ACTORS OF PROTECTION AND THE APPLICATION OF THE INTERNAL PROTECTION ALTERNATIVE

NATIONAL REPORT

BELGIUM

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I. Acknowledgments.

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The information in this report is up to date as of 6 May 2014.

II. Glossary of acronyms.

CALL: Council for Aliens Law Litigation ("Conseil du Contentieux des Etrangers").

CEDOCA: Centre of Documentation and Research of the CGRS/CGRA (« Centre de documentation et de recherche du CGRA »).

CGRS/CGRA: Office of the Commissioner General for Refugees and Stateless Persons. ("Commissariat Général aux Réfugiés et Apatrides").

CS: Council of State ("Conseil d'Etat").

III. Background: the national asylum system.

a. Applicable Law.

The main legislative act dealing with the asylum procedure is the Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens[1]. This law has been amended several times. Recently, a new law was published to partially transpose the recast qualification directive[2]. This law entered into force on 1st September 2013.

A series of Royal decrees regulate important aspects of the asylum procedure[3].

b. Institutional Setup.

Four bodies, all centralized in Brussels, can intervene over the course of the asylum procedure.

[1] Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.
[2] Loi du 8 Mai 2013 modifiant la loi du 15 décembre 1980 sur l 'accès au territoire, le séjour, l 'établissement et l'éloignement des étrangers, la loi du 12 janvier 2007 sur l ' accueil des demandeurs d 'asile et de certaines autres catégories d'étrangers et la loi du 8 juillet 1976 organique des centres publics d 'action sociale, Art. 4, Belgian Offical Journal (M.B.), 22 August 2013, http://www.ejustice.just.fgov.be/mopdf/2013/08/22_1.pdf
[3] For a list of the main decrees, administrative regulations and circulars, please see: ECRE, Asylum Information Database – Belgium Country Report: www.asylumineurope.org

The ***Immigration Department*** ("Office des Etrangers") registers the application for asylum and carries out certain preliminary investigations, such as the application of the Dublin III criteria.

The ***Office of the Commissioner General for Refugees and Stateless Persons*** *(CGRS/CGRA)* examines the content of the application and decides on whether to grant or refuse refugee status or subsidiary protection status. The CGRS is the central authority for the asylum procedure. Since 1 June 2007 the CGRS is also the only government agency that has competence for examining asylum applications. Within this general responsibility it is furthermore competent to apply accelerated and prioritized procedures.

The protection applicant can lodge an appeal against an unfavorable decision from the Immigration Department or the CGRS to the ***Council for Aliens Law Litigation*** *(CALL)*. This Council is an independent administrative tribunal, responsible, among others, for examining appeals. It can confirm, reform or annul the CGRS decisions. Judges are independent and judgments (even judgments of the General Assembly) are considered not to have any precedent setting character. Jurisprudence of French (two) and Dutch (one) language asylum chambers can be very different.

The asylum seeker can lodge a cassation appeal against an unfavourable decision from the Council for Aliens Law Litigation to the ***Council of State*** *(CS)*. The CS will only verify whether the CALL decision was taken in accordance to legal requirements. It will not pronounce on the facts of the case. When the CS annuls the decision, the case will be sent back to CALL. Its decision will only be legally binding in the case where it was pronounced, but CS case law does, in general, have high moral influence on lower case law.

c. The Procedure.

Aside of the regular asylum procedure, there are a series of other specific procedures applied in Belgium, such as the border procedure, the admissibility procedure, the accelerated procedure, and the Dublin Procedure. A residence status as protection for medical reasons is granted through a regularisation procedure rather than the asylum procedure.

An asylum application can be lodged either on the territory or at the border or from a detention centre. The ***regular asylum procedure*** involves three main stages. First, the Immigration Department examines the criteria in the Dublin Regulation to determine whether Belgium is the responsible authority. Secondly, the CGRS examines the merits of the asylum application. Finally, the protection applicant can lodge an appeal against a negative decision to the CALL[4].

An ***accelerated procedure*** applies with regard to asylum applications by EU nationals and nationals of EU accession candidate countries, and by asylum seekers from a safe country of origin. In those cases the CGRS can consider that a decision is not admissible if no elements are submitted that the person has a well-founded fear of persecution or there are serious grounds for a real risk of serious harm, within 5 or 15 working days respectively. From 1

[4] For a more detailed overview of the asylum procedure in Belgium see ECRE and CBAR, Asylum Information Database – National Country Report on Belgium, 30 April 2013 (updated by-annually).

September 2013, also applicants, who have been granted protection status in another European member state, will have to be admitted to a full status determination procedure, within 15 working days.

A ***border procedure*** applies with regard to asylum applications made at the border with the border police section of the Federal Police. They refer the asylum application immediately to the Immigration Department, who informs the Commissioner General for Refugees and Stateless Persons.

d. Representation and Legal Aid.

All asylum seekers have a right to free legal advice, although some prefer to take out paid advice from lawyers. Free legal advice is organized by the various bar associations in Belgium. Aliens law and refugee law is not a widely spread area of specialization in Belgium, and the number of qualified lawyers is somewhat limited.

IV. Methodology: Sample and Interviews.

a. Methodology used.

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

During June and July 2013, the researcher had interviews with the following persons:

- Christine Flamand, legal officer and project manager at INTACT vzw[5].
- CALL Judge.
- CALL Judge.
- Benoit D'Hondt, lawyer.
- Jennifer Addae, Claudia Bonamini, Meron Knikman and Femke Vogelaer, legal officers at Flemish Refugee Action (Vluchtelingenwerk Vlaanderen)[6].
- Ruben Wissing, Céline Lepoivre, Marjan Claes and Geertrui Daem, legal officers at the Belgian Refugee Council[7].
- Dirk Van den Bulck, Commissioner General at CGRS.

b. Description of the Sample.

The six countries of origin that were selected for the case file review were Afghanistan, Iraq, Russia, the Democratic Republic of the Congo, Guinea and Kosovo. These have been the top six countries of origin of protection applicants in Belgium in both 2011 and 2012. Moreover, according to discussions with stakeholders, the concepts of actors of protection and the Internal Protection Alternative are mostly applied to applicants from these countries.

[5] http://www.intact-association.org
[6] http://www.vluchtelingenwerk.be/
[7] http://www.cbar-bchv.be/

This selection of countries also guarantees a good combination of decisions taken in French and Dutch.[8]

From each of these six countries, initially 10 first instance decisions and 10 decisions in appeal were selected, resulting in a selection of 120 decisions. The appeal decisions were found on the CALL website. A random selection of decisions was made, that were taken between 1st November 2011 and 28 February 2013. CGRS provided a full list of decisions taken during the same period. Again, a random selection of the decisions in 60 files was made.

As the amount of decisions where internal protection alternative and actors of protection was raised was less than one third of the total amount of decisions selected, another 24 CALL decisions (4 per country of origin) were selected, again randomly chosen. Out of these, seven decisions mentioned the concept actors of protection, and two decisions mentioned the IPA. These eight decisions were added to the sample, resulting in a case sample of 128 files.

Since a random selection amounted to a too small number of decisions mentioning the concepts of actors of protection or internal protection alternative to allow for a good qualitative research, another 36 files were added to the sample, six per country (three first instance decisions and three appeal decisions). These decisions were found through a keyword search on CALL's website. This selection resulted in a final sample of 164 files.

Out of 41 CGRS decisions where internal protection alternative and/or actors of protection had been mentioned, 35 case files could be consulted. Some were not available since an appeal was still pending at CALL.

Country of Origin	Total Cases	Instance	
		CGRS	CALL
Afghanistan	26	13	13
Congo DRC	28	13	15
Guinea	27	13	14
Iraq	26	13	13
Kosovo	29	13	16
Russia	28	13	15
TOTAL	**164**	**78**	**85**

V. National Overview.

The concepts of AP and IPA are detailed in Articles 48/5 §2 and §3 of the Aliens Act, which has been amended to transpose Article 7 and 8 QD 2011. The CGRS released internal guidelines on the application of both concepts (IPA and actors of protection) in August 2013.

