

Impact case study (REF3b)

<p>Institution: Robert Gordon University</p>
<p>Unit of Assessment: UoA 20 Law</p>
<p>Title of case study:</p> <p>Impact on practice in asylum status determination through development and uptake of guidelines for best practice.</p>
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>A series of projects which examined judicial reception of evidence and enabled development and uptake of guides for best practice in asylum determination has contributed to international good practice in a field where it is difficult to ensure objective and fair decision making. The projects included analysis of: gender guidelines; medical evidence; Country of Origin Information (COI); and best practice where children are subject to the asylum process, including COI and evidence relating to age assessment. The research has stimulated and contributed to debate among practitioners. Further, medical evidence guidelines proposed by the research team have been adopted by the International Association of Refugee Law Judges (IARLJ) affecting judicial activity internationally. In addition, research into reception of evidence surrounding COI led to a position on an Advisory Board and development of a further best practice guide.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>The research team comprise: Rebecca M. M. Wallace (Professor of International Human Rights Law 2003 – 2009, Visiting Professor 2009 – 2012, returned to RGU full time as Research Professor of International Human Rights and Justice, 2012 – present); Anne Holliday (Research Assistant 2001 - 2010; Karen Wylie (Research Assistant 2007 – present).</p> <p>For the last 10 years, the abovementioned team has analysed existing guidance around asylum determination and judicial reception of evidence. The first project in the series ran from 2003 - 2005 when Wallace and Holliday were awarded a Nuffield Foundation Research Grant to conduct an analysis of the Immigration Appellant Authority’s Gender Guidelines and their application within the UK asylum determination process. Wallace came to the project having previously conducted research on gender issues in asylum determination and bringing subject expertise in the discipline of international human rights law and refugee law. The team brought its findings to practitioner conferences in 2004 and 2005, followed by the publication of a chapter in a text on international law in 2006 (R3). In addition, an update of the EU and ECHR sections on refugee law by Wallace for immigration judges in 2004 made reference to the gender guidelines. A more recent output related to gender issues in refugee status determination took the form of a sole-authored chapter in <i>Contemporary Issues in Refugee Law</i> (R6).</p> <p>Subsequently, in 2008, another Nuffield Foundation grant allowed Wallace and Wylie to undertake a project initiated by the IARLJ concerning the judicial reception of medical evidence in asylum claims. Wallace initiated the project having heard the call for guidelines being expressed in various fora by immigration judges and case workers. The format and the requirement to produce a ‘user friendly’ tool were similar to the requirements for the gender guidelines and both the medical evidence guidance and gender guidelines both relied partly on a comparative assessment of guidance and practice within different jurisdictions. The medical evidence project examined international case law to establish how expert medical evidence was being assessed in practice by decision makers and legal representatives and an online questionnaire was sent out to decision-making bodies in international chapters of the IARLJ. From the data, Wallace and Wylie extrapolated generally applicable principles of how expert evidence should be approached by asylum and refugee status decision-makers worldwide, and drew up guidelines for adoption by the IARLJ in 2010. Further details on the development of the <i>Guidelines</i> will appear in a peer reviewed paper in the <i>International Journal of Refugee Law</i>.</p>

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Then, in 2008-2009, with British Academy funding, **Wallace** and **Wylie** conducted research on a related area where disputed asylum claims depend on expert evidence, namely COI. It had become apparent during the research on expert medical evidence that evidence cannot be taken in isolation, but that objective, current and accurate information of one type impacts on other, related evidence. Accordingly, medical evidence must be seen in the context of COI from the country in which the alleged torture or ill-treatment has occurred. Subsequently, **Wallace** and **Wylie** were amongst the authors of a discussion paper given at the 9th World Conference of the IARLJ in 2011 where **Wylie** led the Working Party Session on 'COI as expert evidence'.

More recently, in 2010, research into COI in the context of claims relating to children was conducted, again with a Nuffield grant. **Wallace** had previously published on issues around children in the asylum process, including **R1** and **R2**, and has since published a co-authored case note examining the best interests of the child (**R4**) and a further co-authored paper in the British Medical Bulletin on considerations in the assessment of age (**R5**). This is a natural follow-on from previous work in that it addresses the complexity of evidence in this field and recognises the particular needs of a vulnerable group in the asylum system. It again highlights the need for evidence that is transparent, contemporary and accurate to facilitate the establishment of a claimant's credibility.

