APAIPA

ACTORS OF PROTECTION AND THE APPLICATION OF THE INTERNAL PROTECTION ALTERNATIVE

NATIONAL REPORT

SWEDEN

ecre European Council on Refugees and Exiles

Asylum Aid Protection from Persecution

VluchtelingenWerk Nederland

Hungarian Helsinki Committee

European Refugee Fund of the European Commission

2014

I. Acknowledgments.

This country report is based on the research carried out by Ms. Maite Zamacona and Ms. Emelie Hökfelt.

ECRE would like to thank the Swedish Migration Board for their support to this research. In particular, ECRE would like to thank Helene Hedebris for her support in reviewing the results of the research and her assistance during the APAIPA Workshop in Brussels in May 2014.

II. Glossary of acronyms.

AA: Aliens Act.

AP: Actors of Protection.

CA: Migration Court of Appeal.

IPA: Internal Protection Alternative.

MB: Migration Board.

MC: Migration Court.

QD 2004: Qualification Directive (2004/83/EC)

QD 2011: Recast Qualification Directive (2011/95/EU)

III. Background: the national asylum system.

a. Applicable law.

In Sweden, the applicable law consists of the law, preparatory works on proposed laws and case law. The Aliens Act (2005:716) (Utlänningslagen: 2005:716) addresses essentially all aspects of migration,[1] which are further detailed in the Aliens Ordinance (Utlänningsförordning: 2006:97).[2] The European Convention on Human Rights was incorporated into Swedish Law in 1995. The European Courts of Human Rights has released a series of judgments looking at the application of the IPA by Sweden in - mostly – cases of applicants from Iraq.[3]

[1] The Aliens Act (in English) is available here: http://www.asylumlawdatabase.eu/en/content/en-aliens-act-2005716-sweden
[2] http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Utlanningsforordning-200697_sfs-2006-97/?bet=2006:97
[3] See: ECtHR, *A.M.M. v. Sweden* (Application no. 68519/10), 3rd April 2014; ECtHR, *B.K.A. v. Sweden* (no. 11161/11), 19 Dec 2013; ECtHR, *K.A.B. v. Sweden* (no. 886/11), 17 Feb 2014; ECtHR, T.A. v Sweden (no 48866/10), 19 December 2013; ECtHR, *W.H. v. Sweden* (no 49341/10), 27 Mar 2014; ECtHR, *A.G.A.M. v Sweden* (no 71680/10), *M.K.N. v Sweden* (app.no. 72413/10), *M.Y.H. and others v Sweden* (no. 50859/10), *N.A.N.S. v. Sweden* (no. 68411/11), *N.M.B. v. Sweden* (no. 68335/10)

Preparatory work on proposed laws, i.e. the texts that are created in connection with the legislative process, are also used in the application of the law. Preparatory work and case law are subsidiary sources of law. Preparatory works are used as a means of assistance in the application of the law. The preparatory work for government bills has the greatest importance. A series of preparatory works are of relevance for this research:

- Prop. 1996/97:25 (p. 101): Swedish Migration Policy on a global perspective[4]
- Prop. 2005/06:6 (p. 28): Refugee status and persecution on grounds of gender and sexual orientation.[5]
- Prop. 2004/05: (p170, p. 176ff, p. 182-195, p. 280 ff): A new system for appeals and procedures in alien and citizenship cases.[6]
- SOU 2006:6 (p. 159 ff., p. 130f.): The Qualification Directive and Swedish law.[7]
- Prop. 2009/10:31 (p. 134-135): The transposition of the Qualification Directive and the Directive on asylum procedures.[8]

b. Institutional setup.

The Migration Board is the central administrative authority in the area of asylum and subordinate to the Government as a whole. It reports to the Ministry of Justice. The Migration Board is responsible for the processing of applications.

The Migration Courts are a special division of the County Administrative courts (Förvaltningsrätterna) in Stockholm, Gothenburg, Luleå and Malmö. Cases that have been refused by the Swedish Migration Board can be appealed to the Migration Courts, which review immigration and nationality matters in full. According to the Swedish constitution, the Courts enjoy independent status. The procedure at the Migration Courts is adversarial which means that the Swedish Migration Board and the applicant meet as two separate parties before the Migration Court.

The Migration Court of Appeal is a section of the Administrative Court of Appeal in Stockholm (Kammarrätten i Stockholm). If leave to appeal is granted, determinations made by the Migration Courts can be appealed to the Migration Court of Appeal, which reconsiders determinations in full made by the Migration Courts.

c. The procedure.

Sweden offers protection to three categories of asylum seekers:

- those with refugee convention grounds (Chapter 4, Section 1 AA).
- those with subsidiary protection needs (Chapter 4, Section 2 AA).
- those otherwise in need of protection (Chapter 4, Section 2a AA).

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and *N.M.Y. and others v. Sweden* (app.no. 72686/10) (judgments of the 27 June 2013). See on Afghanistan: ECtHR, *Husseini v Sweden* (10611/09), 13.10.2011; ECtHR, *N v Sweden* (23505/09), 20.07.2010.

[4] http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/prop-19969725-Svensk-migrati_GK0325/

[5] http://www.regeringen.se/content/1/c6/05/10/73/8e1942a2.pdf

[6] http://www.regeringen.se/content/1/c6/04/55/68/018827d5.pdf

[7] http://www.regeringen.se/sb/d/108/a/56440

[8] http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/prop-20091031-Genomforande-a_GX0331/

The Swedish Migration Board investigates cases and takes decisions in the first instance. When an asylum seeker arrives in Sweden he/she must report him/herself and register as soon as possible with the nearest office of the Migration Board. The asylum seeker, through an interpreter, is given information about asylum regulations, the Dublin Convention, return options to the country of origin if their asylum application proves unsuccessful, secrecy and the right to collect information about asylum seekers from governments and organizations but not from their governments, about daily allowances, language classes, work, health care and legal support.

The asylum seeker undergoes a voluntary medical checkup offered by the Swedish Migration Board and is also issued a general id-card known as "LMA–kort" issue by the law: Lagen om mottagande av asylsökande' with some personal details and photo of the cardholder.

If an application is considered manifestly unfounded an accelerated procedure is applied. The procedure is foreseen in Chapter 8 Section 6 of the Aliens Act. Decisions in "accelerated procedures" must be taken within three months. If an accelerated procedure decision is appealed (including a Dublin decision) there is no suspensive effect. There are no border procedures in Sweden.

d. Appeals.

Decisions of the Swedish Migration Board in asylum and citizenship cases can be appealed to one of the four migration courts. When a decision is appealed the appeal is first reconsidered by the Migration Board which has the legal possibility of changing its earlier decision. If the refusal stands, the appeal is transferred by the Migration Board to the Migration Court.