[8] Whether an application is assigned to the Dutch or to the French language role is based purely on an informal agreement between the asylum authorities (the CGRS, the AO and the CALL), who develop an expertise per country mostly just in one or the other language. Unless the asylum seeker does not need an interpreter, in which case he can choose between Dutch or French as the language of the procedure, they have no say in the assignment to one or the other language role. (Article 51/4 Aliens Act)

While the guidelines have been taken into account in this report, the decisions analysed are older than August 2013 and thus do not reflect how these guidelines are applied in practice.

A. ACTORS OF PROTECTION.

According to the Aliens Act (Article 48/5 §2) protection can only be offered by the State, or by parties or organisations, including international organisations, controlling the state or a substantial part of its territory. To be considered as actors of protection, both the State and parties or organisations need to be willing and able to offer protection.[9] The law then further details the nature of protection, by indicating that protection is generally provided when the actors of protection take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, 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.

The concept of actors of protection, as described in Belgian legislation, is further explained in CGRS internal guidelines and in the Memorandum to the law that introduced Article 48/5 into the Aliens Act in 2006.

The rules for assessing an actor of protection do not differ based on whether refugee status or subsidiary protection is at issue.[10]

i. <u>The Nature of Protection.</u>

Both the old and the recently revised Article 48/5 §2 of the Aliens Act foresees that protection is generally provided when the actors of protection "*take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, 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.*"

1. Prevention of Persecution or Serious Harm.

According to the CGRS internal guidelines on actors of protection, it is required to look at a series of criteria when assessing whether an actor of protection has taken reasonable steps to prevent the persecution or suffering of serious harm. It is for instance required to assess the general circumstances of the country of origin, the complicity of the state to the acts of persecution, the nature of the policy of the state towards the acts of persecution or serious harm, the influence of actors of persecution or serious harm on state officials, the existence of measures to prevent persecution or serious harm, as well as the application of these, the efficiency of official measures that are being taken or their merely formal nature and the systematic lack of reaction of the state. A law that merely prohibits a certain act is said to be not sufficient, it should also actually be applied.[11] In practice, it appears that there are no

[9] Original text (French): *"La protection au sens des articles 48/3 et 48/4 ne peut être offerte que par:*
a) l'État, ou
b) des partis ou organisations, y compris des organisations internationales, qui contrôlent l'État ou une partie importante de son territoire,
pour autant qu'ils soient disposés et en mesure d'offrir une protection, conformément à l'alinéa 2"
[10] Interview with CALL Judge 4 July 2013.
[11] CGRS internal guidelines on actors of protection, 27 August 2013, p. 3.

clear rules on what is considered “reasonable steps”, but that it is rather assessed on a case-by-case basis.[12]

The Aliens Act and the CGRS internal guidelines do not provide details on what criteria are considered when assessing the effectiveness of protection, and simply require that the actor of protection operates an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm.[13] However, further details are provided in the Memorandum to the law that introduced Article 48/5 §2 Aliens Act in 2006, that explains that there should be a system of internal protection and tools for the investigation, prosecution and punishment of acts of persecution: *“These mechanisms should as a whole provide an adequate and accessible protection to all members of the population. A condition for effective protection is that the state is willing and able to apply this system in such a way that the risk of persecution or other serious harm is in fact minimal. To assess whether the state has taken or will probably take all fitting measurements to prevent harm, in a first phase, the following elements should be taken into account:*

- *The general circumstances in the country of origin*
- *The role of the state in the acts of persecution*
- *The character of the policy of the state towards this issue; is there a penal law in force that punishes violent acts of persecution according to the severity of the crime?*
- *The influence of actors of persecution on state officials*
- *Are the official measurements efficient or are they merely a formality? Are instances of criminal prosecution willing to trace down offenders, prosecute and punish them?*
- *Is the passivity of the state systematic?*
- *Is the state refusing to provide services?*
- *Is the state taking measurements to prevent the inflicting of damage?”* (translation by author)[14]

In practice, the protection is required to be effective. However, the protection is not required to be absolute.[15] From the case analysis, it seems that the criteria mentioned in the Memorandum are taken into account by CGRS. For example, a Subject Related Briefing (a COI document compiled by CEDOCA, the COI desk of CGRS) about the safety situation and freedom of movement in Kosovo, that was added to several files that have been reviewed, states that there is sufficient protection for minorities including Rom, Ashkali and Egyptians, since the several police forces and KFOR guarantee legal mechanisms for the detection, prosecution and punishing of acts of persecution.[16]

The vulnerability of protection applicants should be taken into account when assessing the effectiveness of protection. For example, the CGRS internal guidelines on actors of protection point out that the existence of appropriate custodial and care arrangements, in the

[12] Interview with CALL judge 4 July 2013.
[13] CGRS internal guidelines on actors of protection, 27 August 2013, p. 3.
[14] Chamber Doc. 51 2478/001, p. 87-88.
[15] Geert Debersaques, "Kroniek van de rechtspraak van de Raad voor Vreemdelingenbetwistingen (gerechtelijke jaren 2007-2008 en 2008-2009)”, *Rechtskundig Weekblad* 29/2009-2010, p. 1202; refers to CALL 29.057, 24 June 2009.
[16] CEDOCA Subject Related Briefing “Kosovo. Veiligheidssituatie en bewegingsvrijheid van Roma, Ashkali en Egyptenaren”, 14 March 2011, p. 25. See also: CGRS, 31.01.2012 (RUS155FRSNO): given the very racist behaviour towards Africans in Russia, the applicant who is married to a man from Cameroun and who has two children with him, is said to have a very credible asylum claim. CGRS refers to an internal CEDOCA document about the racism towards Africans in Russia, and states that the police reacts very little and rarely to racist attacks, often being racist themselves, which makes protection very difficult to obtain.

best interest of the child, should be one of the elements considered. [17] This is reflected in the case analysis, which indicates that CGRS generally takes into account the vulnerability of applicants when assessing the effectiveness of protection.

2. Durability of protection.

The recently modified Article 48/5 § 2 Aliens Act indicates that *"protection […], must be effective and of a non-temporary nature"*. This is not further detailed in legislation or in the CGRS internal guidelines on actors of protection. The durability of protection was not discussed in the case files reviewed and no indication was found in these cases about how this would be assessed in practice.

3. Access of the applicant to protection.

As mentioned above, the Aliens Act (Article 48/5 §2) requires that the applicant has access to protection. While the Aliens Act does not provide further details on how the access to protection should be assessed, further information can be found both in the Memorandum to the law that introduced Article 48/5 Aliens Act in 2006 and in the CGRS internal guidelines on actors of protection.

The Memorandum explains that "*it should be assessed whether the applicant has sufficiently access to state protection, taking into account these elements:*

- *the elements of proof submitted by the applicant that the persecutors are not in fact under control of the state,*
- *the quality of the protection the applicant receives, taking into account that the applicant cannot be denied as a group the benefit of legal protection,*
- *any attempts of the applicant to obtain protection from state officials and their reaction."* (translation by author)[18]

The CGRS internal guidelines on actors of protection state that protection officers should take into account any obstacle that might exist to access protection, and more specifically the profile of the applicant. It lists, as some examples, obstacles linked to the personal situation of the applicant (psychological problems, minor, illiterate, handicapped, etc.), obstacles that relate to the importance given to traditions (e.g. some types of complaints are not being registered, such as a gender related complaint) or obstacles that relate to a discriminatory context (e.g. towards women) or a discriminatory attitude of the authorities (e.g. towards members of a certain ethnic group or that have a certain religion), or any obstacle that is related to the situation of the protagonists (e.g. if the actor of persecution has an influential position).[19]

[17] CGRS internal guidelines on actors of protection, 27 August 2013, p. 2.
[18] Chamber Doc. 51 2478/001, p. 88.
[19] CGRS internal guidelines on actors of protection, 27 August 2013, p. 3-4. Also, for example, in a case of an asylum seeker from Guinea, the applicant claimed to be victim of forced marriage and was found credible on this point. CGRS added state protection is not possible, since Guinea is one of the few countries that did not sign the Maputo Protocol, a fundamental instrument to protect the rights of African women. Also, Guinea still did not ratify the CEDAW Protocol that allows Guinean women that are victim of violence, to have access to an international mechanism that protects their rights, when they don't have access to national justice. Additionally, the access of women to justice has been rendered practically impossible because of the lack of information on their rights and the laws that protect them, the high level of illiteracy among women, and the very high cost of procedures. The lack of training of police forces and courts often undermines the processing of complaints and even results in victims being discouraged to pursue legal action.

