September 2021](#)

¹ For a list of Country Policy and Information Notes see UK Visas and Immigration, [Country policy and information notes](#), Last updated 14 May 2021

National Service

- [Eritrea: National service and illegal exit, September 2021](#)

Religion

- [China: Non-Christian religious groups, July 2021](#)
- [Iraq: Religious minorities, July 2021](#)
- [Pakistan: Shia Muslims, July 2021](#)

This commentary is intended to raise concerns with legal practitioners and decision-makers, who use or engage with CPINs, in respect of the two trends observed and further outlined below. This commentary should not be submitted in isolation as evidence to the UK Home Office, the Tribunal or other decision-makers in asylum applications or appeals.

1. Statistics and prevalence rates in the assessment sections of CPINs

1.1. The use of statistics and prevalence rates to assess whether discrimination amounts to persecution or serious harm

In the following two examples, the use of comparative global statistics in CPINs was noted:

Bangladesh: Women fearing gender-based violence, June 2020 [emphasis added]	Namibia: Women fearing gender-based violence, September 2021 [emphasis added]
<p>Assessment [...]</p> <p>2.4 Risk</p> <p>a. Societal treatment [...]</p> <p>2.4.4 Social norms continue to prescribe discriminatory and stereotypical roles, rights and responsibilities according to gender. Women are expected to marry, have children and manage the household and may face family pressure to do so. Following marriage, most women continue to depend on fathers and husbands for decision making, financial and social welfare. As a result, widowed and divorced women experience increased vulnerability to poverty, exploitation and social isolation. [...]</p> <p>2.4.6 Social acceptance of single women is low and the ability to live alone is likely to be limited to women from higher socio-economic backgrounds who have family and financial support. Living without male support is very difficult due to social and financial constraints. Disadvantaged groups of</p>	<p>Assessment [...]</p> <p>2.4 Risk</p> <p>a. State treatment [...]</p> <p>2.4.2 Women participate in the political process and are represented in government, comprising 46% of Namibia's parliament in part due to legislation that aspires to equal representation. Women also have access to formal education resulting in high literacy rates and access to employment opportunities, including in skilled occupations and leadership roles. Namibia has one of the smallest income gaps between men and women globally, and in terms of gender parity, is currently ranked 6th in the Global Gender Gap Index 2021², above the UK in 23rd place (out of 156 countries) and top in Sub-Saharan Africa.</p> <p>2.4.3 In general, while women sometimes experience discrimination in some areas such as accessing land rights, inheritance and certain employment sectors, any discrimination that may be encountered is not</p>

² The Global Gender Gap Index “benchmarks the evolution of gender-based gaps among four key dimensions (Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment) and tracks progress towards closing these gaps over time”. See World Economic Forum, [Global Gender Gap Report 2021, Insight Report](#), March 2021, Key Findings, p. 5.

women and girls face multiple intersecting forms of discrimination due to their gender, health, indigenous identify, caste and socio-economic status, such as Dalit women, women with disabilities, elderly women and women of ethnic minorities. [...]

2.4.9 In 2015, a survey found that around two thirds of women reported to be victims of some form of gender-based violence. The same survey indicated over 72% of ever-married women had experienced one or more forms of domestic abuse by their husbands. Dowry-related disputes are reported to be one of the main causes of domestic abuse. The common perpetrators of domestic and dowry-related abuse are husbands or other family members [...]

2.4.10 As a global comparison, a 2013 World Health Organization (WHO) report estimated 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence, whilst some national studies indicate that up to 70% of women have experienced physical and/or sexual violence from an intimate partner during their lifetime. In the UK, a survey found 29% of women had experienced sexual and/or physical violence at the hands of an intimate partner at least once in their lifetime [...]

2.4.11 More recent country information continues to indicate gender-based violence in Bangladesh is widespread and sharply increased in 2019. Moreover the risk of gender-based violence has been exacerbated by Cyclone Amphan and the lockdown associated with COVID-19. Children and women victims of rape experience levels of societal stigma that may affect their marriage prospects and mean that they cannot stay in their home area. Many rape victims subsequently commit suicide. However, whether the level of abuse, by its nature, degree and repetition, amounts to persecution, will depend on the facts of the case.

2.4.12 The level of societal discrimination, in general, is not sufficiently serious by its nature and repetition that it will reach the high threshold of being persecutory or otherwise inhuman or degrading treatment. However, each case must be considered on its facts.

sufficiently serious by its nature and repetition to reach the high threshold required to constitute persecution or serious harm [...]