The Migration Courts reconsiders the matter in full and can grant protection in their own right. If new grounds for seeking protection first appear at the appeal stage, the court may refer the case back to the Migration Board for reconsideration and investigation. This is because an applicant has the right to have their protection grounds assessed in two separate instances.

Reviews of the Migration Courts decisions are made to a third instance body, the Migration Court of Appeal, which is the Administrative Court of Appeal in Stockholm. According to section 16§2 of the Aliens Act leave to appeal to the Migration Court of Appeal is issued if:

- it is of importance for the guidance of the application of the law that the appeal is examined by the Migration Court of Appeal or
- there are other exceptional grounds for examining the appeal.

The Administrative Court of Appeal is a general administrative court and is a Court of final instance. The decisions made by the Administrative Court of Appeal will provide guidance for decisions of the Swedish Migration Board and Migration Courts in similar matters.

The Migration Court of Appeal is the main source of precedent in the system (with the jurisprudence of the ECtHR). Decisions by the Migration Courts are not deemed to have any special status as precedence, even though they may contain important legal reasoning.

e. Representation and legal aid.

If the Migration Board determines that the asylum application will be processed in Sweden, then a lawyer is appointed by the Migration Board, unless the asylum applicant asks for a specific lawyer.
The asylum-seeker has the right to legal representation as long as the asylum application is being examined. Free legal assistance is provided to the asylum seekers throughout the regular procedure and at all appeal levels and is funded by the state budget. The lawyer can attend the interview at first instance.

In Dublin cases and manifestly unfounded applications normally no free legal assistance is provided.

IV. Methodology: sample and interviews.

a. Methodology used.

The methodology was based on desk research (mainly national legislation, guidelines and reports), the analysis of decisions and interviews with key stakeholders.

Semi-structured interviews were held with a lawyer, a migration court clerk, a legal researcher at Uppsala Law School and two experts from the Migration Board's legal department. The interviews were conducted anonymously.

b. Description of the sample.

The sample consists of 100 cases, evenly divided between first instance decisions (Swedish Migration Board) and appeals (decisions from the three Migration Courts located in Stockholm, Malmö and Gothenburg). The selected decisions are all dated in 2012.

In approximately 1/3 of the selected decisions, the applicants are from the pre-determined set of countries of origin, i.e. Afghanistan, Iraq and Russia. The rest of the decisions mainly relate to applicants from countries that frequently apply for asylum in Sweden, in particular Syria and Somalia.

About 1/3 of the decisions concern vulnerable applicants, approximately 1/3 of the applicants are from the selected countries of origin, and about 1/3 of the decisions are representative of the national asylum case load as a whole. In a number of cases these categories overlap.

The range of cases selected tries to reflect and provide examples for as many questions as possible in the project questionnaire. At least 1/3 of the sample involves state protection actors, and at least 1/3 involves non-state protection actors. The sample also attempts to reflect the make-up of applications for protection received by gender, between cases that consider refugee status and subsidiary protection, and by country of origin. The sample also entails cases from each of the regional courts (7 from Göteborg, 20 from Malmö and 23 from Stockholm).

Country of Origin	Total Cases	Instance		
		1st Instance	Appeal	Last resort
Afghanistan	38	14	24	
Congo DRC	3	2	1	
Eritrea	3	3		
Ethiopia	1	1		
Iraq	28	12	16	
Kosovo	2		2	
Lebanon	1	0	1	
Libya	1		1	
Mongolia	2	0	2	
Nigeria	1	1		
Russia	3	1	2	
Somalia	12	9	3	
Stateless (Gaza)	1	1		
Syria	7	7		
Turkey	1		1	
Uganda	2	1	1	
TOTAL	**106**	**52**	**54**	

V. National Overview.

a. Actors of protection.

In Sweden, the concept of Actors of Protection is not regulated in Swedish legislation. However, it is referred to in the *preparatory works:* proposition 2009/10:31.[9] Actors of Protection will be exclusively regulated in Swedish Law when the amended Qualification Directive is implemented. Sweden will implement the amendments in 2014.

[9] See: *preparatory works:* proposition 2009/10:31[9] p. 134.

i. The nature of protection (art. 7(2)).

The assessment of actors of protection is the same when examining whether the applicant qualifies for refugee status or subsidiary protection. However, in the study sample, the criteria in Article 7(2) QD 2004 are often not part of the assessment, and if there is an assessment, the rules, criteria or procedures for the assessment are not specified in the decisions analysed in this study.

In the cases where the MB or MC considers that there is a situation of "internal armed conflict" there is little assessment regarding state protection and actors of protection. This is the case in the majority of the decisions analysed for this study that deal with countries such as Somalia or Afghanistan for which the Migration Board (hereinafter "MB") has deemed that in certain areas there is a situation of "internal armed conflict".

1. Prevention of persecution or serious harm.

In the majority of the decisions that have been analysed for the study it is required that actors of protection take "reasonable steps" to prevent serious harm. In the preparatory works,[10] established practice by the Migration Court of Appeal[11] and in Migration Board's leading documents (i.e. general recommendations on the application of laws and regulations issued and used by the Migration Board)[12] "reasonable steps" are defined according to the criteria outlined in Article 7 (2) QD 2004. It is required that actors of protection take "reasonable steps" to prevent the persecution or suffering of serious harm, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection. However, the decisions that refer to the existence of an effective legal system often do not define what this means in practice and whether the legal system can effectively detect, prosecute and punish the particular acts discussed in the decision.

There is a strong presumption, in case law, that if the state is the actor of persecution, then there is no effective protection. The decisions analysed concerning Syria for this study illustrates this presumption. In cases where the state official is considered to act in an individual capacity, the violence is sometimes not considered as state persecution. This is for example the case in some cases when the sexual violence is perpetrated in a non-custodial setting by a state agent, perpetrators are often considered as acting in individual capacity and the violence is not considered as state persecution.[13]

2. Securing human and social rights.

In the sample analysed, no decisions applied IPA to unaccompanied minors. However, it was noticed that IPA was applied to a number of cases outside the sample.

[10] SOU 2006:6 s. 159 f. and prop. 2009/10:31, p. 134.
[11] C.A., 09.03.2011,(LIB106MND), https://lagen.nu/dom/mig/2011:6
[12] For example, RCI 12/2011: Leading document regarding state protection in Iraq ("Rättschefens rättsliga ställningstagande angående myndighetsskydd i Irak"), http://lifos.migrationsverket.se/dokument?documentSummaryId=24948
[13] Gensen Project, Gender-related asylum claims in Europe: Comparative analysis of law, policies and practice focusing on women in nine EU Member States, May 2012, p. 47.