In practice, CALL underlined that both legal and practical obstacles to access to effective protection should be evaluated.[20] However, CALL also wrote that the mere fact that the applicant has no financial means to defend himself before the [Senegalese] court does not suffice to conclude that it would be impossible for him to have access to the effective protection of his authorities.[21]

In its compilations of COI, CGRS often makes a detailed review of the possibility of access to protection. For example, the Subject Related Briefing about the safety situation and freedom of movement in Kosovo, which was added to several files that have been reviewed, gives an overview of the initiatives to guarantee that minorities including Rom, Ashkali and Egyptians have effective access to police and justice, such as the distribution of information leaflets and legal assistance programs. It does point out that Rom women have problems obtaining access to justice due to the dominant patriarchal structures, their low education level and the fact that they are often not aware of the existence of free legal assistance.[22]

The applicant should try to approach the authorities for protection, and if he/she does not, he/she should be able to provide a valid reason.[23] The CGRS internal guidelines do not provide details on what is deemed to be a "valid reason" but gives some examples of questions that could be asked during the interview; "Did the applicant ask for protection before leaving his country of origin? If not, why not? If the applicant asks for protection in vain, did he use all means of appeal? If not, why not? Are the earlier experiences of the applicant a justification for the fact that he did not ask for protection or use all means of appeal?"[24] CALL repeated, but nuanced the obligation: *"the fact that the applicant did or did not approach his authorities is an element that should be taken into account, just as, in the first case, the reaction of these, but it is not the only one. Indeed, when it is clear from the individual circumstances or the general information submitted by the parties that any procedure would be in vain or inefficient, or that there is no protection accessible, offering a reasonable perspective of success and offering to the applicant the remedy of his claim, he cannot be expected that he should have contacted his authorities."* (Translation by author) [25]

From the case files that were reviewed, it is clear that the fact that the applicant did not approach an actor of protection in his/her country of origin could undermine his or her credibility. For instance, CALL indicated "*that the applicant who is from a wealthy family, that had problems with extorters for two years, where two members of the family have been kidnapped for ransom and a third was extorted and threatened, makes it in the opinion of the Council only more incredible that the applicant and his family did not take the effort to*

[20] CALL, 14 March 2012 (no. 77.179): *"The assessment of this issue supposes that not only the legal or judicial obstacles are taken into account, but also the practical obstacles that could prevent a person to have access to an effective protection as in 48/5, §2, of the law of 15 December 1980. The nature of the persecution and the way it is being perceived by the surrounding society and its authorities in particular can, in certain cases, constitute such a practical obstacle. The personal situation of the applicant, especially his vulnerability, can also contribute to prevent, in practice, the access to access to a protection by his authorities."*(translation by author).
[21] CALL, 6 March 2012 (no. 76.642).
[22] CEDOCA Subject Related Briefing "Kosovo. Veiligheidssituatie en bewegingsvrijheid van Roma, Ashkali en Egyptenaren", 14 March 2011, p. 21-22.
[23] CALL, 26 October 2007 (no. 3253); CALL, 30 September 2008 (no. 16.682); CALL, 17 May 2009 (no. 27.494); CALL, 25 June 2009 (29.108).
[24] CGRS internal guidelines on actors of protection, 27 August 2013, p. 5.
[25] CALL 71.313, 30 November 2011. See also for example: CALL 75.849, 27 February 2012 , which indicated that a woman who was a victim of domestic violence could not be blamed that she had not attempted to obtain protection from the Kosovar authorities, since it was clear from COI that they cannot or do not want to offer protection against the persecution she fled.

engage the police or seek help elsewhere for their continuing problems, moreover since he gives no plausible explanation for this negligence" (translation by author)[26]

This was also confirmed by the Commissioner General of CGRS, who indicated that when an applicant did not sufficiently take steps in his/her country of origin to find a solution to his/her problems, this is seen as an element undermining the credibility of the asylum claim.[27]

The CGRS Guidelines on IPA do not specifically refer to the possibility for the applicant to access protection. Access to protection is defined in the CGRS Guidelines on Actors of protection.[28] Some of the cases reviewed looked at the access to protection when assessing the IPA. For example, in a case of an applicant from Kosovo, CALL pointed out that "*the applicant did not ask for protection of his own authorities, nor did he contact his local Rom representative or an organisation that defends Rom interest or human rights. COI proves that these do exist and that the police does accept complaints from Rom, that police can be trusted, complaints are dealt with without discrimination, and that minorities have no problem accessing the judicial system*."[29]

ii. Actors of Protection.

According to the Aliens Act (Article 48/5 §2) protection can only be offered by the State, or by parties or organisations, including international organisations, controlling the State or a substantial part of its territory.

1. General criteria.

Both the State and parties or organisations need to be willing and able to offer protection in order to be considered as actors of protection.[30] According to one CALL Judge, there do not seem to be clear rules as to how this concept is interpreted. It is rather assessed on a case-by-case basis.[31]

The CGRS internal guidelines on actors of protection indicate that, when assessing if an actor is able to provide protection, it should be reviewed whether the actor is taking reasonable steps to prevent persecution or serious harm. If this is the case, they will operate an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm. The protection should also be efficient and of a non-temporary nature.[32] The Memorandum to the law that introduced Article 48/5 Aliens Act in 2006 indicates that *"a condition for effective protection is that the state is willing and able to apply*

[26]CALL,12.04.2012 (IRQ94MNSNO). See also: Call, 25.10.2012 (RUS147MNSNO): "Moreover, it is not credible that you, under the given circumstances, did no effort to contact an organisation that defend the rights of the Armenian minority, in Russia as well as in Belgium, to obtain more information or assistance with your problems of persecution" (translation by author). See also CALL, 24.05.2012 (DRC41FRENO): CGRS claims that the applicant, recognized as a refugee in Burundi, could and should have asked the Burundese authorities for protection. Protection is said to be possible since no security incidents were known to CGRS where Congolese refugees were a victim.

[27] Interview with Mr. Dirk Van Den Bulck (Commissioner General at CGRS), 24 July 2013.

[28] See chapter on Actors of Protection.

[29] CALL, 14.03.2012 (KOS119MNSNO).

[30] Original text (French): *"La protection au sens des articles 48/3 et 48/4 ne peut être offerte que par:*

a) l'État, ou

b) des partis ou organisations, y compris des organisations internationales, qui contrôlent l'État ou une partie importante de son territoire,

pour autant qu'ils soient disposés et en mesure d'offrir une protection, conformément à l'alinéa 2"

[31] Interview with CALL judge 4 July 2013.

[32] CGRS internal guidelines on actors of protection, 27 August 2013, p. 3.

this system [of internal protection] in such a way that the risk of persecution or other serious harm is in fact minimal." To assess whether the state has taken or will probably take all fitting measures to prevent harm, the following elements should be taken into account [among others]:

- *Are the official measures efficient or are they merely a formality? Are instances of criminal prosecution willing to trace down offenders, prosecute and punish them?*
- *Is the passivity of the state systematic?*
- *Is the state refusing to provide services?*
- *Is the state taking measures to prevent the inflicting of damage?" (translation by author)*[33]

For example, CALL[34] decided that the information that was added to the file about forced marriages supported the claim of the applicant that the Russian authorities were not able or did not want to offer her protection against the persecution by her family and family-in-law.