2.4.9 GBV although reportedly widespread in Namibia, contains a wide spectrum of behaviour, much of which is not likely to be sufficiently serious by its nature and repetition to reach the high threshold of persecution or serious harm. However, it is for the person to show she has a well-founded fear of persecution or is at real risk of serious harm, with each case assessed on its own facts.

In both examples it is unclear why global statistics and the comparison to the UK were included.

Whilst in the case of Bangladesh the reason seems to be to emphasise the high levels of gender-based violence, including domestic abuse, the ensuing concluding assessment at paragraph 2.4.11 of the CPIN, however, does not explicitly provide an assessment of whether there is a well-founded fear of being persecuted. Further, the Bangladesh CPIN fails to provide any assessment in relation to how the

state treats women and thereby omits the risks that arise from laws that systemically discriminate against women.

In the case of Namibia, the inclusion of comparative statistics on Namibia and the UK seems to want to indicate that gender parity is more likely in Namibia than in the UK, which in turn results in an overall assessment at paragraph 2.4.3 that women “sometimes experience discrimination” in certain areas such as accessing land rights, inheritance and employment sectors but not to an extent that it constitutes serious harm. It is concerning that the CPIN assessment of state treatment of women in Namibia fails to remind decision-makers that the individual circumstances of the applicant must be taken into account in determining whether discrimination may amount to persecution.

In both cases the inclusion of global comparative statistics raises concern about undue weight being placed on quantitative evidence. By focusing its assessment of risk on return on quantitative COI, the CPINs are infused with references to various thresholds. This, in turn, leads to the failure to clearly separate the CPINs’ assessment of whether the harm or discrimination feared amounts to persecution and whether there is a well-founded fear of being persecuted. By amalgamating these two elements of the refugee definition, the CPINs’ analysis of the COI lacks clarity and inaccurately applies the law.

While the two CPINs correctly note that harm must reach a “minimum level of severity” to constitute persecution³, prevalence of harm in a general population is not relevant to that issue. According to the *Refugee or Person in Need of International Protection (Qualification) Regulations 2006*,⁴ harm may be sufficiently serious (or in the CPINs’ terminology, “reach the minimum level of severity”) due to its very nature or, *alternatively*, due to its repetition where the nature of the harm may not by itself amount to persecution. The element of repetition in the latter case denotes a situation where the applicant is exposed on more than one occasion to the harm in question.

However, by adopting a quantitative approach, the CPINs use prevalence of harm in a general population as a metric to make a general assessment of whether harm is sufficiently serious, irrespective of the individual circumstances of an applicant. In addition, the CPINs appear to require the threshold to be met through both the nature *and* the repetition of the harm.⁵ It ignores that an act of persecution may also be “an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual” due to its nature or repetition.⁶ It appears the CPINs also fail to consider the existence of persecution as “a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner”.⁷

To overcome this shortcoming, the CPINs on *Women fearing Gender-based Violence* would be strengthened by correctly applying the Asylum Policy Instruction (API) on *Gender Issues in the Asylum*

³ See the Bangladesh and Namibia CPINs at paragraphs 1.2.2.

⁴ UK [Regulation 5\(1\)\(a\) of the Refugee or Person in Need of International Protection \(Qualification\) Regulations 2006](#) states that an act of persecution must be “sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right”. The planned new Nationality and Borders Bill (Bill 187 2021-2022) currently proposes to revoke the Protection Regulations (Clause 29(4)), but proposes to retain the definition of persecution (Clause 30(2)(a)).

⁵ See paragraphs 2.4.11 and 2.4.12 in the Bangladesh CPIN and paragraphs 2.4.3 and 2.4.9 in the Namibia CPIN.

⁶ UK [Regulation 5\(1\)\(b\) of the Refugee or Person in Need of International Protection \(Qualification\) Regulations 2006](#). See also the proposed [Nationality and Borders Bill 2021](#), Clause 30(2)(b).

⁷ UK [Regulation 5\(2\)\(b\) of the Refugee or Person in Need of International Protection \(Qualification\) Regulations 2006](#). See [Lord Justice Pill in *EB \(Ethiopia\) v Secretary of State for the Home Department* \[2007\] EWCA Civ 809 at \[51\]](#) and the proposed [Nationality and Borders Bill 2021](#), Clause 30(3)(b).