In the Aliens Act, however, a decision to return an unaccompanied minor cannot be executed if the returning authorities have no assurances that the minor will be received by his or her family, placed in a foster family, or put in a reception centre, which can take appropriate care of minors (Chapter 12, 3a §). In the preparatory work it is also mentioned that a children's home/orphanage or social authorities can be a reception centre.[14]

3. Durability of protection.

In established practice, the protection required should be "sufficiently effective" (MIG 2011:6), but there is no reference to the durability of protection. No such reference was found either in the sample of decisions that have been analysed in this study, with the MB and MC only referring to "effective protection" or "sufficiently effective protection".

According to established practice, UNHCR's handbook and its recommendations are considered an important source of guidance in the refugee status determination process although they do not constitute Swedish law.[15] However, neither established practice nor the analysed decisions refer to the fact that the protection "must be effective and durable" as stated in UNHCR's Guidelines on Internal Flight or Relocation Alternative.

4. Access to protection.

An applicant for international protection must have sufficient access to protection. There are no specific criteria that determine whether the applicant has access to protection. The Migration Court of Appeal generally takes into account the applicant's statement and COI when assessing the availability of state protection and access to protection.[16] Further, in a key decision on honour related crimes the Migration Court of Appeal took into account the gender and age of the applicants when examining whether the parents of the minors can provide actual access to protection. In this key decision, the Court indicated that an individual assessment must always take place. In addition to these elements, the Court also mentioned the social status of the parents of the applicants, as this could influence the authorities and legal system and further limit the access to protection. There is often a lack of any intersectional analysis[17] recognising the specific problems women, specifically lesbians, minority groups, or women with little means as to whether they have effective access to a durable state protection. Gender-related asylum claims in Sweden are often rejected just referencing the availability of State protection.[18]

[14] Prop. 2011/12:60: "Implementation of the Return Directive", p.95: http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/prop-20111260-proposition-D_GZ0360/

[15] C.A., 15.06.2007, MIG 2007 :33 II, https://lagen.nu/dom/mig/2007:33

[16] C.A., 09.03.2011, MIG 2011:6, (LIB106MND), https://lagen.nu/dom/mig/2011:6. In this case, a young couple (both minors) were eligible for subsidiary protection as they risked being the victims of honour-related violence in their countryof origin (Iraq). The C.A. concluded that, in this particular case, it would be unreasonable to ask the applicants to have sought the protection of domestic authorities.

[17] intersectional analysis is an analytical tool for understanding and responding to the ways gender identity intersects with and is constituted by other social factors such as race, age, ethnicity and sexual orientation.

[18] Gensen Project, Gender-related asylum claims in Europe: Comparative analysis of law, policies and practice focusing on women in nine EU Member States, May 2012, p. 53. See also for example, MC, 20.11.2012 (UGA105MRS): Since Uganda is against homosexuality and the fact that Ugandan authorities do not want to protect homosexuals and that it is illegal to be homosexual the applicant is considered a refugee.

When assessing an asylum claim it needs to be based on a forward-looking view.[19] What has happened to the applicant before he or she has left the country of origin can be taken into account when assessing the risk if the person will return but it can never be decisive. By not seeking national protection before seeking international protection can be taken into account when assessing the need for protection when an applicant comes from a country where state protection is offered, but the applicant's individual reasons for not seeking national protection must always be taken into account. Since the assessment is forward looking, all aspects must be taken into account when assessing if the applicant risks persecution or violence if he or she returns to the country of origin. The analysis shows that this is not always the case in practice. Indeed, the requirement to seek protection before fleeing is often phrased as an automatic requirement without any reasonability analysis on the basis of country of origin information relevant for the applicant.[20] In the decisions analysed for the study, the fact that the applicant has not approached would-be protective authorities does usually negatively affect the application. Furthermore, there is often little or no consideration given to the individual reasons for not seeking national protection, such as gender or ethnicity. For instance, in several decisions in the study sample the MB considered that women subjected to sexual violence, should seek protection from the authorities before leaving the country without taking into account elements such as trauma, fear or the risk of repercussion or the attitudes of the law enforcement authorities towards women and sexual violence.[21]

ii. Actors of protection.

1. General criteria.

Actors of protection are required to be "willing and able to provide protection" according to established practice and leading documents from the MB (RCI).[22] However, in several cases regarding the persecution by non-state actors, the interpretation of the preparatory works on the causal link requirement has introduced an additional criterion, i.e. that the persecution must be linked to a Convention ground.

Indeed, the preparatory works on refugee status and persecution on grounds of gender and sexual orientation indicate that if the reason behind the inability of the State to offer protection is a lack of resources or inefficiency that cannot by itself be linked to one of the Convention grounds, then the applicant cannot be considered as a refugee.[23] As pointed out in the study on "Gender-related asylum claims in Europe", there is no basis in the UNHCR Guidelines or any other UNHCR documents that states that a person at risk of persecution in the so-called "private sphere" shall be disqualified from refugee status merely because a non-State actor is the persecutor and the State is deemed unable to provide protection because of a lack of resources or efficiency. Although it is difficult to say in the absence of explicit reasoning in case law, this sequence in the preparatory works may well be one factor

[19] MIG 2007:16.
[20] Gensen Project, Gender-related asylum claims in Europe: Comparative analysis of law, policies and practice focusing on women in nine EU Member States, May 2012, p. 53; and UNHCR, Quality in the Swedish asylum determination process (Kvalitet i svensk asylprövning), 2011, p. 164. http://www.unhcr.se/fileadmin/user_upload/PDFdocuments/Studies-reports/QI-rapport-110909.pdf
[21] See for example, M.B., 14/06/2012, (AFG36FaRS) (Afghan woman); MB, 27.02.2012, (IRA49FSP) (Iraqi woman).
[22] MIG 2011:6 and MB leading document on State protection in Iraq, 12/2011. See also MC, 5.02.2012 (KOS80FND).
[23] Prop. 2005:06:6, "Flyktingskap och förföljelse på grund av kön eller sexuell läggning", 22.09.2005, p. 28: http://www.regeringen.se/content/1/c6/05/10/73/8e1942a2.pdf

which explains why cases of gender-related persecution are disproportionally granted subsidiary protection instead of refugee status.[24]

In the same preparatory works and established practice it is important to take into account how the social structure in the applicant's home country influences the state's willingness and ability to provide protection. Further, a person who risks being subjected to persecution on grounds of gender by non-state actors can be refused protection as a consequence of the prevailing political, social, religious and cultural structures, which in this context can be referred as gendered power structures.