2. State actors of protection.

The CGRS internal guidelines on actors of protection mention that it is the State and its employees at all levels (national, regional, local authorities, state institutions such as police and the army) who are the main actors that can offer protection.[35] A CALL judge said he felt that in practice this is rather assessed on a case-by-case basis, based on CEDOCA information.[36]

From the case analysis, one can see that the CEDOCA information often relied on various sources to indicate whether the State is an actor of protection. For instance, a CEDOCA Subject Related Briefing, that was added to some case files of Kosovar applicants, mentioned that, even though Rom are still very often victim of widespread discrimination and marginalization, there are several national strategies to improve the status and social inclusion of Rom in Serbia. The Subject Related Briefing referred to a national Rom integration agency and a government help line where any minority can declare human rights violations. The law that prohibits discrimination is said to provide legal protection. The police force is considered very successful in fighting crime and is continuously improving because of OSCE training. The Subject Related Briefing concluded that there are no systematic human rights violations towards Rom by the Serbian authorities, and that the authorities and the police guarantee legal mechanisms for the detection, prosecution and punishing of acts of persecution to all ethnic minorities.[37] The CGRS advices on safe third countries, which were developed when the concept of safe third countries was introduced in Belgium, are also relevant in this context. For instance, with regard to Kosovo, the CGRS made a detailed analysis of the human rights situation, the functioning of the judicial system, and the presence of international organisations, and concluded that the Kosovar authorities take the

[33] Chamber Doc. 51 2478/001, p. 87-88.
[34] CALL, 24 May 2012 (no. 81.702).
[35] CGRS internal guidelines on actors of protection, 27 August 2013, p. 2-3.
[36] Interview with CALL judge 4 July 2013.
[37] CEDOCA Subject Related Briefing "Servië. De situatie van Roma in Servië", 14 October 2011. *"Even though Rom have been victim in some cases of police violence, verbal and physical bullying by civilians attack by extreme right and nationalistic groups and social discrimination and will sometimes not obtain the full protection by the law, the authorities are willing to provide sufficient protection to Rom. Additionally, there is full freedom of movement in Serbia and in case of individual problems, Rom will be able to settle elsewhere in Serbia without any problems, where they will not be confronted with any difficulties."* (translation by author)

protection of its citizens seriously and takes reasonable measurements to offer protection, even though in some exceptional cases might be insufficient.[38]

The Council of State underlined that when the State is not the source of persecution, it will not be considered as an actor of protection when it knowingly covers the acts of persecution, while it has the possibility to intervene and to guarantee an efficient protection, regardless of its motivation not to do so.[39] In practice, this seems to be assessed on a case-by-case basis, mostly based on CEDOCA information.[40] For example, in the case of a Russian protection applicant, who is married to a man from Cameroun and who has two children with him, was said to have a very credible asylum claim given racism towards Africans in Russia. CGRS stated in its internal evaluation form that the police reacted very little and rarely to racist attacks, often being racist themselves, which made protection very difficult to obtain. CGRS referred to an internal CEDOCA document about racism towards Africans in Russia.[41]

There is a presumption that effective protection is not available when the State is the actor of persecution. This has been confirmed in an overview of CALL case law for the period of 2007 to 2009.[42] According to the CGRS internal guidelines, when the State is the actor of persecution or serious harm, it should be analysed if the actor was acting on an individual and personal basis. In that case, effective protection is still possible, even though the actor of persecution was a state actor.[43]

3. Non-State Actors of protection.

i. Criteria for a Non-State Actor to be Actor of Protection.

Article 48/5 §2 Aliens Act indicates that protection can be provided by parties and organisations, including international organisations, controlling the state or a substantial part of its territory. The internal guidelines of CGRS on actors of protection state that parties or organisations, including international organisations, should be stable and organised authorities that have full and complete control over (a part of) the territory and population. It gives no further indication as to how to interpret these concepts.[44] According to a CALL judge, there do not seem to be clear rules on this; it is rather assessed on a case-by-case basis.[45]

ii. Types of Non-State Actors of Protection.

[38] CGRS, "Avis du Commissaire Général aux Réfugiés et Apatrides concernant les pays d'origine sûrs", 5 March 2012, p. 4. Article 57/6/1 Aliens Act allows for an accelerated procedure when the applicant originates from a safe country of origin. In this case, CGRS will take a decision on the admissibility of the application within 15 days. A Royal Decree stipulates which are these safe countries of origin, to be renewed at least every year. In 2012, this happened for the first time[38], and CGRS provided an advice on which countries should be included and why.
[39] Council of State, 20 May 2005 (no. 144.725).
[40] Interview with a CALL judge 4 July 2013.
[41] See also this CGRS decision: In a case of a protection applicant from Iraq, the applicant's profile as a doctor in Baghdad and his asylum claim were found credible. The fact that the applicant had declared his problems to the police and they had answered that besides some general security measures, there is nothing they could do to protect him, was said by CGRS to be credible.
[42] Geert Debersaques, "Kroniek van de rechtspraak van de Raad voor Vreemdelingenbetwistingen (gerechtelijke jaren 2007-2008 en 2008-2009)", *Rechtskundig Weekblad* 29/2009-2010, p. 1202; refers to CALL 10.947, 7 May 2008; CALL 21.715, 21 January 2009.
[43] CGRS internal guidelines on actors of protection, 27 August 2013, p. 2-3.
[44] CGRS internal guidelines on actors of protection, 27 August 2013, p. 2.
[45] Interview with CALL judge 4 July 2013.

1. *International Organisations and Multinational Forces.*

The Memorandum to the law that introduced Article 48/5 Aliens Act in 2006 explains that non-state actors can also provide protection, in the same way as state actors: *"This implies that international organisations such as UN or NATO or a stable instance similar to a state has control over the territory that is proposed for return, and that it is willing and able to prevail certain rights and will protect certain persons – in a similar way as an internationally recognized state – against harm as long as is required."* (translation by author)[46]

The internal guidelines of CGRS on actors of protection provides some guidance as to which organisations should be understood as an "international organisation" that can provide protection. The guidelines mention intergovernmental international (United Nations) or regional organisations (European Union, African Union), as well as military organisations (NATO). The guidelines further indicate that EU guidance should be taken into account when assessing whether an international organisation controls a State or a significant part of its territory and offers protection there.[47] No such guidance was known to CGRS at the time of the drafting of the internal guidelines.

In none of the case files that have been reviewed, reference was made to protection that could be given by international organisations. However, some reference was made to multinational forces as possible actors of protection. For instance, in the cases of Kosovar applicants that were analysed in this study, it was nearly always considered that they could and should have asked for the protection of EULEX and KFOR.[48] In one case, UNMIK was also mentioned. Another example can be found where CALL stated that the argument of CGRS that the applicant should have sought protection offered by MONUC completely lacked relevance, as MONUC most definitely could not be considered as an agent of protection under Article 48/5 §2 Aliens Act. [49]

2. *Clans or Tribes.*

The CGRS internal guidelines on actors of protection explicitly state that local clans or tribes that do not represent the recognized authority and/or only have temporary control cannot be seen as actors that can provide protection. Movements that fight for national liberation of a de facto secession of a part of a national territory, could be an actor of protection.[50] From the case analysis, it appears that CGRS and CALL do not consider clans or tribes as possible actors of protection. However, in one case that was reviewed, IPA was said to be possible in Herat given the presence of traditional protection mechanisms such as family, clan or tribe relations.[51]

[46] Chamber Doc. 51 2478/001, p. 88.
[47] CGRS internal guidelines on actors of protection, 27 August 2013, p. 2.
[48] Call, 10.02.2011 (KOS116 FNSTO): CGRS claims the applicant could have obtained protection from the Kosovo Police, EULEX and KFOR against the persecution he claims he fears as a Rom in Kosovo. CGRS adds that the applicant also failed to inform the local Rom representatives, who works at the 'Committee of Communities', that has an important role in the protection of human rights of minorities in the commune.
[49] CALL, 25 March 2010 (no. 40.768).
[50] CGRS internal guidelines on actors of protection, 27 August 2013, p. 2. See also the CGRS internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 3.
[51] CALL, 18.09.2012 (AFG03MNSNO).