*Claim.*⁸ The two CPINs used as an example for this commentary do not reflect the approach encouraged in the Gender API for asylum claims based on gender discrimination, which notes that “a discriminatory measure, in itself or cumulatively with others, may, depending on the facts of the case, amount to persecution. This would be the case, for example, if the discrimination has consequences of a substantially prejudicial nature for the person concerned”.⁹

As a consequence of placing undue weight on quantitative assessments, there appears to be an amalgamation between the seriousness of the harm (and thus whether it amounts to persecution) and the likelihood of the harm occurring (and thus whether there is a well-founded fear of being persecuted upon return). Furthermore, the assessment of protection needs through a narrow statistical lens obscures the risks that arise from laws that systemically discriminate against a particular section of society (i.e. women, LGBTIQ+ persons).

1.2. The use of statistics and prevalence rates to question the relative severity and risk of harm

In the following three CPIN examples, national population figures have been used in the respective assessment sections to question the relative severity of the harm or frequency of incidents suggesting that the violation either is not serious enough to amount to persecution or is not widespread enough to create a well-founded fear of being persecuted.

Eritrea: National service and illegal exit, September 2021 [emphasis added]	China: Non-Christian religious groups, July 2021 [emphasis added]	Pakistan: Shia Muslims, July 2021 [emphasis added]
<p>Assessment [...] 2.4 Risk [...] b. National service [...]</p> <p>2.4.9 Laws exist which set out the conditions and length of service and discharge but in practice the duration of service is not limited to the 18 months set out in law. The arbitrary and inconsistent application of the rules means that conscripts’ experience of national service – and length of service – varies greatly and in extreme cases, a conscript may serve up to 30 years. However, Eritrea has a population of 6.1 million and an estimated 300,000 to 400,000 conscripts, which indicates that the majority of Eritreans have either been released from national service or have avoided national service [...]</p>	<p>Assessment [...] 2.4 Risk [...] d. Buddhism, Taoism (also spelt Daoism) and folks religions [...]</p> <p>2.4.23 The number of adherents of folk religions, Buddhism and Taoism in the country compared against the relatively low number of reported incidents of restrictions to religious practice appears to show that followers of these religions are not generally subjected to treatment which would be sufficiently serious by nature and/or repetition as to amount to persecution or serious harm (see State treatment of specific religious groups).</p>	<p>Assessment [...] 2.4 Risk [...] a. State treatment [...]</p> <p>2.4.4 The blasphemy laws, which carry severe penalties, apply to and are used against all religious groups, can lead to criminal prosecution and often arise from trivial disputes and social media activity (see Blasphemy laws and Application of the blasphemy laws). The year 2020 saw a rise in blasphemy charges – at least 199 people were charged, of which 70% were Shia Muslims. At least 40 cases were registered against Shias in one month alone, which sources suggest were linked to hate speech directed at Shias during the month of Muharram. Sources indicated that between 80% and 95% of blasphemy cases were acquitted on appeal, though</p>

⁸ See UK Home Office, [Gender issues in the asylum claim](#), 10 April 2018.

⁹ UK Home Office, [Gender issues in the asylum claim](#), 10 April 2018, p. 16.

		<p><i>often after lengthy periods of detention. As at 2019, 82 persons were in prison on blasphemy charges (see Application of the blasphemy laws). Relative to the overall number of Shias in Pakistan, the risk of being accused and charged with blasphemy is, in general, very small. [...]</i></p> <p><i>2.4.7 Relative to the size of the Shia population in Pakistan, Shia Muslims are, in general, unlikely to be subject to treatment or discrimination by the state that is sufficiently serious, by its nature or repetition, to amount to persecution. [...]</i></p> <p><i>b. Societal treatment and sectarian violence [...]</i></p> <p><i>2.4.13 Although there have been sporadic targeted attacks against Shia Muslims, relative to the size of the Shia population in Pakistan, they are, in general, unlikely to be subject to treatment or discrimination by non-state actors that is sufficiently serious by its nature or repetition to amount to persecution.</i></p>
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The examples above illustrate how the prevalence of harm in the general population, calculated as the proportion of accidents relative to the size of the population in question, is relied on to assess whether there is a well-founded fear of being persecuted. They also reflect the trend discussed above regarding the lack of clarity and erroneous application of the law caused by the amalgamation of the two tests.

In addition, the undue weight that has been placed on the quantitative aspects of the information has resulted in a probability assessment of whether the fear is well-founded. However, the test for the assessment of risk was established in 1987 by the UK House of Lords in [R v Secretary of State for the Home Department, ex p Sivakumaran \[1988\] AC 958](#) as a 'real and substantial risk' or a 'reasonable degree of likelihood' of persecution for a Refugee Convention reason. A statistical probability test is not the correct approach to determine whether an applicant has a well-founded fear of being persecuted. By doing so, the CPINs appear to implement a higher standard of proof.

