

Prof. Dr. Livia Holden<sup>1</sup>

15 December 2013

## 1. Introduction

On the 6<sup>th</sup> November 2013 I was commissioned the reviews of *India: Country of Origin (COI) Report (Home Office UK Border Agency COI Service)* dated May 2012 and of the *Operational Guidance Note India (OGN)* by Chief Inspector of Borders. These reviews are provided hereby as two separate documents. As per the terms of reference <sup>2</sup> the present review evaluates *India: Operational Guidance Note*. Specifically this review entails:

- (i) to what extent the OGN refers to the most up-to-date information produced by COI service or other publicly available COI, and
- (ii) to what extent the OGN gives an indication of the range of relevant country of origin information that should be considered.

## 2. Overview

---

<sup>1</sup> Prof. Dr. Livia Holden is Dean of the Faculty of Humanities and Social Science and Chair of the Department of Behavioural Sciences at the Karakoram International University. She holds a Master and an M.Phil from the University of Paris 10 – Nanterre and a PhD in Law and Social Sciences from SOAS - University of London. Prior to Karakoram International University, she has worked at Freie University, Humboldt University, Griffith University and LUMS. She has research affiliations with the Law Department of the University of Otago, the University of California at Berkeley. She is Visiting Scholar at the European Ethnology Department at Humboldt University and at the Johann Wolfgang Goethe University. Her research focuses on state law, religious law, and mixed sources of law, especially for their implications with gender, human rights and governance in South Asia and in the diasporas. She has provided consultancies and expertise in anthropology of law, anthropology of borders, qualitative research methods, ethics, human rights, institutional development, asylum and immigration related cases in the US and UK courts. She is the author of *Hindu Divorce* and the editor (and contributor) of *Cultural Expertise and Litigation*. She has also realized two documentary-films, *Runaway Wives* and *Lady Judges of Pakistan*, and contributed with chapters and papers to collected volumes and journals such as the *Journal of Legal Pluralism*, *South Asia Research* and the *International Journal for the Semiotics of Law*. Her teaching portfolio includes International Human Rights, Qualitative Research Methods, Mountain Areas and Development, Anthropology of Corruption, Anthropology of Law, South Asian Diasporas, Lawyering and Legal Practice, and Cultural Expertise and Litigation.

<sup>2</sup> Available at <http://icinspector.independent.gov.uk/the-independent-advisory-group-on-country-information-invites-tenders-to-evaluate-the-uk-home-offices-country-of-origin-information-coi-reports-and-operational-guidance-notes-ogns-on-indi/> (accessed 9 December 13).

Evidently, the authors of *India: Operational Guidance Note 2013* (hereafter referred to as *India: OGN 2013*) have used and cited sources that are more updated than *India: COI 2012*. Nevertheless this reviewer finds that significant information is sometimes missing and at times misinterpreted. Therefore *India: OGN 2013* might not always accurately reflect *India: COI 2012*. In particular this reviewer finds that except for most recent facts *India: OGN 2013* relies on updated but not always relevant sources.

My general remark formulated in the review of *India: COI 2012* regarding the need to integrate the existing sources with original legal texts and academic publication, appears to make particularly sense with regard to the *India: OGN 2013*, whose correct applicant depend from the understanding of the specific context of the information, especially for the consideration of individual cases. This reviewer notices a significant use of the US State Department as sources of information, which recurs in 29 instances in *India OGN 2013*. Detailed suggestions have been formulated with regard to relevant sources but, from a general perspective, this reviewer reiterates that the use of a greater diversification of sources (possibly including original texts, especially for legal sources, and academic publications as well) is necessary to a balanced understanding of information and facts that are heavily impacted by important cultural, historical, financial and political factors.

### **1. Page-by-page Suggestions**

p. 2

2.2.2

This section should be integrated with the reference to people's massive displacement due to internal conflicts such as Gujarat Riots and Garo Rabha conflicts, which should be added and/or linked to the existing references in other sections of *India OGN 2013*.

p.4

2.2.8

At 9.26 of *India COI 2012* (p.44) it is reported that on the basis of information from USSD report (2010) there are no data on custodial deaths. This appears to be updated by *India OGN 2013*, which at section 2.2.8 states that "The Group estimated that the actual number of death is far greater". This statement appears to more accurately reflect the of *India COI 2012* (9.37 p.47) on torture and judicial deaths.