3. Other Parties or organisations.

In the cases analysed, some reference were found to other parties or organisations, such as international aid organisations (Afghanistan), political parties (DRC, Iraq, Russia),[52] associations (Guinea), "your local Rom representative" (Kosovo), organisations (Kosovo, Russia) or lawyers (Russia). According to CGRS, the reference to these actors is in no way intended to consider them as actors of protection, but is rather used as an element of credibility.[53] However, in a CEDOCA Subject Related Briefing about forced marriage in Guinea, it was indicated that women who are victim of forced marriage can normally flee and settle elsewhere and find protection with her family members, mostly on mother's side, seemingly indicating that these would be actors of protection.[54] Interviews with stakeholders also indicated that there is great dissatisfaction among lawyers and NGO's about the way IPA is being applied by CGRS and CALL to victims of FGM, assuming these women could obtain effective protection from state and/or NGO's.[55]

B. THE INTERNAL PROTECTION ALTERNATIVE.

Article 8 QD 2004 was almost identically transposed into Belgian legislation (Article 48/5 §3). Since 1st September 2013, the Aliens Act has been amended to transpose Article 8 of the Recast Qualification Directive. The transposition is in content almost identical to Article 8 QD 2011. According to the Aliens Act (Article 48/5 §3), "*there is no need to grant international protection if, in a part of the country of origin, the applicant has no well-founded fear of persecution or is at no real risk of suffering serious harm, or has access to protection against persecution or serious harm […]".* The applicant must also be able to *"safely and legally travel to this part of the country, and can gain admittance to go there and can reasonably be expected to settle there".* In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance […], *"the general circumstances in that part of the country and the personal circumstances of the applicant will be taken into account".*

The concept of Internal Protection Alternative, as described in Belgian legislation, is further explained in CGRS internal guidelines and in the Memorandum to the law that introduced Article 48/5 into the Aliens Act in 2006[56].

i. <u>Assessment of the Internal Protection Alternative.</u>

1. Safety in the protection region.

[52] CALL, 30.11.2012 (IRQ84MNSNO): The applicant claims to have been persecuted because of his activism for an Iraqi Kurdish political party. CALL states that it cannot be understood that the applicant did not seek Gorran's aid before fleeing the country, and that the applicant does not indicate why this would have increased his problems. A wikipedia article is referred to, that mentions that Gorran is not a small political party but on the contrary has several representatives in the Iraqi and Kurdish parliament. CALL states that one can assume that Gorran would have been able to help the applicant.
[53] Interview with Mr. Dirk Van Den Bulck (Commissioner General at CGRS), 24 July 2013.
[54] CEDOCA Subject Related Briefing "Guinée. Le mariage", April 2012, p. 17.
[55] Interview with INTACT staff 24 June 2013.
[56] Doc. 51 2478/001, p. 89.

The Council of State confirmed that Article 48/5 §3 Aliens Act does not require the identification of a specific area of relocation.[57] From the case analysis, CGRS often proposed a specific area or city for relocation. However in several cases, the applicant was simply said to be able to live "elsewhere" in the country of origin.

The CGRS internal guidelines on IPA point out that one of the cumulative conditions that should be met for the application of an IPA is that there is no fear for persecution or real risk for serious harm in the proposed region for relocation. It is specified that this implies the neutralisation of the invoked fear of the asylum application, but also the absence of any other persecution or serious harm.[58]

A CALL Judge indicated that it is clear, from CALL case law, that CALL requires more than the mere absence of persecution, and does assess the rights and living standards in the proposed region.[59]

2. Securing human and social rights.

i. General circumstances.

The Memorandum to the proposal of law that introduced Article 48/5 Aliens Act highlights that when an IPA is applied, safety circumstances, political and social circumstances, as well as the human rights situation in the country of origin, should be taken into account.[60] In some of the case files that were reviewed, CGRS explicitly referred to COI to point out that the applicant would be safe in the proposed region, or 'elsewhere' in the country of origin. Examples of CALL case decisions can be found where an IPA was deemed not reasonable given the general circumstances in the whole of the country, such as the general security situation in the country of origin.[61]

An overview of CALL case law (2007-2009), as was compiled by the President of CALL at the time, points out that the difficulty of access to housing, education, work, social services and health care in a certain region can make an IPA there impossible.[62] In a case of a protection applicant from Kosovo, CALL[63] reviewed in a detailed way whether an IPA could be applied. It referred to UNHCR Guidelines 2003 and stated: *"The Council deems it necessary to examine whether, in case of internal relocation, the applicants risk to be exposed to other forms of persecution or serious harm. (…) In this case, the court observes, reading the documents submitted by the applicants, that Kosovo is confronted in a general way with a difficult economic and social context. However, the arguments developed by the applicants do not show that in case of return to their country, they would be exposed to living*

[57] Council of State, 21 November 2012 (no. 221.445).
[58] CGRS internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 3.
[59] Interview with CALL judge 5 July 2013.
[60] Chamber Doc. 51 2478/001, p. 89.
[61] CALL, 10 February 2012 (no. 74.918); CALL, 29 February 2012 (no. 81.857).
[62] Geert Debersaques, "Kroniek van de rechtspraak van de Raad voor Vreemdelingenbetwistingen (gerechtelijke jaren 2007-2008 en 2008-2009)", *Rechtskundig Weekblad* 29/2009-2010, p. 1202.
[63] CALL 90.024, 18 October 2012.

conditions more difficult than for the whole of the Kosovar population." (translation by author)[64]

The Commissioner General of CGRS indicated that only the most exceptional circumstances are considered unreasonable for IPA.[65]

The CGRS internal guidelines mention that the living conditions in the region of relocation cannot, in principle, amount to degrading or inhuman treatment as per Article 3 ECHR. The guidelines further refer to the case law of the European Court of Human Rights, in particular to *M.S.S. v. Belgium* and *Sufi and Elmi*, and indicate that the threshold of Article 3 is very high and that difficult living conditions due to a difficult economic situations are not sufficient to constitute a violation of Article 3 unless in particular cases related to the vulnerability of the applicant. A violation of Article 3 ECHR will a priori only be possible due to a combination of factors relating to the inability to meet the basic needs (food, health, housing) and aggravating circumstances such as lack of perspective of improvement of the situation of vulnerability of the claimant. The guidelines make clear that the threshold for the violation of Article 3 ECHR does not need to be reached for an IPA to be considered unreasonable. Depending on the individual circumstances of the claimant, the internal flight alternative can be estimated "unreasonable" even if living conditions do not meet the threshold of violation of Article 3 ECHR.

ii. Personal circumstances.

The Memorandum to the proposal of law that introduced Article 48/5 Aliens Act, explains that when an IPA is applied, personal circumstances such as age, sex, health, family situation and ethnic, cultural and social ties can have an influence.[66] The CGRS internal guidelines refer to circumstances, such as age, sex, gender, health, handicap, family situation, education, and social level.[67]

Based on the analysis of decisions, different kinds of personal circumstances were named to support the possibility if an IPA:

- employment prospects
- presence of family members in the proposed region[68]
- the financial situation of the applicant and/or his or her family[69]
- his or her experience in starting a business or previous working experience
- the level of education of the applicant[70]
- the time the applicant already spent in the proposed region of relocation

[64] Original text : *"Le Conseil estime devoir encore examiner si, en cas de réinstallation interne, les requérants risquent d'être exposés à d'autres formes de persécution ou d'atteinte grave. (…) En l'espèce, le Conseil observe, à la lecture des documents déposés par les parties requérantes, que le Kosovo est confronté de manière générale à un contexte économique et social difficile. Par ailleurs, il ne ressort pas des arguments développés par les requérants qu'en cas de retour dans leur pays, ils seraient exposés à des conditions de vie plus précaires que l'ensemble de la population kosovare"*

[65] Interview with Dirk Van Den Bulck (Commissioner General at CGRS), 24 July 2013.

[66] Chamber Doc. 51 2478/001, p. 89.

[67] CGRS, Internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 2.

[68] For example, CGRS, 28.02.2013 (AFG14MNSNO): CGRS stated explicitly that the fact that the applicant had no family in Jalalabad, did not pose a serious burden to relocation there.

[69] See, for example: CALL, 30.10.2012 (IRQ93MNSNO): The applicant raised the issue that he could not afford to live and pay rent in the proposed region for relocation, but CALL answered that this is hardly credible since he paid 14.000 dollars for his journey to Belgium.