2. State actors of protection

As provided for in Swedish case law, the main criterion for a state to be considered as an actor of protection is their ability to provide effective protection.[25] There is no exhaustive definition of what effective state protection means and what standard must be reached for the protection to be considered effective. The Migration Board has indicated, in one of its leading documents that the state must be able to provide protection in accordance with the criteria as stated in Art. 7(2) QD 2004.[26] The Migration Court of Appeal highlighted the importance of the implementation of legislation in practice as an important requirement to fulfil for a state to be able to provide protection.[27]

In the majority of the decisions analysed the main criteria was that the State should offer "effective state protection" as well as the "willingness and ability to protect" as an actor of protection. In several of the other decisions, the "existence of an effective legal system" was mentioned as a criterion.[28] The criterion of the "existence of an effective legal system" was rarely mentioned in the decisions studied, and when it is mentioned, it was not further developed.

As per established practice, if the state is not the actor of persecution, the applicant should be granted refugee status if the authorities are not able to provide protection from non-state actors.[29] Further, in situations of "internal armed conflict" and "severe conflicts" the state is often implicitly not considered as an actor of protection, such as in decisions regarding Somalia, Afghanistan and Syria. This can refer to the whole territory of the country such as in the case of Syria[30] or in some specific areas or provinces as in the case of Somalia or Afghanistan.[31]

[24] Gensen Project, Gender-related asylum claims in Europe: Comparative analysis of law, policies and practice focusing on women in nine EU Member States, May 2012, p. 58.
[25] MIG 2011:6, MIG 2009:4, MIG 2008:39.
[26] MB leading document on State protection in Iraq, 12/2011, p. 6. Leading documents are general recommendations on the application of laws and regulations issued and used by the Migration Board. Their comments are developed in order to provide a consistent and uniform law enforcement within the Migration Board. Board staff should follow them in the RSD process.
[27] MIG 2011:6.
[28] See for instance: MB,19.12.2012 (NIG12FaRS); MB, 24.02.2012 (AFG22MND): In some provinces the legal system works better than in others. An individual assessment needs to be made; MB, 14.06.2012 (AFG36FaRS); MB, 23.03.2012 (IRA39FSP): Weak legal system (Iraq, religious minority and woman); MC, 05.01.2012 (KOS80FND): Legal system in Kosovo does not lack the willingness and ability to protect; MC, 30.01.2012 (KOS100FaND).
[29] MIG 2011:8.
[30] See for example, M.B., 08.12.2012, (SYR14FSP) and M.B., 06.10.2012 (SYR15MSP).
[31] See for example, M.B, 23.02.2012 (SOM17MSP) (Hiran Province).

3. Non-state actors of protection.

As a rule, the state is considered the only actor of protection in all the decisions analyzed and in established practice. However, in some first instance decisions it appears that an assessment of non-state actors as possible actors of protection takes place. In such cases, the Migration Board on appeal has ruled that these actors were unable to provide protection.

In one decision regarding an applicant from Kosovo, the Migration Court considers that there are national *and international organisations* that can provide protection to victims of domestic violence, and concludes that the applicant is not in need of international protection.[32] This is the only decision identified that considers international organisations as possible actors of protection. It must be noted that in this particular case, the international organisation is considered to be able to provide protection alongside the state.

In three decisions, regarding Mandeans from Iraq, the MB came to the conclusion that the Mandean church cannot provide protection to its members.[33] The starting point for such an assessment was that the Mandean religious community could be a possible actor of protection. That type of assessment was however not observed in leading decisions from the Migration Court of Appeal nor in leading documents from the MB. In four decisions regarding Somalia, was noted that there is no "clan protection", and that the applicant "cannot avail herself of clan protection" or that the clan protection is "weak when the applicant has not access to the clan elders or the applicant's clan is not present in the relocation territory". Although the MB reaches the conclusion that the clan is not able to provide protection, the premise for the assessment is that clans can be considered as actors of protection but that in this particular case, they are not able to provide protection to the applicant. These decisions still refer to older COI from 2010[34] or 2009[35] where clans are considered actors of protection. This is done despite the fact that the MB in its leading document, RCI 27/2012[36], notes that clans cannot be considered actors of protection.

b. The International Protection Alternative.

The IPA is not regulated in Swedish legislation. However, it is mentioned in the *preparatory works*[37] and in judgements of the Migration Court of Appeal.[38] The Migration Court of Appeal considers that an asylum seeker cannot be in need of international protection or be considered a refugee, if he or she can get an effective protection in any other part of the home country.[39]

The European Courts of Human Rights has released a series of judgements looking at the application of the IPA by Sweden in - mostly – cases of applicants from Iraq.[40]

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[32] MC, 5.01.2012 (KOS80FND).
[33] See for example, M.B. 31.08.2012 (IRA01MRS) and M.B., 23.03.2012 (IRA39FSP) and M.B., 22.02.2012 (IRA24MND).
[34] Landprofil Somalia, 11 January 2010, p. 10: http://lifos.migrationsverket.se/dokument?documentSummaryId=22041
[35] Leading MB document on Clan Protection and protection for minority groups in Somalia, 2009/-04-04, Lifos 20644.
[36] RCI 27/2012: "Legal position regarding the nature of the security situation in Somalia" (Rättsligt ställningstagande angående karaktären av säkerhetsläget i Somalia) RCI 27/2012, http://lifos.migrationsverket.se/dokument?documentSummaryId=28930. In this leading document the MB refers to the changes in the Qualification Directive as well as established practice as a consequence of the Abdulla case from the EU court (C-175/08).
[37] Proposition 2009/10:31 p. 136.
[38] MIG 2007:33 and 2009:4.
[39] MIG 2007:33 II. See also: MIG 2008:20.
[40] See a.o.: *A.M.M. v. Sweden* (Application no. 68519/10), 3rd April 2014; *B.K.A. v. Sweden* (no. 11161/11), 19 Dec 2013; *K.A.B. v. Sweden* (no. 886/11), 17 Feb 2014; *W.H. v. Sweden* (no 49341/10), 27 Mar 2014.

i. Assessment of the IPA.

1. Safety in the region.

In the majority of decisions, a protection location is suggested.[41] The Migration Board has the responsibility to identify the area of relocation, which must be a specific region in the home country. A mere reference to "larger cities" is not sufficient.[42]

In a case from an applicant from the Ghazni province, the MC considered that an IPA was not available elsewhere in Afghanistan (Kabul or Herat), where the applicant would face a situation of undue hardship. However, the MC considered the possibility of returning the applicant to Iran as the MB suggested in their 1st instance decision. The applicant had lived in Iran most of his life (was born there) and there was not an individual threat for him in Iran and consequently, the MC considers that he can be returned there.[43]

Preparatory works[44] and established practice[45] require showing that there is no risk of persecution in the proposed region of relocation. However, in many decisions, the protection location will be deemed safe without the criteria behind the risk assessment being stated. In general, there is very little information in the decisions with regard to the criteria being applied to assess the risk in the relocation region.