2. Where no or limited COI is found, increased reliance on general assessments questioning the severity and/or the extensiveness of particular human rights violations

The following examples, two taken from CPINs focusing on Sexual Orientation and Gender Identity or Expression (SOGIE) claims and one on religious minorities, all suggest there is an absence of well-founded fear of being persecuted for LGBTI or religious minority applicants based on a lack of or limited country information on the scale and extent of abuse and in the case of SOGIE claims, frequency of arrests and prosecutions.

<p>Ghana: Sexual orientation and gender identity or expression, May 2020 [emphasis added]</p>	<p>Iraq: Sexual orientation and gender identity and expression, September 2021 [emphasis added]</p>	<p>Iraq: Religious minorities, July 2021 [emphasis added]</p>
<p>Assessment [...] 2.4 Risk [...] b. State treatment [...]</p> <p>2.4.9 There are no reported prosecutions or convictions of LGBTI persons for consensual same-sex sexual activity in the sources consulted. However, the UN Special Rapporteur on human rights and extreme poverty, Human Rights Watch and the US State Department (USSD) state that some LGBTI people have been arbitrarily arrested, primarily gay men, usually held briefly and released without charge. These incidents include LGBTI people who have been the victims of crime, sometimes because of their sexual orientation or gender identity, but when reporting those crimes to the police have been arrested or threatened with arrest, fear of exposure and extortion. The UN Special Rapporteur concluded that LGBTI persons endure intimidation, arbitrary arrest, violence, threats and blackmail and they lack access to remedies for such violations. However, sources do not provide information about the number or how widespread such arrests are in order to determine their frequency or patterns of treatment [...]</p> <p>2.4.11 LGBTI persons have reportedly experienced discrimination in accessing services</p>	<p>Assessment [...] 2.4 Risk [...] b. State treatment overview [...]</p> <p>2.4.5 Available evidence indicates that LGBTI people experience verbal, physical and sexual abuse as well as discrimination at the hands of state authorities in both central and southern Iraq and the Kurdistan Region of Iraq (KRI). Some sources stated that some LGBTI persons have been subjected to kidnapping and murder by state authorities, however the scale and extent of these abuses and the degree to which specific ‘group’ are targeted and treated is not clear [...]</p> <p>g. State treatment conclusion</p> <p>2.4.11 Available evidence does not indicate that there is a systematic campaign of state mistreatment towards LGBTI persons in Iraq and the KRI which, by its nature and repetition, amounts to persecution. While there is reporting of state actors involved in the mistreatment of members of the LGBTI community, it appears to be largely sporadic and opportunistic rather than targeted, state sanctioned campaigns. [...]</p> <p>h. Societal, non-state and ‘hybrid’ actors treatment – overview [...]</p>	<p>Assessment [...] 2.4 Risk [...] a. Treatment by state and ‘hybrid’ actors [...]</p> <p>2.4.5 There are reports that local authorities, including Shia militias and Popular Mobilisation Units (PMU), subject religious minority groups to restrictions, harassment, discrimination, extortion at checkpoints, kidnapping and the confiscation of property, movement restrictions as well as attempting to facilitate demographic change by allocating land and housing to followers of certain religions in certain areas, for example to Shias and Sunnis in predominantly Christian areas in the Ninewa Plains. It should be noted that the available evidence does not provide a clear indication of the regularity, scale and extent of these incidents and only states that they have been reported (see Treatment of religious minority groups) [...]</p> <p>2.4.9 Overall the country of origin information does not provide clear and definitive information regarding the scale and extent of the mistreatment faced by religious minorities from state authorities across Iraq and the KRI. Therefore, based on available information, in general, members of religious minorities do not face</p>