[70] See for example: CGRS, 20.12.2012 (GUI71FRSTOVT): CGRS wrote in the internal evaluation form that objectively, the applicant is 19 years old, is little educated and has no profession besides helping her aunt at the market, which makes IPA difficult in her case.

- the fact that the applicant showed the initiative to travel to Europe and take care of himself or herself
- the knowledge of languages of the applicant

For example, in one of the cases reviewed, CALL agreed that the applicant, as a young man who speaks both languages, had a settlement alternative in Kabul. CALL added that the argument that the applicant lived there for some time and did not find a house or a job during this time did not mean that he could not reasonably be expected to settle in Kabul. CALL answered to the argument that the applicant had no ties or network in Kabul and thus could not be expected to move there by referring to the ECtHR decision Husseini/Sweden.[71] The document that the applicant added to the appeal, which showed that a forced return to Kabul could not be compared to voluntary return, was said not to prove that settlement in Kabul would be unreasonable. CALL reminded the applicant that his statements were found not credible, concluding that he could reasonably be expected to settle in Kabul.[72]

It should be mentioned that in two of the case files reviewed, elements of access to employment or financial status were called merely economical and said to hold no relation to the Geneva Convention, when assessing the arguments an applicant would hold against IPA. For example, in one case, CGRS indicated that the applicant's argument that he did not have money or a job elsewhere in Kosovo was a purely financial motive that had no link to the Geneva Convention or to the regulations on subsidiary protection. In the appeal procedure, CALL confirmed that the argument that the applicant did not have a place to live or work elsewhere in Kosovo was purely economical and had no link to the Geneva Convention.[73] It appears that in such cases a nexus to Convention reasons was required for some of the arguments raised against the reasonableness of an IPA. However, in such a situation, there is no need for a Convention nexus – it is not the presence/absence of persecution that is being evaluated, but rather the reasonableness of relocating to a particular area.

In another case, CALL[74] gave a very detailed analysis of whether relocation could reasonably be expected, underlining that the vulnerability of the applicant should not be increased by the relocation : *"Reviewing the documents of the file, the Council notes in this regard that the mother tongue of the applicants is the same as the majority of the suggested area for relocation, being Albanian, that they belong to the ethnic majority of this zone, that the elements of the file do not prove that their level of education would be lower than that of the population, that they regularly relied on the authorities of other Kosovar localities without having any particular problems, and that several members of their family live there. Given all this, the Council notes that relocation of the applicants in another locality in Kosovo would not be the cause of their isolation or increase in their vulnerability. Finally, the submitted medical and psychological certificates do not prove that the handicap of the son of the applicants and the depressive troubles of the applicant have their origin in previous*

[71] *Husseini v. Sweden*, Application no. 10611/09, European Court of Human Rights, 13 October 2011.
[72] CALL, 25 February 2013 (AFG13MNSNO).
[73] CALL, 10.11.2011 (KOS120MNSNO). See also: CALL, 7.09.2012, (GUI66FSPNO): CALL states that there is indeed no nexus with the Geneva Convention, but grants the applicant subsidiary protection status since her statements are credible, and that it is not reasonable to expect that the applicant would settle elsewhere, given her personal circumstances (60 years old, having been hospitalized, lived in Conakry her whole life, all her family members passed away, except for her brother who lives in Matam). CALL adds that the fact that she could travel to Belgium is not a pertinent argument.
[74] CALL, 18 October 2012 (no. 90,024).

persecution of that a return to their country of origin would expose them to a new traumatism." (Translation by author)

According to a CALL Judge, there is a generally big consensus in case law on the need for special attention to the vulnerability of ***children***.[75] Indeed, in a CALL decision[76], an IPA was said to be not possible because of the personal circumstances of the applicant, given that he was a minor and an orphan.

The Belgian Refugee Council published a report on the vulnerability of the child in June 2013, giving examples of how CGRS and CALL approach the best interest of the child in the asylum procedure. The report referred to a CGRS decision, where a family with three children was refused international protection stating an IPA to Kabul was possible, without taking into account the vulnerability of the three children and making an assessment of the reasonableness of the relocation to Kabul for them.[77] CALL confirmed the decisions, stating that the Convention on the rights of the Child and Article 22bis of the Constitution have no direct effect and the limitation to access to education in Afghanistan have no link to the Geneva Convention.[78]

Another interesting case that was referred to in the report was a CALL decision that cited the Convention on the rights of the Child. CGRS had decided that an IPA to the applicant's uncle in Kabul was possible, rejecting the protection claim. CALL granted subsidiary protection status to the unaccompanied child, stating that in line with the Convention, the centre of the child's interests was primarily with his/her parents who lived in the province Maidan-Wardak, and that for this reason, this should be the region of reference for protection under Article 15(c) QD 2004.[79]

In one of the cases reviewed, CGRS found the asylum claim of the applicant (an unaccompanied child) not credible and points out that it cannot believe there would have been no alternatives for him than to leave his country, especially since he could not explain why his father's friend decided to let him travel abroad after having lived with him for 3 months. At the appeal stage, CALL found the applicant credible, and explained the obligations of CGRS under Article 48/5 §3 Aliens Act. CALL pointed out that it is not clear from the decision that CGRS verified if it could reasonably be expected from the applicant to settle elsewhere, nor that CGRS would have taken into account any general or personal circumstances in this regard.

The CGRS internal guidelines on IPA point out that it can be assumed that IPA for an unaccompanied child should be considered unreasonable, and that only in exceptional circumstances, notably when it is clear that the child could effectively count on his/her family or a network, IPA could be applied.[80]

[75] Interview with CALL judge 4 July 2013.
[76] CALL, 10 February 2012 (no.74.918).
[77] Belgian Refugee Council, "L'enfant dans l'asile : prise en considération de sa vulnérabilité et de son intérêt supérieur", June 2013, p. 8, available at http://www.cbar-bchv.be/Portals/0/Information%20juridique/Asile/Analyses/L%27enfant%20dans%20l%27asile.pdf
[78] CALL, 28 March 2013 (no. 100.098).
[79] CALL, 21 September 2010 (no. 48.387).
[80] CGRS internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 2.

A CALL judge said that there is probably less consensus in case law on the need for special attention to the vulnerability of ***women***. [81] In some of the case files that were reviewed, the fact that the applicant was a single mother with minor children was not given any consideration when applying IPA. In many of the case files that were reviewed, IPA was deemed possible even though the protection claim of the female applicant was gender-based.

In case of people in need of ***medical treatment***, the CGRS generally states that the need for medical treatment should be evaluated in the context of an application for legal stay (Article 9ter Aliens Act), and not in the context of a protection claim based on the Geneva Convention. In some cases, the applicant had mentioned that he or she needed medical attention, but this element was not mentioned in the assessment of the possibility of an IPA. In some cases, CGRS did refer to the possibilities of medical treatment in the proposed region of relocation. For example, CGRS referred to COI that pointed out that Roma have full access to the public health system in Podujevë (Kosovo).

In the reviewed cases where the applicant claimed to be a ***victim of sexual abuse*** or had been ***tortured*** in the country of origin, this element was not mentioned when assessing the possibility of an IPA.

The psychological impact of moving to the protection location is sometimes taken into account[82]. A CGRS protection officer can rely on a psychologist who will provide advice on the psychological aspects of the application.[83] However, in one of the files where the applicant raised this as an issue, the CGRS answered that the impact of moving to Belgium must have been just as high: *"Moreover, CGRS believes that you could board an airplane and a train to a European country where absolutely everything is unknown to you and where you don't know anyone, it would have been possible to do the same some hundred kilometres away in another city in Guinea, far from your family-in-law"* (translation by author).[84] Also in some other cases that were reviewed, the fact that the applicant had travelled to Europe was used as an argument to prove his or her sense of initiative and as a reason to apply IPA, rather than taking into account what the impact would have been of living in another region in the country of origin.

iii. Stay/settle.