2. Securing human and social rights.

i. General circumstances.

The main factor that is normally considered in evaluating "the general circumstances" in the proposed region is the power of the actor of persecution in that area.

In some decisions, for example, regarding Iraq (Mandeans relocating to the area of the Kurdistan Regional Government) factors such as the ethnic and religious composition of the population in the relocation area are taken into account. In decisions regarding Somalia, the clan composition of the Northern areas (Puntland and Somaliland) is also considered.

The MB, when carrying out an assessment of the general circumstances in Kabul found that there was a "severe conflict" in the region.[46] In the majority of the decisions analysed concerning Afghanistan, applicants are referred to an IPA in Kabul from provinces where there is a situation of "internal armed conflict".[47] The MB deems that the situation of "severe conflict" in Kabul is "milder" than a situation of "internal armed conflict".

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[41] MIG 2009:4.
[42] MIG 2009:4.
[43] MC, 5.1.2012 (AFG63MND).
[44] Prop. 2009/10:31 p. 135: The preparatory work refers to art. 8(1)QD: 1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. In the preparatory work, it is considered that it was contrary to the spirit of article 1 A of the Geneva Convention to accept the possibility to apply the IPA if it cannot be enjoyed in safety (prop. 2009/2010:31, p. 135 and SOU 2006:6 p. 102 and 162) (translation by the author).
[45] MIG: 2007:33 II and MIG 2008:20.
[46] The decisions in the sample are based on the M.B. instruction of 2010 ("Rättschefens rättliga ställningstagande angående fråga om väpnad konflikt, andra svåra mottsätningar, myndighetsskydd och inter flykt i Afghanistan").
[47] See for example: M.C., 26.01.2012 (AFG59FaND) (Hemland Province) and MC, 26.01.2012 (AFG61MND) (Ghazni Province).

When assessing whether or not the actor of protection can reach and persecute the applicant in the area of relocation it is necessary to – according to leading case law from the Migration Court of Appeal (2009:4) – establish the reach of the protection need. The Migration Court of Appeal states that it is necessary to find an area where the actor of persecution cannot threaten the person. If the person can be reached by the actor of persecution it is necessary to establish that it is possible to seek state protection in the area. It is also vital to find that the applicant in the IPA area would not be in danger for other kind of threats. In the sample of decisions analysed, this type of assessment is often lacking.

There are decisions where the distance to the relocation area from the hometown region is an important factor in order to conclude that the actor of persecution (non-state actor) cannot reach and persecute the applicant there.[48] This conclusion is reached without a proper analysis of the access and connection of the non-state actor of persecution to the relocation area. The size of the cities, such as e.g. Istanbul or Kabul, is also considered in some of the decisions as a decisive factor to be able to relocate to these areas and live unnoticed by the actors of persecution.[49]

The question of the rights and living standards that are considered sufficient for the applicant to be expected to remain in the proposed relocation region is touched upon in the preparatory works, which state that the applicant should have a realistic possibility to support himself/herself and the necessary prerequisites to live in a way that does not entail undue hardship.[50] According to established practice, the applicant should have the right to seek employment in the proposed region. However, although many decisions regarding Afghanistan note the difficulties that can be faced by minority applicants (e.g. hazaras) to get employment and housing in the relocation area, the MB and MC conclude that they will not face "undue hardship from a humanitarian perspective".[51] It is never defined or further developed in the decision as to how this conclusion is reached and which living standards need to be met in order to be considered not to face "undue hardship from a humanitarian perspective".

ii. Personal circumstances.

According to established practice, for the IPA assessment circumstances such as gender, age and health should also be considered.[52]

The Migration Court of Appeal stresses, in one decision, the importance of the applicant's personal circumstances and possibility to settle with his or her family in the relocation area when carrying out the reasonability assessment. The existence of a social net in the area of relocation is also often considered both in established practice and in the decisions analysed in the sample.[53] In all the decisions analysed where the MB or MC had carried out an IPA assessment, the social net factor is always taken into account. In decisions regarding Somalia and Afghanistan, it is stated that women do not have a relevant or reasonable IPA if they do not have a social net in the relocation area.[54] These decisions follow the established

[48] See for example: MC, 25.05.2012 (AFG83MND): Since the proposed cities are geographically far away from the home-province the court deems these cities to be a relevant IPA even though there is a personal threat against the person in the home province.
[49] MC, 15.02.2012 (TUR102MND).
[50] prop. 2005/06:06, p. 28 and MIG 2008:20.
[51] See: MC, 5.09.2012 (AFG64MND). On the contrary, see: MC, 04.01.2012 (AFG58UmSP): the MC considers that an IPA is not reasonable for the applicant. The applicant is according to the MC's age assessment, a minor. His father is dead and his mother disappeared. He lacks a social network in Kabul. Further, the applicant has lived most of his life outside of Afghanistan, in Pakistan. Taking into account the applicant's age, his vulnerability due to the fact that he lacks a social network in Kabul, the MC concludes that he risks facing *undue hardships of a humanitarian character in Kabul*. For this reason, there is not a reasonable IPA for the applicant. The applicant is granted subsidiary protection.
[52] See for example: MIG 2008:20.
[53] MIG 2010:10. See also, MC, 12.09.2012 (IRA92FRS).
[54] See also: MC, 27.06.2012 (DRC27FS) (Woman applicant from North Kivu (Congo DRC).

practice in this regard. It should be noted however, that in decisions from other countries, such as Kosovo, Turkey or Mongolia, there is often a lack of individual assessment of relevance and reasonability from a gender perspective.

There are no decisions in the sample and no established practices regarding the IPA in relation to victims of trafficking.

In the research sample, not much consideration was given to mental health issues (such as PTSD).

In most of the decisions analysed in the study, the criteria that are mostly mentioned are that the applicant is in good health,[55] young and therefore he/she can get access to an employment.[56] In established case law from the courts, it is stated that there does not need to be a guarantee that everyone can get employment in the proposed relocation region but that the existence of the "right to work" should suffice.[57] In some decisions, the educational background or level of the applicant is also mentioned as a factor that can facilitate employment and relocation prospects. Furthermore, access to housing is also mentioned as a factor in two decisions of the study.[58] In the majority of the decisions analysed, the MB and MC consider that there is no indication that the applicant would not be able to get an employment of resettle in this particular area. Nevertheless, in cases regarding minorities (religious, ethnic or both), there is often lack of an analysis on whether discrimination can affect their right to settle and register in the relocation area as well as right to e.g. employment and housing.