3. References to the research (indicative maximum of six references)

R1 Wallace, R. M. M. and Middleton, K., "Double Jeopardy: Refugee Children Seeking Asylum", Vol. 13, No 3 (2000) *Representing Children* p189-200.

R2 Wallace, R. M. M., "Discharging the Debt to Unaccompanied Minors Seeking Refugee Status: The Policies and Practices within the European Union", Vol. 18, No 1. (2005) *Representing Children* pp 11-27

R3 Wallace, R. M. M., and Holliday, A., "Application of Gender Guidelines within the Asylum Determination Process: From Reflections on the UK and Canadian Experience" in Waters, C. P. M. (ed.) *British and Canadian Perspectives on International Law*,. Martinus Nijhoff: Boston, 2006 pp. 169-186. ISBN13: 9789004153813; E-ISBN: 9789047410911

R4 Wallace, R. M. M. & Janeczko, F. A. W. 2011. "Best Interests of the Child in the Immigration and Asylum Process: The Case of ZH (Tanzania) v. Secretary of State for the Home Department", 31(1) *Children's Legal Rights Journal*, pp.46-50.

R5 Aynsley-Green, A., Cole, T. J., Crawley, H., Lessof, N., Boag, L. R., & Wallace, R. M. M. 2012. "Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control" 102(1) (2012) *British Medical Bulletin* pp.17-42.

R6 Wallace, R., "Internal Relocation Alternative in Refugee Status Determination: Is the Risk/Protection Dichotomy Reality or Myth? A Gendered Analysis" in Juss, S., and Harvey, C. (Eds.). *Contemporary Issues in Refugee Law*. Edward Elgar Publishing, 2013 pp.289-310. DOI:10.4337/9781782547662.00020

Relevant funding

- Nuffield Foundation Research Grant, 'Analysis of the application of UK Gender Guidelines within the UK determination process' 2004.
- Nuffield Foundation Social Sciences Small Grant, 'The Reception of Expert Evidence: An evaluation of the reception of expert evidence, particularly in claims alleging torture within the asylum determination process' February 2008–September 2008.
- British Academy Small Grant, 'The reception of country of origin information as expert evidence in the context of the asylum determination process' October 2008–April 2009.
- Nuffield Grant – COI in the Context of Claims Relating to Children 2010

4. Details of the impact (indicative maximum 750 words)

Two documented examples of the impact arising from the aforementioned research into evidence in asylum claims are outlined below. The impact can be defined as an effect on legal practice, evidenced by research findings stimulating debate amongst practitioners, leading to developments in attitudes and behaviours, alongside documented evidence of influence on guidelines. In both examples, a set of judicial guidelines were drawn up to aid best practice in asylum determination.

The first example of impact concerns the investigation into reception of medical evidence which led to the development of guidelines to be adopted by the IARLJ. The IARLJ is the main international organisation in the field of asylum and refugee law with a membership of over 300 judges in 46 countries. Asylum applications may include presentation of, for instance evidence of torture as the basis of an asylum claim, or evidence of psychological disturbance as a reason for inconsistent or incomplete testimony. The quality of evidence presented can vary internationally, and some types of evidence, for instance the claim that injuries were caused by torture, is inherently difficult to establish, especially after the passage of time. As mentioned previously, the need for guidelines on medical evidence was recognised by the IARLJ in the Expert Evidence Working Parties and their development was discussed at IARLJ World Conferences.

Subsequently, **Wallace** and **Wylie** were chosen (**E1**) to lead the research and to draw up recommendations to be included in a guidance document for the IARLJ. The guidelines (**E2**) set out principles that are generally applicable across the wide variety of refugee determination systems and procedures found internationally. The guidelines were adopted by the IARLJ and recommended for use, and initially published on its website in May 2010 (with a final version uploaded in June 2011). They are intended as a 'living document', to be refined through their use in practice, and reviewed after a period of three years from publication. It is expected that **Wallace** and **Wylie** will undertake this review. Initial reactions within the impact period have been positive, and Judges have commented that the guidelines are useful both in practice and in training environments (**E3**).