2.2.9

More recent information than the report for ACHR 2008 should be included on torture and custodial death.

p.24-25

3.13.12-3.13.13

These sections are based on a report by Human Rights Watch dated December 2012, which was not available at the time of the redaction of the COI (cf. Rape p.128-130, 24.37-24.41). They therefore provide more updated and accurate information than *India COI 2012*.

p.13

3.10.2 The quotation from US State Department (see note 33 page 13) stating that “The central and state government and the armed forces investigated complaints and punished some violations committed by their own forces ...” does not reflect the section on human rights violation by security forces (COI 9.23, p.43) that states “Even in cases where the Government’s Central Bureau of Investigation has found compelling evidence of violation by the security forces, permission to prosecute has been denied”.

p.13

3.10.3 This section reports data from a US State Department report (see note 34, p.13, *India OGN 2013*). The same US State Department report at p. 3 also quotes another source which is not mentioned by *India OGN 2013* and provides slightly different data: “The Kashmir Coalition of Civil Society, a Kashmir-based human rights nongovernmental organization (NGO), reported 148 deaths from violent incidents, among other human rights abuses, including the deaths of 35 civilians, 75 alleged militants, and 36 security forces personnel.”

Data cited by India OGN 2013	Data from the same report but not cited by India OGN 2013
------------------------------	---

Source: Institute for Conflict Management	Source: Kashmir Coalition of Civil Society
tot. deaths 117	tot. deaths 148
civilians 16	civilians 35
terrorist 84	terrorist 75
security forces 17	security forces 36

Furthermore the following statement from *the India COI 2012* (p. 35, 8.09) is not reflected in the *India OGN 2013*: “the major threat to stability in Jammu and Kashmir does not come from insurgents but from general protester as a reaction to the huge military presence and lack of political progress.”

p.14

### 3.10.6

After consultation from the cited source the following data appear to be mistaken: read 604 instead of 600 for Maoists related deaths in 2011, and 1080 instead of 1180 for Maoists related deaths in 2012.

The relationship between civilians, Maoists and State forces should be clarified in the light of the report mentioned at p.33-34 by section 8.04-8.06 of *India COI 2012* (see <http://www.hrw.org/sites/default/files/reports/india0712ForUpload.pdf> accessed 14 December 13). This same report is mentioned in *India OGN 2013* at p. 15, note 48 but does not highlight the undue pressure suffered by civilians in the area affected by conflicts between the state and Maoist groups.

p. 15

### 3.10.13

This section should better reflect the information provided at p. 79, section 17 of *India COI 2012*, Freedom of speech and media, regarding journalists and activists facing trial under special laws and the limitation to the freedom of speech against state sponsored abuses.

p. 18

#### 3.11.10

This section stresses that religious motivated violence (for ex. Gujarat riots of 2002) is not contained because of lack of trained public officials and discriminative attitude by the police. However, as this reviewer has suggested in relation to section 3, History, of the *India COI 2012*, the likely responsibility of the Gujarat Chief Minister Narendra Modi, should also be highlighted (see <http://www.bbc.co.uk/news/world-south-asia-13170914> accessed 14 December 13).

Similarly mistreatment and discrimination of religious minorities appear to be widespread and systematic. Accordingly this reviewer has suggested to expand the section of India COI 2012 Arbitrary arrest and detention, as to include arbitrary detention influenced by religious affiliation (see

<http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/call-to-end-targeting-of-innocent-muslim-youth/article4507097.ece> accessed 14 December 13).

p. 20 and ff.

#### 3.12 Land Disputes

While this section might reflect and even be slightly more updated than the India COI 2012 it does not include the difficulties of farmers due to the failure of agricultural reforms (see on agricultural reforms and their failure (see Deshpande, R S, 2012, Agrarian Crisis and Farmer Suicides (Land Reforms in India Series), Sage Publication), and failure of micro-credit schemes (see

<http://www.businessinsider.com/hundreds-of-suicides-in-india-linked-to-microfinance-organizations-2012-2> accessed 14 December 13). While the direct link

between the high number of farmers' suicide and corporate agriculture such as the introduction of GMO has been challenged (see as an ex.

<http://news.nationalpost.com/2013/01/26/the-myth-of-indias-gm-genocide-genetically-modified-cotton-blamed-for-wave-of-farmer-suicides/> accessed 14

December 13) it is a fact that soaring numbers of suicide among farmers are registered (see <http://www.thehindu.com/opinion/columns/sainath/farmers-suicide-rates-soar-above-the-rest/article4725101.ece> accessed December 13) and soaring number of suicide in concomitance with the extractive industries and the introduction

of corporate agriculture using GMO techniques has been observed and registered worldwide (see [http://www.un.org/esa/sustdev/csd/csd16/PF/presentations/farmers\\_relief.pdf](http://www.un.org/esa/sustdev/csd/csd16/PF/presentations/farmers_relief.pdf) accessed 14 December 13).