The best interest of the child is a primary consideration when assessing the IPA with regard to a family or unaccompanied children. The Best Interest of the Child (BIC) is codified in Chapter 1 para 10 § of the Swedish Alien Act which is considered to be a general provision that should be applied in all the cases concerning children. Furthermore, the deciding authorities should undertake a child impact assessment according to the relevant government regulation (Förordning 2007:996 med instruction för Migrationsverket, 2 § phrase 9) that the Migration Board should follow. The provision for the best interest of the child is referred to in the decisions concerning unaccompanied minors analysed in this study.[59] The Migration Board has a few leading decisions where a child-impact assessment has been carried out. However, there is no guidance regarding how and when this type of assessment should be carried out. There this guidance is available for the department of the MB dealing with reception.[60] It is therefore difficult to evaluate how the assessment of the BIC has been carried out in the decisions analysed in this study. Often in the decisions there is only a standard phrase where the MB or the MC states that the decisions have been taken in accordance with the BIC principle without specifying the reasoning and deliberations behind the statement and without specifying whether a child impact assessment has been undertaken.

[55] It seems however that references to the health of the applicants are more standardised than part of an individual assessment.
[56] MC, 25.05.2012 (AFG83MND): The person is young, healthy, educated and has some work-experience. There will not be any specific complications to establish in another city (Afghanistan). See also: MC, 31.05.2012 (AFG54MND): The MC considers that the applicant is a young man in good health with school education who has earlier worked and studied in Afghanistan. […] the MC considers that it is relevant and reasonable for the applicant to relocate to the provinces suggested by the Migration Board (Kabul, Herat or Mazar Al-Sharif).
[57] MIG 2007:33II.
[58] See for example, MC, 18.01.2012 (IRA77MND). The question to be assessed is whether there is a possibility for IPA to Baghdad (area defined as possible IPA by the MB). The MC considers that the applicant is a young male, in relative good health and in employment age. Further, he speaks Arabic and has relatives in Baghdad. Despite the fact that the applicant belongs to a minority there is no indication that he would face difficulties to get housing and employment in those provinces that the MB has suggested as IPA. Taking these elements into account, the MC concludes that the IPA is relevant and reasonable.
[59] See for example: MB, 15.11.2012 (AFG06FSP); MB, 27.10.2012 (AFG11FaRRS).
[60] Rutiner för verksamhetsområde Mottagnings arbete med barnkonsekvensanalyser - Routines for working with child-impact assessment in the area of reception (VCA nr. 150/2011).

iii. "Stay/settle"

The duration and length of the "stay" or "settlement" in the relocation area is seldom specifically addressed in the decisions analysed in this study. In the decisions referring to the Mandeans being relocated to the area of the Kurdistan Regional Government there is an assessment of their ability to settle in this area. However, there is no analysis of the duration of the stay by either the MB or the MC.

The factors that are taken into account in the majority of the decisions of the sample are employment prospects. However, it varies depending on the area and the COI available, which is highly influenced by the leading documents (RCI) issued by the MB on various countries. The MC also relies in many cases on the leading country documents by the Migration Board as COI information for their assessments of IPA.

3. Access.

i. Access to protection.

In the preparatory work (prop. 2005/06:6, p.28) it is stated that in some cultures the power imbalance between the genders is such an undisputed and fundamental part of society, that it is impossible for women to get state protection from violence, freedom from violations and honour-related crimes from their relatives. Tradition and power structures can have the same consequences regarding violence and harassment for LGBT people.

The Migration Court of Appeal found that taking into account the girl's father's position in society, the limited COI available concerning the protection available for young girls against their parents, the limited access to protection for men subject to honour-related violence, as well as the fact that both applicants were minors, it was not reasonable to require that the applicant should have sought protection from the local authorities. Internal protection was not considered applicable.[61] However, in some of the decisions analysed in the study it is still required that the applicant exhausts all possibilities to avail oneself of state protection despite the fact that in the cases analysed, the applicants were woman who had been subjected for sexual violence in a country where law enforcement authorities do not take these types of allegations seriously and enforced the law.[62]

ii. Safe and legal travel.

The preparatory work stresses that it is a prerequisite that the applicant can travel safely to the proposed region.[63] This is a prerequisite that has also been recognised by established practice.[64]

[61] MIG 2011:06.
[62] See for example, M.B., 14/06/2012, (AFG36FaRS) (Afghan woman), MB, 27.02.2012, (IRA49FSP) (Iraqi woman).
[63] Prop. 1996/97:25, p. 101.
[64] MIG 2007:33 II.

In the decisions analysed the MB and MC take into account available COI regarding travel and admittance to the proposed region. However, the COI used is not always up-to-date or relevant to the applicant's background or personal circumstances in relation to the general circumstances in the relocation area. The leading decisions (RCI) issued by the MB are often used as the unique source of COI for this type of assessments, especially in countries such as Afghanistan, Syria and Somalia, which constitute the bulk of the decisions in the research sample.

ii. Application of the IPA.

1. Procedure.

i. In which procedure is the IPA applied?

The IPA is only applied in the regular procedure. There is no border procedure in Sweden, and IPA is not considered to declare an application as manifestly unfounded or inadmissible.[65]

The IPA is considered as part of the assessment of the protection claim. The question of whether an IPA can be applied becomes relevant when a protection need towards a particular part of the country arises. The immigration authorities in Sweden uphold the concept of internal protection alternative by denying refugee status and subsidiary protection to asylum applicants who can access efficient protection in another part of their country.

ii. At what point in the procedure is the IPA applied?

When it is determined that the asylum applicant has a protection claim arising from a particular part of the country they fled from, the assessment of whether an IPA exists should occur within the assessment of the protection claim.[66] The Court of Appeal indicates that once an applicant has been assessed as having a reasonable need for protection within a specific part of their country of origin, then the assessment of whether there is an internal flight alternative must be carried out within the framework of the provisions on protection.[67]

In a recent judgement from the Migration Court of Appeal regarding IPA, the Court found that the fact that there is no IPA is a prerequisite for the existence of a protection need. According to the judgement, there is no possibility to reach the conclusion that an applicant is in need of international protection without taking into account the applicant's possibility to relocate to another part of his or her home country's territory.[68]

iii. Procedural safeguards.

The applicant has the opportunity to comment on the application of the IPA when it arises (it usually does) during the asylum interview at the Migration Board. After the interview, the applicant has the opportunity to comment the application of the IPA as part of the final plea

[65] The "accelerated procedure" can be launched in case of manifestly unfounded applications.
[66] MIG 2007:33 II, MIG 2007:9 and prop 2009/10:31, p. 135).
[67] MIG 2007:33, and MIG 2007:9 and prop 2009/10:31, p. 135 and 1996/97:25, p. 101.
[68] MIG 2013:2. This is also confirmed in a later judgement: UM 1622-13 of the 2nd of May 2013 .

by his or her legal representative. In addition, it is possible to contest the application of the IPA by appealing the MB's decision to the MC.