<p>such as healthcare, including access to HIV / AIDS treatment and services, education and employment, although the nature and frequency of this treatment is unclear [...]</p> <p>2.4.14 The evidence suggests that while elements of the government have used anti-LGBTI rhetoric, the treatment of LGBTI persons by the police and other public agencies varies with, for example, some sources reporting that police have assisted LGBTI persons who have been the victims of crime linked to their sexual orientation or gender identity. There is an absence of data in the sources consulted regarding the number and frequency of arrests of LGBTI persons and there are no recent recorded cases of state violence, prosecutions or convictions under the same-sex laws. In general, the available evidence does not establish that LG and B persons who are open about their sexual orientation are likely to be subject to treatment from the state that by its nature and frequency amounts to persecution. Each case must, however, be considered on its facts, with the onus on the person to demonstrate that they are at risk.</p>	<p>2.4.19 There are reports that ‘hybrid’ actors (also known as Popular Mobilisation Forces or Shia militias) target LGBTI people. There have been a number of historic killing campaigns organised by these groups, the latest of which was in 2017 when more than 100 names of actual or perceived LGBTI people were put on a list and distributed across Baghdad, with warnings that they must either change or be killed. Other similar campaigns had taken place in 2009, 2012 and 2014. A study found that 31% of ‘violations’ against LGBTI people between 2015 and 2018 came from ‘armed groups (militias)’. However, the definition of ‘violations’ was broad and included incidents such as ‘threats’ and ‘verbal abuse’ and it was unclear how many people experienced these ‘violations’</p>	<p>treatment from the state which is sufficiently serious by its nature and repetition to amount to persecution or serious harm. However, decision makers must consider each case on its individual facts, taking full account of the person’s circumstances.</p>
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The emphasis in these examples is again placed on the quantitative aspect of the evidence (or lack thereof). This results in the Home Office’s assessment that the harm does not amount to persecution and/or is not sufficiently widespread to create a real risk on return. The language used in the Ghana CPIN appears to confirm the observation made throughout that the focus on quantitative thresholds causes an overlap between the questions of whether treatment amounts to persecution and whether the information demonstrates a reasonable degree of likelihood of persecution. The terms “nature and repetition” from the definition of persecution in the *Protection Regulations*¹⁰ is replaced with “nature and frequency”, illustrating the consolidation between these two elements of the refugee definition.

The assessments in the CPINs above ignore that human rights violations do not have to be widespread to be serious enough to be considered persecutory. A single act may be sufficiently serious by its very nature to amount to a severe violation of a basic human right. Significantly, ill-treatment by the State

¹⁰ UK [Regulation 5\(1\)\(a\) of the Refugee or Person in Need of International Protection \(Qualification\) Regulations 2006](#) states that an act of persecution must be “sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right”. See also the proposed [Nationality and Borders Bill 2021](#), Clause 30(2)(a).

is not required to be 'systematic' to be sufficiently serious or reasonably likely to occur. The CPIN appears to refer to the test of whether serious harm by non-state actors is rendered systemic (i.e. part of the prevailing political or social order) due to the absence of state protection.¹¹

In any event, the very nature of state-persecution often results in limited reporting being available due to limits placed on press freedom, acts of repression or publicly hidden abuse and violations. In the case of SOGIE claims specifically, relying only on readily identifiable 'open' LGBTI+ persons' violations to determine a well-founded fear of being persecuted is denying the reality on the ground. Gaps, omissions, or inaccuracies in COI does not necessarily equate to an absence of risk and should therefore not automatically lead to a denial of protection.¹²

Conclusion

Based on the above observations, the following recommendations are made:

1. The 'Assessment' sections of Country Policy and Information Notes (CPINs) should more clearly distinguish its conclusions with respect to the question of whether harm is sufficiently serious to amount to persecution and the question of whether particular categories of applicants have a well-founded fear of being persecuted upon return;
2. The question of whether particular categories of applicants have a well-founded fear of being persecuted (i.e. 'is there a real risk?') should not be conflated with an assessment of probability;
3. The assessment of whether harm or discrimination amounts to persecution should reflect the alternative aspect of the question (i.e.: nature *or* repetition) and take into account that an accumulation of various measures may also amount to persecution;
4. The assessment of protection needs should not be conducted predominantly through the use of quantitative data as it may obscure the impact of harm on individual applicants and the risks that arise from laws that systemically discriminate against particular sections of society;
5. CPINs should ensure a holistic assessment of country of origin information is undertaken and that quantitative data is not given undue weight;
6. The lack of or limited country of origin information on the treatment of asylum applicants should not lead to an assessment of an absence of risk as a matter of course, particularly where the country situation leads LGBTI and religious minority applicants for example to conceal their sexual orientation, gender identity and expression or religion; and
7. The guidance provided in Asylum Policy Instructions (API) should be consistently and correctly applied in the assessment sections of the CPINs.

¹¹ See Lord Justice Ward in [Horvath v Secretary of State for the Home Department \[1999\] EWCA Civ 3026](#).

¹² UNHCR, [Guidelines on International Protection No 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 23 October 2012, para. 66.