Further to this, there has been interest in the guidelines from: Freedom from Torture (**E4**), a UK medical foundation for the care of victims of torture, in a 2011 report where they are said to "represent the most current and complete guidance on these matters and a consensus of international judicial opinion, and could be used to good effect in developing consistency in decision-making in this area" (p. 60); and in wider guidance drawn up by the IARLJ as part of the Credo project (**E5**), a partly EU-funded joint project of the Hungarian Helsinki Committee, the United Nations High Commissioner for Refugees, IARLJ and Asylum Aid – the IARLJ has drawn up wider guidance on credibility assessment in asylum cases. For assistance in the use of expert medical evidence, users of the paper are directed to the guidelines (**E5** p. 39).

Following publication of the guidelines, **Wallace** and **Wylie** co-presented a paper at a symposium in Edinburgh in 2011. This was based on the research for the IARLJ, and aimed to disseminate the research findings while raising the profile of the guidelines. Several practitioners were in attendance including: an advocate; an immigration judge; and representatives from the UK Borders Agency and the Scottish Refugee Council (**E6**).

The second example of impact is underpinned by the British Academy funded work on COI. A Working Party Session was led by **Wylie** (**E7**) at the 9th World Conference of the IARLJ in 2011 where **Wallace** and **Wylie's** co-authored paper (**E8**) formed the basis for a discussion on the difficulties in ascertaining the objectivity and relevance of expert country evidence compared to expert medical evidence. The objective of such Working Party sessions is to assist in the development of a coherent body of international refugee jurisprudence: the working party is said to "make a direct contribution to the principal constitutional objects of the Association which, in turn, strengthens the international refugee protection regime or system in the world today while protecting and advancing the rights of refugees." (**E9**).

Subsequently **Wallace** was asked, in May 2013, to sit on the Advisory Board of a project to draft a best practice guide for country expert evidence. This involvement can be expected to have future

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impact on the UK asylum determination process, but within this REF assessment period, has resulted in the publication of a best practice guide on writing COI reports (E10). The guide was published in July 2013 on the Electronic Immigration Network, and it provides a practical hands-on tool to aid the writing of effective and useful country evidence reports.

5. Sources to corroborate the impact (indicative maximum of 10 references)

E1 Confirmation of Wallace and Wylie's work on the guidelines. 3RD REPORT of the Expert Evidence Working Party to the IARLJ Conference, Cape Town South Africa, January 2009

http://www.iarlj.org/general/images/stories/wp_papers_cape_town/geoffrey_care_introduction.pdf

E2 IARLJ Guidelines on the Judicial Approach to Expert Medical Evidence

http://www.iarlj.org/general/images/stories/working_parties/guidelines/Final_guidelines_March_2011.pdf

E3 Emails on file from a senior judge in the UK Upper Tribunal, and a High Court Judge in the Administrative Court of the Republic of Slovenia.

E4 Freedom from Torture, *Body of Evidence: Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal* (2011)

<http://www.freedomfromtorture.org/sites/default/files/documents/body-of-evidence.pdf>

E5 Allan Mackey and John Barnes, *Assessment of Credibility in Refugee and Subsidiary Protection under the EU Qualification Directives. Judicial criteria and standards*, Prepared by the IARLJ in its role as a partner in the "Credo Project", January-November 2012

<http://www.iarlj.org/general/news/1/362-credo-project-paper>

E6 Symposium programme, including abstracts and participants list on file.

E7 Wylie, K. 2011. 'IARLJ Expert Evidence Working Party Session, Lake Bled, Slovenia, 8th September 2011' [report of meeting, on file]

E8 G. Care, R. Wallace and K. Wylie, 'The Use of Expert Country Evidence', discussion paper given at the 9th World Conference of the IARLJ, Between Border Control, Security Concerns and International Protection: A Judicial Perspective, Lake Bled, Slovenia, 7-9 Sept 2011

http://www.iarlj.org/general/images/stories/BLED_conference/papers/WP_ECE_-_K_Wylie.pdf

E9 Coordinator's Report of the Activities of the IARLJ Working Parties since the last IARLJ World Conference, January 28th – 30th, 2009 Dr. James C. Simeon

http://www.iarlj.org/general/images/stories/BLED_conference/papers/10_WP_Coordinators_Report_J_Simeon.pdf

E10 Best practice guide for country evidence:

<http://www.ein.org.uk/sites/default/files/Expert%20Country%20Evidence%20BPG.pdf>