2. Policy.

i. Type of protection claim.

The IPA principle is applied to both refugee status and subsidiary protection in established practice. The question of whether IPA can be applied becomes relevant when a protection need towards a particular part of the country arises. When it is determined that the asylum applicant has a protection claim towards a particular part of the country, the assessment of whether an IPA exists should occur within the provisions regarding a protection need.[69] If the IPA is not deemed possible, relevant or plausible, then the person should be granted refugee status or subsidiary protection according to Chapter 4 para 1 or 2 §§ in the Aliens Act.

According to established practice,[70] it is not necessary to apply IPA to an area of the country where there is a situation of "internal armed conflict" and article 15 (c) is engaged. However, an IPA can be applied by referring asylum seekers originating from areas where there is a situation of internal armed conflict to other areas of the country. For example, asylum seekers from the Ghazni Province in Afghanistan have been referred to Kabul.[71]

If the State is the actor of persecution or tolerates persecution, there is a presumption that IPA should not be applied.

ii. Frequency of application.

The question of whether IPA has to be assessed becomes relevant when a protection need towards a particular part of the country arises. According to a recent judgement from the Migration Court of Appeal regarding IPA, there is no possibility to reach the conclusion that an applicant is in need of international protection without taking into account the applicant's possibility to relocate to another part of his or her home country's territory.[72]

In the Migration Board's leading documents regarding LGBT[73] cases and cases regarding religious conversion, [74] where an assessment method/test is laid out, the assessment of the IPA is also part of test. It is the last element to be considered in the test.[75]

[69] MIG 2007:33 II and MIG 2007:9 and prop 2009/10:31, p. 135 and 1996/97:25, p. 101.
[70] MIG 2008:20 (Afghanistan), MIG 2009:27 (Somalia) and MIG 2011:4 (Somalia).
[71] MC, 26.01.2012 (AFG61MND) (Ghazni Province).
[72] This judgement (MIG 2013:2) was not taken into account or referred in the decisions analysided for this study, because they were rendered before that particular judgement.
[73] See Rättschefens rättsliga ställningstagande. Metod för utredning av risken för personer som åberopar skyddsskäl på grund av sexuell läggning. RCI 03/2011 http://lifos.migrationsverket.se/dokument?documentSummaryId=24390
[74] Rättsligt ställningstagande angående religion som asylskäl inklusive konvertering. RCI 26/2012. http://lifos.migrationsverket.se/dokument?documentSummaryId=28914
[75] See the MB's leading document « Rättschefens rättsliga ställningstagande. Metod för utredning av risken för personer som åberopar skyddsskäl på grund av sexuell läggning ». RCI 03/2011 http://lifos.migrationsverket.se/dokument?documentSummaryId=24390, p. 5. The assessment of the IPA is point no. 7 out of 7.

iii. IPA as a blanket policy?

The IPA is applied on a case-by-case basis. However, the leading documents from the Migration Board regarding the application of the IPA in certain countries have an important influence regarding a number of categories of applicants (Syrian, Afghan and Somali applicants).

iv. Scope of application of IPA.

In general established practice no national group or categories of applicants are excluded from the use of the IPA. However, in the leading document by the Migration Board RCI 01/2010 (on Afghanistan)[76], the use of the IPA is *generally* excluded regarding unaccompanied minors. IPA for UAM is sometimes considered if the authorities assess that there is no protection need and there are reception facilities available for the UAM in the country of origin.

In the case of women, it is also often excluded, but only in cases when they lack a social network or connection to the relocation area (e.g. Afghanistan and Somalia).[77]

v. Application if technical obstacles to return.

According to the preparatory work concerning the transposition of the Qualification Directive into the Swedish Alien Act,[78] the possibility to apply the IPA even when there are technical obstacles to return as outlined in Article 8 (3) QD 2004 should not be applied. In the preparatory work, it was considered that it was contrary to the spirit of article 1 A of the Geneva Convention to accept the possibility of the application of IPA if it cannot be enjoyed in safety.[79]

c. Assessment of facts and circumstances.

According to Administrative Law in Sweden, all the information and facts pertaining to the case are part of the assessment and the decision. The rule of the "free sifting of evidence" is central to all assessments in the Swedish context.[80] The free sifting of evidence contains a free submission of evidence and a free evaluation of evidence. All evidence can be presented in the individual case. The evidence is then evaluated on its individual merits.

The applicant bears the burden of proving the elements of protection specified in Article 7 (i.e. the effectiveness of protection, the durability of protection and the access to protection) and the state bears the burden of proving the elements of protection specified in Article 8.[81] In the final plea, before the decision is taken the applicant puts forward the grounds for protection and the lack of actors of protection if relevant. The burden of proof for proving the

[76] Leading document on the question of "internal armed conflict", "severe conflicts", state protection and IPA in Afganistan (RCI 01/2010). Leading documents are general recommendations on the application of laws and regulations issued and used by the Migration Board. Their comments are developed in order to provide a consistent and uniform law enforcement within the Migration Board. Board staff should follow them in the RSD process.
[77] See MB leading documents on Afghanistan and Somalia. See also: M.B., 02.11.2012 (IRA03FRS).
[78] Prop. 2009/2010:31 on the implementation of the Qualification Directive and the Asylum Procedures Directive, p. 135.
[79] prop. 2009/2010:31, p. 135 and SOU 2006:6 p. 102 and 162.
[80] A rule of free sifting of evidence is embedded in the Rättegångsbalken [RB] [Code of Judicial Procedure] 23:4 (Swed.).
[81] MIG 2009:4.

elements of protection specified in Article 8 remains with the state. However, in many decisions, when carrying out a relevance assessment of the IPA, reference is made to Article 7 (2) QD when assessing the protection needs of the applicant in the proposed area of relocation.

The Migration Court of Appeal stated that even if it is the applicant who primarily holds the burden of proof for the adduced need for protection, the burden of proof is normally transferred to the Migration Board as regards the existence of internal protection. It is established practice that the Migration Board has the burden of proof but there is no guidance on what that standard of proof is. The Migration Court of Appeal stated that there are different standards, depending on the circumstances of the case, with regard to the threshold required from the Migration Board when investigating the conditions of internal protection.[82]

According to Supreme Administrative Court and established doctrine, the standard of proof should generally be set at the criterion of a 'reasonable possibility" or "plausibility" (*sannolik* in Swedish) in administrative law and asylum law cases. In MIG 2009:4 the Migration Court of Appeal states that in the majority of the cases, after the applicant has made it *plausible* that he or she has a local protection need, the burden of proof is transferred to the Migration Board to prove the existence of an IPA which means that the applicant is not deemed to be in need of international protection. Although the Migration Court of Appeal states that the burden of proof is transferred to the Migration Board, there is no guidance as to what the standard of proof should be. This has also been confirmed by the interview carried on with the Migration Board representative.