Article 48/5 §3 Aliens Act, which transposes Article 8 QD 2011, now refers to "settle" ("s'établir"), and replaces the wording "stay" ("rester") that was used in the previous version of this article. The new wording would require a longer-term stay in the region of relocation. The CGRS internal guidelines on IPA point out that the relocation should be durable, at least for the time of the need for protection.[85] A CALL judge mentioned that, in practice, there would not often be a difference between the two.[86]

[81] Interview with CALL judge, 4 July 2013.
[82] See CALL 18 February 2013 (no. 7.398).
[83] Interview with Dirk Van Den Bulck (Commissioner General at CGRS), 24 July 2013.
[84] Call, 7.09.2012 (GUI66FSPNO).
[85] CGRS, Internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 3.
[86] Interview with CALL judge 4 July 2013.

From the case files, it seems that CGRS and/or CALL do assess the possibility of a long term residence, since it takes possibilities for employment etc. into account. However, in other cases, the mere fact that a family member lives in a certain region and has no problems there seems to suffice for CGRS or CALL, without assessing the long-term options for the applicant. For example, in one case, the fact that the applicant had stayed with a friend in al-Mansour in Baghdad for a month and a half and had not had any problems during this period, even though he left the house on several occasions, was said to undermine the statement of the applicant that he's not safe anywhere, making an IPA possible, according to CGRS. In some other files, CGRS and/or CALL simply stated that the applicant could go live elsewhere, without identifying where exactly and without explicitly identifying any personal or general circumstances that would make it reasonable for the applicant to go live there.

3. Safe and Legal Travel.

The CGRS internal guidelines on IPA point out that one of the cumulative conditions that should be met for the application of an IPA, is that the proposed region for relocation should be practically, legally and safely accessible. The guidelines explain that this implies that the applicant cannot be expected to travel through a conflict zone to access the proposed region, or to enter there illegally. He/she should also be able to obtain permission to live and settle there. Similarly, if the applicant is expected to travel through a third country, he/she should be able to obtain permission to do so. In this context, the CGRS guidelines refer to ECtHR cases “Salah Sheekh/Netherlands” and “Sufi and Elmi/United Kingdom”.[87]

The Council of State has annulled a CALL decision because it had not evaluated the possibility of a safe travel to an area that was deemed safe, indicating that it is indeed required to include this element in the application of an IPA.[88]

From the case analysis, it is not clear how the possibility to safely and legally travel to the protection region is verified. In none of the files, this was explicitly mentioned as an element that was investigated. A CALL judge assumed that CGRS reviews whether there are technical obstacles, and will not apply the IPA if this would be the case. He/she said he/she himself does not review this in every case, but definitely will when the applicant raised it in his appeal against a CGRS decision.[89]

For example in the case file of a protection applicant from Afghanistan, the applicant had raised the fact that Kabul was not a safe place for him to live. CALL however confirmed that an IPA was reasonable, since Kabul is under the efficient control of the government and can safely be reached through the international airport.[90] Similarly, in another case of an applicant from Afghanistan, CALL indicated that the applicant could be reasonably expected to relocate to Herat, since there is no generalized violence there and it can easily be reached through its international airport in Herat.[91]

[87] CGRS, Internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 2.
[88] Council of State, 18 July 2011 (no. 214.686).
[89] Interview with CALL judge 4 July 2013.
[90] CALL, 28.02.2013 (AFG11MNSNO).
[91] CALL, 18.09.2012 (AFG03MNSNO).

ii. The Application of the IPA.

1. Procedure.

i. In which Procedure is the IPA applied?

IPA is used both in ***accelerated or border procedures***.[92] According to CGRS, these procedures will always include a full assessment of the asylum claim, just with different delays and possibilities for appeal.[93]

IPA is not considered when deciding whether to admit an applicant to a full status determination procedure. Indeed, there is no legal provision that makes this possible. Article 50/10 Aliens Act clearly states that, at the Immigration Department, the identity, origin and travel route of the applicant will be registered and a short summary of the reasons that compelled him to leave his country will be provided. This information will be passed on to the CGRS for a full status determination procedure, unless the Immigration Department is convinced another European state is responsible for the application (Article 51/5 Aliens Act). In none of the files that have been reviewed, the applicant was asked about the possibility of an IPA during the interview at the Immigration Department.[94] However, there is an example in case law where the applicant had demanded the annulment of a decision of non-admissibility because it had invoked the possibility of an IPA, referring to the recommendations of Michigan and Le Blanc,[95] the Council of State underlined that these are not binding and confirmed the decision, implying that IPA can be applied when deciding whether to admit an applicant to a full status determination procedure. It should be noted that this was a decision taken under the old asylum procedure, where the Immigration Department had much larger authority than under the new procedure.[96] Another more recent Council of State decision states that the argument of an IPA could not be invoked in the phase of admissibility, since it should first be investigated whether the applicant qualifies for international protection.[97]

ii. At what Point in the Procedure is the IPA applied?

The CGRS Internal guidelines on IPA point out that the question of IPA should only be considered once the well-founded fear or risk of serious harm has been established.

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[92] This was confirmed during the interviews with CGRS and CBAR. IPA seems also to be used in cases where the application was given priority treatment based on Article 52/2 §2 Aliens Act, after a general instruction from the State Secretary that year had requested CGRS to do so.

[93] Note also that an accelerated procedure takes place in case an applicant originates from a safe country of origin (Article 57/6/1 Aliens Act). In this case, CGRS will take a decision on the admissibility of the application within 15 days. A Royal Decree stipulates which are these safe countries of origin, to be renewed at least every year. The Commissioner General pointed out that in this case, the way of assessing an application and the arguments that can be used will not necessarily be different, but rather the delays and the possibilities for an appeal. He did admit that the standard of proof might be higher in case the applicant comes from a safe country of origin, but that this was probably already the case before the list of safe countries was published, based on the extensive sources of COI CGRS had assembled for these countries.

[94] This was also confirmed during the interview of a Call Judge on 4 July 2013.

[95] Le Blanc, 'L'interprétation de la Convention de Genève relative au statut de réfugié à la lumière des positions du Haut-Commissariat des Nations Unies pour les réfugiés sur les développements politiques récents en matière d'asile', R.D.E., 1993, n/ 76, pp. 571-572: "' L'alternative de fuite interne ne peut constituer un motif d'irrecevabilité d'une demande d'asile, mais peut fonder une non reconnaissance de la qualité de réfugié, après un examen approfondi de la demande, aux termes duquel il est établi que la persécution crainte n'est en effet perpétrée que dans la zone que le demandeur d'asile a fuit, et que la protection disponible dans la zone d'alternative de fuite interne est effective'"

[96] Council of State, 17 November 2003 (no. 125.353)

[97] Council of State,10 March 2004 (no. 129.082).

This is confirmed in practice, where it appears that the protection claim is always assessed before IPA is used as a possible argument not to grant protection. In the case files reviewed, the applicant was always extensively interviewed about the reasons for his/her application and often only at the end of the substantive interview questions were asked about access to protection or an internal protection alternative. Also in the internal evaluation forms that were added to files where CGRS had granted refugee status, this element was evaluated only at the very end of the document.

In most of the CGRS decisions that were reviewed, the existence of an IPA was used only in combination with several elements undermining the credibility of the protection claim. Even when the argument of IPA was mentioned first in the negative decision, CGRS still added argument about the lack of credibility of the asylum claim as such. In the two files where IPA was used as the only argument to refuse refugee status, CGRS had still thoroughly investigated the protection claim itself and explicitly called it credible.

In considering subsidiary protection status based on Article 15(c) QD, the IPA was used as a sole argument to deny protection when it was found credible that the applicant originates from a region that is generally accepted for subsidiary protection, rather than in combination with other arguments to refuse international protection. The claim for refugee status had in every case been assessed.

iii. Procedural Safeguards.

There is no legal provision obliging CGRS to give the applicant the opportunity to comment on the application of the IPA. Indeed, as was confirmed in the Report to the Royal Decree on CGRS Procedures, Article 17 of the Royal Decree only obliges CGRS to confront the applicant with contradictions within the interview, and it is not impossible to base a decision on elements an applicant was not confronted with during the substantive interview, since CGRS is an administrative authority and not a jurisdiction.[98]

However, the internal guidelines of CGRS on IPA point out that the applicant should always be informed during the substantive interview that an IPA can be applied, and that he or she should be given the possibility to give his argument why the foreseen relocation would not be relevant, or if it would be relevant, why it would not be reasonable in his or her case.[99]

In practice, it appears that the applicant is often consulted but not automatically and the extent of the questioning might vary.