Updated information, of which some such as the backlog of civil cases has been reported by India COI 2012 at 12.16 (see also <ftp://ftp.fao.org/docrep/fao./011/ak280e/ak280e00.pdf> accessed 14 December 13), show that the combination of inadequate legislation with connivance between police and politicians make the existing redress ineffective or of difficult access, especially to ethnic and religious minorities and against corporate crime (see <http://www.indianet.nl/pdf/AccessToJustice.pdf> accessed 14 December 13).

This section should be updated with the information suggested by my review of India COI 2012 and particular attention should be given to the unlikely or unduly harsh relocation of disposed farmers, especially if they belong to ethnic and religious minorities, and if they are women relocating alone and/or with children (see <http://www.globalresearch.ca/the-bastar-land-grab-the-expropriation-of-farmers-in-india> accessed 14 December 13).

p. 22

### 3.13 Violence against women

While, generally speaking this section appears to be adequately updated and appropriate reflecting *India COI 2012*, it suffers from the lack of understanding of the debate on personal laws, customs and their potential adverse impact on women and children. This reviewer has already signaled this lacuna for India COI 2012 but here it appears even more evident. A blatant example of the above is that since matrimonial dispute and domestic violence are considered to be a family problem (as correctly mentioned by OGN India 2013 at p. 27) they tend to be settled by state and non-state sponsored alternative dispute resolution such as panchayat and arbitration/adjudication boards. The role and competence of some of these non-state (or partially state-sponsored or state-tolerated) jurisdictions is often acknowledged by state law in India (see for ex. Holden, Livia (2008) *Hindu Divorce*, Aldershot: Ashgate, esp. chap. 4 and 5) and should be given more attention both for the factual protection and their potential manipulation by patriarchal instances in specific circumstances (see Archana Parashar (2013) “Religious personal laws as non-state

laws: implications for gender justice”, *The Journal of Legal Pluralism and Unofficial Law*, 45:1, 5-23).

p. 27

### 3.14 Gay men, lesbian, bisexual and transgender persons

As this reviewer signaled for India COI 2012 this section should be updated with the recent decision by the Supreme Court that sets out the Delhi High Court order declaring gay sex as illegal. See <http://www.indianexpress.com/news/gay-sex-illegal-rules-sc-as-it-sets-aside-delhi-hc-order-on-homosexuality/1206242/> accessed 11 December 13. Here is the text of the Supreme Court judgment:

<http://www.scribd.com/doc/190889099/SC-verdict-on-Article-377> accessed 14 December 13. The Attorney General has expressed a view in the press against the Supreme Court's judgment:

<http://m.economictimes.com/opinion/comments-analysis/law-cant-remain-static/articleshow/27278372.cms> 14 December 13.

More detailed consideration should be given to the situation of transgender persons who have a specific place in South Asian society but due to the lack of awareness and understanding of their cultural practices and traditions may not be given appropriate protection and effective legal rights in the ongoing process of social engineering and progress. See for ex. The difficult management of collective use of income, property rights concentrated in the hands of the guru, and non-state systems of dispute resolution as shown in the documentary film *Between the Lines* by Thomas Wartman (2005).

### 3.15 Prison conditions

This section on prison conditions would benefit from a closer consultation of original sources especially for what concerns the legal texts and adequate linkages with the special legislation that in certain states allow for longer preventive detention and torture by the police and other state forces, especially in Jammu and Kashmir and in the North East areas (see <http://www.kashmirglobal.com/2013/11/14/number-persons-jails-home-dept-prisons-differ-figure.html>,

[http://www.academia.edu/3376275/Prison Houses and Valleys of Torture Everyday violence in Kashmir and Northeast India](http://www.academia.edu/3376275/Prison_Houses_and_Valleys_of_Torture_Everyday_violence_in_Kashmir_and_Northeast_India) accessed 14 December 13). For a

recent snapshot on prisons by the Indian government see <http://apccaindia2013.gov.in/aboutprison2011.pdf> accessed 14 December 13.

Although some of this information is mentioned by *India COI 2012*, *India OGN 2013*

does not reflect the variety of situations and conditions of prisons in the different states of the federation.