The assessment of the IPA should follow the rules and procedures that govern such assessments in general as well as the requirements outlined in art. 8 (1) in the Qualification Directive (2004). Member States should regard the general circumstances prevailing in the relocation area and the personal circumstances of the applicant. In established practice (MIG 2010:10) the Migration Court of Appeal stresses the importance of the applicant's personal circumstances and the possibility to settle with his/her family in the relocation area when carrying out the reasonability assessment. However, in many of the decisions analysed in this study, there is not thorough assessment of the personal circumstances (based on the applicant's testimony and up-to-date COI) of the applicant.

The state bears the burden of proving that it is "reasonable" to expect that the applicant will stay in the protection region. Elements such as gender, age and health should be given special consideration when carrying on this assessment according to established practice.[83]

With regard to vulnerable groups, the preparatory works state that a referral to an IPA should be carried out with caution and take into account the individual's personal circumstances as well as the general conditions in the country. Women's possibilities to support themselves and their family (if there is a family to support) should be taken into account in this assessment. It is important to highlight that women in certain countries are often more vulnerable as an income earner than men.[84]

[82] MIG 2009:4
[83] (see MIG 2009:4, MIG 2010:10).
[84] Prop. 2005/06:6, p. 28.

From the case sample, the fact that the applicant has stated, in the preliminary interview, that he/she spent time in another part of the home country before leaving does not seem to be taken into account.

d. Decision quality.

i. Country of Origin Information.

In the majority of the decisions analysed, the same sources are used to evaluate the situation in the country and in the area of relocation. The majority of the decisions are based on COI which stems from the Migration Board's leading documents, which refer both to the country as a whole and various regions, especially in the case of Somalia, Afghanistan and Syria. Leading documents are general recommendations on the application of laws and regulations issued and used by the Migration Board. Migration Board staff should follow them during the refugee status determination process.

All kinds of available COI can be used as evidence. The MB uses its database, Lifos (equivalent database to Refword where the MB gathers all relevant COI),[85] as the main source of COI. Most of the information in Lifos is publicly available. In the majority of the decisions analysed in this study, the COI used is based on state reports mainly by the Swedish Migration Board, the British Home Office and the US State Department. In some of the decisions, reports by UNHCR are referred to as a source of COI. There is little or no referral to other sources, such as NGO reports.

Furthermore, there are many decisions by the MB and MC where the source of the information is not quoted, making it difficult to assess its source and relevance for the assessment. In the case of gender-related claims, in Sweden, decisions often fail to adequately refer to country of origin information relevant for gender-related claims.[86] Sometimes a lack of information on gender-related persecution in a specific country is regarded as a lack of evidence of persecution. Furthermore, research has identified numerous problems with the availability of LGBT information in COI available, not least in relation to lesbian women. The knowledge of COI by staff, the choice of reports included in the database, the content of the reports and the analysis of COI in decisions taken by the Migration Board and the courts has also been criticized.[87]

Established practice in this area states that in order to assess a protection need, relevant and up-to-date COI has to be used.[88] However, in many of the decisions analysed relevant and up-to-date COI is not always used. In the case of Somalia, for example, there are decisions from 2012 in the sample analysed that still refer to leading documents and COI issued by the MB from 2009 and 2010 where clans are still mentioned as actors of protection.[89]

[85] http://www.migrationsverket.se/info/481_en.html
[86] Gensen Project, Gender-related asylum claims in Europe: Comparative analysis of law, policies and practice focusing on women in nine EU Member States, May 2012, p.91.
[87] Gradin and Sörberg, Unknown people, The vulnerability of sexual and gender identity minorities and The Swedish Migration Board's Country of Origin Information system, Zie, January 2010.
[88] (MIG 2006:7).
[89] See for instance: MB, 02.11.2012 (IRA03FRS).

In the majority of the decisions analysed in this study, COI is evaluated separately for the region of relocation. The general situation of the country is analysed first and if it is determined that the applicant has a protection need, COI relevant for the proposed region of relocation is analysed. However, the depth and extent of the COI utilised varies in the decisions analysed.

The COI used by the MB is communicated to the legal representative who has an opportunity to contest its accuracy and relevance in the final plea at the Migration Board.

ii. Templates, guidance and training.

The templates used for refugee status determination do not refer to the IPA principle.

UNHCR guidelines on IPA are used in very few cases. In one of the decisions analysed, the Migration Court has referred to UNHCR's Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the context of Article 1 A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (The Guidelines have not been mentioned in the decisions analysed in the study.[90] However, UNHCR's handbook is referred to in some of the MB's decisions). The MB takes the guidelines into account in their leading decisions. When leading decisions are referred to by the MB, it can be assumed that the MB implicitly takes the guidelines emanating from these lead decisions into account.

There are more referrals to UNHCR's leading documents when conducting the RSD assessment. In these cases, the MB and MC primarily refer to the UNHCR's Handbook. Furthermore, the leading documents of the MB do generally refer to UNHCR's relevant Guidelines.

There are leading documents and decisions issued by the Migration board for caseworker or decision makers on how to consider and apply the IPA for certain countries. Furthermore, the Migration Board also has a Handbook on RSD that covers IPA.[91] Regarding training, the caseworkers undertake an introduction training (Migrationsprogrammet), which includes IPA assessment and can also attend seven different European Asylum Curriculum courses.

VI. National recommendations.

These recommendations are considered particularly relevant to the Swedish context, and are complementary to the general recommendations provided in the APAIPA comparative report.

- Decisions applying the AP or IPA concepts need to be motivated and clearly indicate the criteria used for such assessment.

- The availability of protection for the applicant must be demonstrated in practice, not merely in principle. The effect of that practice must be shown in relation to the particular

[90] MC, 2.02.2012 (DRC81MND).
[91] Migrationsverket Handbok för migrationsärenden Uppdaterad: 2013-12-16
http://www.migrationsverket.se/download/18.5e83388f141c129ba63109a5/1390548250909/handbok_migrationsarenden.pdf

person concerned or similarly situated persons, not merely in general terms. The decision maker should explicitly demonstrate that the particular applicant can effectively be protected by a specific actor of protection and will have access to protection and that the protection is not temporary.

- According to Article 8(2) of the recast Qualification Directive, the Migration Board must ensure that precise and up-to-date information is obtained. Member States must ensure that additional region-specific COI is used to assess the conditions in the region of relocation. The IPA should not be applied if the COI is unclear or cannot be confidently said to reflect current conditions in the region of relocation.

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