

# Country of Origin Information for Persons with Disabilities

Webinar hosted by Garden Court Chambers  
10 February 2022



# Agenda

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17.00 - 17.15 **Welcome, introductions and preliminary remarks**

17.15 - 17.35 **Introduction to the ARC Foundation and Asylos disability project**

- Rapid review of inclusion of persons with disabilities in COI on Nigeria
- Country report: Nigeria: Children and Young People with Disabilities
- Introduction to models and understandings of disability
- Principles for Country of Origin Information research on persons with disabilities

17.35 - 18.00 **Legal context: International protection for persons with disabilities**

18.00 - 18.30 **Discussion and questions**

# Introductory remarks

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## Speakers:

**David Neale:** Legal Researcher at Garden Court Chambers, former immigration/asylum barrister, and co-author of several publications including Macdonald's Immigration Law and Practice and Butterworths Immigration Law Service, and co-author of the report on disability and asylum law launched by the Helen Bamber Foundation (HBF).

**Maya Pritchard:** Youth Casework and Policy Manager at South London Refugee Association, Level 2 OISC accredited immigration and asylum adviser, and consultant researcher with Asylos for this project.

**Jo Pettitt:** Researcher in the asylum/refugee sector for many years, mostly with Freedom from Torture, currently working freelance and with ARC Foundation for this project.

**Jennifer Blair:** co-author of the report on disability and asylum law launched by the Helen Bamber Foundation (HBF), and barrister in the legal protection team at HBF and at No5 Chambers.

# Background information - the project

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ARC Foundation and Asylos joint project:

- ❖ **Rapid review of COI relating to persons with disabilities**, to assess the level and form of inclusion of persons with disabilities within selected COI sources on Nigeria;
- ❖ **Country Report on the situation of children and young people with disabilities in Nigeria**, combining interviews and excerpts from country information available in the public domain; and
- ❖ **Principles document, handbook and training module** to guide those conducting Country of Origin Information research on disability related issues.

# Review of COI sources - findings (1)

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## Visibility and portrayal of persons with disabilities:

- The visibility and portrayal of persons with disabilities is inconsistent, undeveloped and limited.
- Persons with disabilities are mainly represented in relation to mental health and witchcraft.
- Disability is not consistently referred to in the terms of reference.
- Some reports contained no information on persons with disabilities

## Topics included and omitted:

- Topics included: discrimination, abuse and exploitation, legislation, prison conditions, health care, education and employment.
- Topics omitted or included with insufficient detail: implementation of legislation and policy; information specific to persons with physical, intellectual, or invisible disabilities, or children with disabilities; the economic situation of persons with disabilities.

# Review of COI sources - findings (2)

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## Intersectionality :

- None of the reports contain explicit reference to the ‘intersection’ of disability with other individual characteristics.
- Some reports include information on age and disability related to a range of issues.
- Other reports include limited information on internally displaced persons and mental health, HIV-status and employment, and women and mental illness.

## Sources:

- There is a lack of balance, breadth, specificity, and transparency within sources.
- There is only one explicit reference to the term ‘persons with disabilities’ in a bibliography.
- There is little to suggest that oral information was sought directly from persons with disabilities, including disabled persons organisations.

# Nigeria report

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## Topics included:

- **Societal discrimination**
  - **Exploitation** and other types of harm
  - **Legal and policy frameworks** and their **implementation** and **data** collation
  - **State perpetrated discrimination** and state **protection**
  - **Accesses to services and support**, including health, education, and child protection
  - **Institutionalisation**
  - **Treatment of returnees**
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# Nigeria report

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## Challenges and limitations:

- **lack of visibility of persons with disabilities** in publicly available COI sources;
- **limited disability specific sources** or general sources with disability specific information resulting on an overreliance on a few sources;
- **lack of information specific to children and young people** or persons with disabilities or specific to type of impairment; and
- **lack of sources taking account of different aspects of the identity** of persons with disabilities (an intersectional approach).



# Background: What is disability?

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**Disability** is the

*‘**interaction** between an individual’s **personal condition** (such as being in a wheelchair or having a visual impairment) and **environmental factors** (such as negative attitudes or inaccessible buildings) which **together lead to disability** and affect an individual’s **participation in society**’.*

**Personal** and **environmental factors** can interact to exacerbate disability or alleviate it. These combined factors determine *‘**the extent to which an individual can participate in society and, as a result, the extent to which disability exists**’.*

CRPD Training Guide, Module 1, What is disability,

[https://www.ohchr.org/Documents/Publications/CRPD\\_TrainingGuide\\_PTS19\\_EN%20Accessible.pdf](https://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf)

# Background: Models of disability

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The dominant models of disability are **individual deficit, social construct and human rights** models that respectively focus on the impaired individual, how a society responds to impairment, and on persons with disabilities as rights holders.

# Background: Models of disability

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**Social construct models** propose that it is primarily **social and environmental barriers and oppression**, rather than individual deficits that disable people with impairments. The focus is therefore on achieving **changes in society** rather than individual adjustment and rehabilitation.

In the **international protection context** it is particularly important to be aware of **human rights models**, which represent persons with disabilities as **equal holders of human rights**.

# Rights-based approach to disability

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“A rights-based approach to disability is not driven by compassion, but by dignity and freedom. It seeks ways to respect, support and celebrate human diversity by creating the conditions that allow meaningful participation by a wide range of persons, including persons with disabilities.

Instead of focusing on persons with disabilities as passive objects of charitable acts, it seeks to assist people to help themselves so that they can participate in society, in education, at the workplace, in political and cultural life, and defend their rights through accessing justice.”

CRPD Training Guide, Module 1, What is disability, p.17,

[https://www.ohchr.org/Documents/Publications/CRPD\\_TrainingGuide\\_PTS19\\_EN%20Accessible.pdf](https://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf)

# Principle 1: A person not a disability

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- Persons with disabilities are **first and foremost persons** and **equal holders of all human rights** and entitlements to fundamental freedoms.
- They **may or may not self-identify in terms of any impairment** or wish to identify themselves, or be described as vulnerable, or as a victim.
- In international protection procedures **it may be necessary to focus on vulnerability.**
- **Disability arises from the interaction between an individual and their environment.**

## Principle 2: Persons with disabilities are not a homogenous group

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- Persons with disabilities are **not a homogenous group** - the experience of every person is unique and dynamic.
- **Multiple aspects of identity and specific context** will shape their life experiences.
- Persons with disabilities may experience **different forms of multiple discrimination** - this may be **cumulative** or **intersectional**.
- These forms of **multiple discrimination must be addressed** in international protection decision-making.

# Intersectionality

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**Intersectionality** is an analytical framework that helps us understand how a person's social and political identities combine to create different forms of discrimination and privilege. Multiple factors of advantage and disadvantage may arise from these identities that can intersect in both empowering and oppressive ways.

**Intersectional discrimination** refers to the discrimination that people experience arising from different aspects of their identity that, when they interact, result in a level of prejudice or persecution that is higher than if a single aspect of their identity is considered in isolation. If discrimination arises from several aspects of a person's identity, each considered in isolation, this is known as **additive discrimination**. Both intersectional and additive discrimination amount to **multiple discrimination**.

# Intersectionality

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Relevant aspects of a person's identity that should be considered include:

- age and life cycle stage
- employment status
- ethnic origin
- evidence of personal resilience
- form of impairment (physical, sensory, intellectual and mental, naturally occurring or caused by conflict)
- gender identity or expression
- HIV status
- legal capacity
- marital or relationship status and family situation
- political identity
- religion
- rural or urban dwelling north or south *etc* of a State
- sexual orientation
- socioeconomic background *etc*



# Intersectionality

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Each of the person's identities may interact with each other, and so what we need to try understand is how, taken together, they;

- a) **increase the risk of harm,**
- b) influence the **type of discriminatory and / or persecutory conduct** inflicted against the individual, and
- c) **exacerbate the effect of the harm** on the individual.

# Including the voices of people with lived experience

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- Persons with disabilities have **insights** into their experiences that are not available to persons without disabilities.
- **Their voices are often silenced or ignored**, depriving COI researchers as well as legal representatives and decision-makers of a credible source of knowledge and information that is informed by lived experience
- This is linked to the fact that **persons with disabilities often have limited visibility and voice within societies globally.**
- This may be due to **stigma and shame**, which result in deliberate **exclusion**; different forms of **institutionalised discrimination**; and the lack of family, community or state support that would enable the full participation of persons with disabilities within society.

## Legal context: Protection under the Refugee Convention

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**Disability can increase risk of persecution or can itself be a reason for persecution, and the individual concerned may be said to form part of a ‘particular social group’ within the meaning of Article 1 of the Convention.**

Sometimes disability may itself form a ‘particular social group’, which UNHCR defines as:

*“a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.”*

Guidelines on International Protection No. 2: “Membership of a Particular Social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02)

## Legal context: Protection under the Refugee Convention

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On [DH \(Particular Social Group: Mental Health\)](#) the HBF report explains:

*“It went on to find that, on the facts of the case, **the risk faced on return to Afghanistan by the appellant was on account of his membership in a particular social group, namely ‘those suffering serious mental illness’.** Whether a person with a mental illness forms part of a particular social group will be a complex question of fact and law. **The Tribunal accepted that a person may suffer serious mental illness which is innate, i.e. a characteristic already present when they are born, or which has been developed since. That illness may also be immutable.** It also accepted that, depending on the specific context in the country of origin and on personal circumstances, persons living with a serious mental illness may be perceived as being different by the surrounding society and thus, **have a distinct identity in their country of origin. This is a fact specific assessment.**”*

# Legal context: Protection under the Refugee Convention

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**Persons with disabilities may experience discriminatory treatment that gives rise to a 'well founded fear of persecution'.**

The HBF report provides some examples of disability-specific discrimination which cumulatively or taken alone could constitute persecution, which include:

- Physical and emotional abuse, and situations of profound neglect
- Births of disabled children not being registered, and so causing statelessness
- Inadequate or even grossly inadequate safeguards to prevent an individual being detained arbitrarily in hospital on mental health grounds
- Treatment and conditions in institutions, such as use of solitary confinement, use of chaining, forced sterilisation, and risks of physical and sexual abuse from those detaining them
- Risks of confinement in the family home, such as use of chaining by relatives
- Traditional healing or exorcism procedures
- Exploitation and trafficking, such as forced begging
- Systematic denial of socioeconomic rights such as access to healthcare and education

## Legal context: Protection under the Refugee Convention

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The HBF report offers examples of the ways in which disability may interact with other aspects of a person's identity, making them more vulnerable to persecution

- Returning someone who suffers from delusions that they have magical or religious superhuman powers to a country where blasphemy is punished severely could give rise to a real risk of persecution on religious grounds.
- If a disabled woman displaying disinhibited behaviour as a manifestation of her disability went into public spaces in her nightwear or in clothing deemed to contravene social mores, she may face risks of sexual or other abuse from state or non-state actors.
- In some circumstances a disabled person may be less able to keep safe from abuse or exploitation, including human trafficking.
- If someone is suffering from mental illnesses, including as a result of previous traumatic experiences, and/or has some other physical or mental condition, it may put them at greater risk of future abuse, for example if Complex Post Traumatic Stress Disorder impacts on interpersonal relationships.

# Legal context: Protection under the Refugee Convention

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- **Sufficiency of protection for persons with disabilities**

Horvath [2000] [UKHL 37](#):

“the word "persecution" implies a failure by the state to make protection available against the ill-treatment or violence which the person suffers at the hands of his persecutors” (Lord Hope)

“complete protection against such attacks is not to be expected of the home state. The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals” (Lord Hope)

AW (sufficiency of protection) Pakistan [2011] [UKUT 31 \(IAC\)](#):

“Notwithstanding systemic sufficiency of state protection, a claimant may still have a well founded fear of persecution if authorities know or ought to know of circumstances particular to his/her case giving rise to the fear, but are unlikely to provide the additional protection the particular circumstances reasonably require”

# Legal context: Protection under the Refugee Convention

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- Disability may be relevant to decisions on internal relocation.

[Paragraph 3390 of the Immigration Rules](#) states:

“The first test to satisfy when considering internal relocation is whether or not there is a ‘safe area’ to which the claimant can return without a well-founded fear of persecution.

The second test is whether or not the claimant can reasonably be expected to stay in that area, and in the context of the country concerned, lead a relatively normal life without facing undue hardship. If not, it would not be reasonable to expect the person to move there.”



# Legal context: Protection under the Refugee Convention

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The HBF report states:

“The assessment of whether internal relocation is unreasonable or unduly harsh takes account of the particular characteristics of the individual, whose age, gender, experience, health, skills and family ties may all be very relevant. Initially the test can appear to be a high threshold – it is often said that the harshness of relocation has to be judged by reference to “standards prevailing generally in the country of nationality” (see Januzi [2006] UKHL 5 and AH (Sudan)), and the circumstances in the person’s home country may be very difficult. However, in AA (Uganda) [2008] EWCA Civ 579, the Court of Appeal found that there will be conditions in the place of relocation that are unacceptable to the extent that it would be unduly harsh to return the applicant to them even if the conditions are widespread in the place of relocation. It is often the case that internal relocation will be found to be unduly harsh for a disabled person, where it may not have been for a person who was not disabled.

[...] In a recent unreported Upper Tribunal determination for example, it was found that a young Afghan with learning difficulties was entitled to refugee status because he would be at risk in his conservative home area of religious persecution because he had “no ability to censor himself, and appeared incapable of self-moderation when it came to expressing his views or managing his behaviour”. Internal relocation was also deemed unreasonable because he would not be able to cope due to his disability.”

## Discussion and questions

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Thank you so much for listening.

We would now like to open up for questions and discussion.

Please post questions in the chat and raise your hand if you would like to speak.