In most of the case files where the interview transcript could be consulted and IPA had been applied, the applicant had been asked during the substantive interview about the possibility of an IPA and his or her arguments were written down. For example, in a file of a protection applicant from Congo DRC, the part of the interview transcript dealing with “internal flight” would read like this (translation by the author”):

[98] Report to the Royal Decree on CGRS procedures, *B.S.* 27 January 2004, p. 4627, available at : http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl?N=&=&sql=(text+contains+(''))&rech=1&language=nl&tri=dd+AS+RANK&numero=1&table_name=wet&cn=2003071105&caller=image_a1&fromtab=wet&la=N&pdf_page=7&pdf_file=http://www.ejustice.just.fgov.be/mopdf/2004/01/27_1.pdf

[99] CGRS, Internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 2.

- *"Q: Do you think it would be possible to settle elsewhere in Congo without knowing any problems there? In another region? Another city?*
- *A: No, there's money and that makes things easier. He will find me. Here, in Europe, he can't.*
- *Q: How could he find you elsewhere in Congo?*
- *A: He is known, he has his men.*
- *Q: What do you mean? Could you be more precise?*
- *A: He has friends almost everywhere. His friends also have ties who could easily find me.*
- *Q: Other reasons that prevent you from settling elsewhere in Congo?*
- *A: No.*
- *Q: Who are the ties of your husband who could find you and harm you?*
- *A: He knows military officers, governors.*
- *Q: Can you give me names?*
- *A: I don't know the names."*[100]

It should be noted that in some of the cases reviewed the questioning about IPA was quite superficial and the applicant is asked only very shortly about the possibility of an IPA, for example in a case of a protection applicant from the Democratic Republic of the Congo:

- *"Q: Do you think you could live elsewhere in DRC, for example Lodja or Goma?*
- *A: No because where I live I was used to things, I never travelled.*
- *Q: Are there any other reasons why you could not start your life again elsewhere in DRC?*
- *A: No."*[101]

In some of the cases reviewed, the applicant was not asked about IPA at all during the interview. For example, in a case related to a protection applicant from Afghanistan, the applicant was asked which languages he speaks, when and where he worked, throughout different sections of the interview. He was never asked about the possibility of an IPA, which was applied as a reason to deny subsidiary protection status under Article 15 (c) QD.[102]

According to interviews with a lawyer and NGO staff, CGRS would usually not go into too many details during the interview and would ask few follow-up questions.[103] NGO stakeholders underlined the need for a clear understanding by the applicant of the

[100] CGRS, 29.02.2012 (DRC53FNSNO). See also a section of the transcript of a case of an applicant from Guinea (CGRS, 20.12.2012 (GUI71FRSTOVT)): *"Q : Could you have fled to another place in your country and settle there? A : I couldn't because I don't know anyone besides my aunt who lives in Conakry. That's why I was with her, in Conakry. Q : Here you also don't know anyone, why could you not settle in another region in Guinea? A : It wasn't me who decided that. It was my aunt who decided. I didn't know I was coming here. If she would have told me to go elsewhere in the country, I would have. It wasn't me who decided. Q : Would you have problems if you would go live elsewhere in Guinea? A : Yes, I could have problems because they could find me one day. I could run into someone I know. Or the parents of the man who's looking for me. Q : Your aunt decided that you would come here. Why not go to another region in your country, and use the money she paid for your journey to settle there? A : I don't know if they gave money to Jean-Paul or not. They just told me to follow." (translation by author)*

[101] CGRS, 10.05.2011 (DRC54FNSTOVT).

[102] See also: CGRS, 7.08.2012 (AFG26MNSUM): The applicant was asked who lives in Kabul, and what these family members do there. He was at no moment asked if he thought an internal flight to Kabul would be possible for him. Nevertheless, IPA was applied as a reason to deny subsidiary protection status under Article 15 c) QD; and another case where only the applicant's husband had been asked about the possibility of an IPA, but she was not asked herself.

[103] Interview with lawyer 5 July 2013.

implications of his/her answers when asked e.g. if he/she had an uncle in Kabul, or which languages he/she speaks.[104]

2. Policy.

i. Type of Protection Claim.

IPA is applied to both ***refugee status and subsidiary protection***. In the majority of the case files reviewed, IPA was applied to refugee status. When applied to subsidiary protection, it was mostly in cases, where subsidiary protection status was evaluated based on Article 15(c) QD.[105] In all Afghan cases reviewed where IPA was applied, but one[106], this was done in relation to the evaluation of the need for subsidiary protection that was based on Article 15(c) QD. Also in Iraqi cases, the IPA[107] was applied in cases based on Article 15(c) QD.

When the State or its agents are the actors of persecution or tolerate the persecution, it should be assumed that effective protection in another part of the country is not available since the State is normally able to act on the whole territory.[108] CALL pointed out explicitly that when the State is the actor of persecution, there is a rebuttable presumption that there is no IPA possible, since the state is assumed to have executive power on the whole of the territory.[109]

In the cases that were reviewed, IPA was only applied when the element of State persecution was found not credible.[110] The rebuttable presumption could be reversed, according to a judge, in the case of Kurds in Turkey, who might be safe in Istanbul but not in the Kurdish region.[111]

ii. Frequency of Application.

IPA is not assessed in every case. Indeed, the Commissioner General of CGRS stated that the protection officers of CGRS are not obliged to assess the possibility of an IPA in every file, but this will depend on the individual situation, the origin and the profile of the applicant. He said that when an asylum claim is found not credible, the possibility of an IPA will normally not be assessed.[112]

At CALL level, it appears from our interviews, that the review of a possibility of an IPA is not automatic, and that some judges might raise it only if it has been raised as an argument by CGRS at first instance.[113] The research has also showed instances where the IPA is not raised at first instance, but is raised at CALL level. In a case of a Russian applicant, where IPA was not raised at first instance, CALL explained, as was confirmed by the Council of

[104] Interview with Flemish Refugee Action staff 8 July 2013; Interview with Belgian Refugee Council staff 9 July 2013.
[105] However, there were some cases where subsidiary protection status was explicitly evaluated based on Article 15 a) and b) QD. See for example: CALL, 12.04.2012 (IRQMNSNO) and CGRS, 31.01.2012 (KOS134MNSNO).
[106] CGRS, 07.08.2012 (AFG26MNSUM).
[107] See for example: CGRS, 4.04.2011 (IRQ104FNSNO).
[108] CGRS, Internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 2.
[109] CALL, 31.08.2013 (DRC37FNSNO).
[110] See for example, CALL, 5.01.2011 (DRC36MNSNO), http://www.rvv-cce.be/rvv/index.php/nl/component/docman/doc_download/29221-a54102
[111] Interview with CALL judge 5 July 2013
[112] Interview with Mr. Dirk Van Den Bulck, 24 July 2013.
[113] Interview with CALL judge 4 July 2013.

State,[114] that it can independently investigate if an internal flight is possible, regardless of CGRS' arguments.[115]

iii. IPA as Blanket Policy?

The CGRS internal guidelines on IPA point out that the possibility of an IPA should always be assessed on a case-by-case basis, since the personal circumstances and the possible vulnerability of the applicant strongly influence the assessment of the asylum claim.[116] The guidelines underline that an IPA cannot be applied in a general way for a country or a particular group of applicants.[117]

The interview with a CALL judge suggests that CGRS considers the IPA concept on a case-by-case basis, based on country specific COI.[118] In practice, indeed, it seems that CGRS mostly relies on country specific COI to evaluate the possibility of an IPA. In several of the case files that were reviewed, CGRS added documents developed by CEDOCA, its COI department, indicating whether an IPA would be possible in a certain context. For example, a CEDOCA Subject Related Briefing about Kosovo, under chapter Security and freedom of movement, explains that Rom, Ashkali and Egyptian communities can generally move freely in the region and many of them regularly travel to other areas in Kosovo.[119] Another CEDOCA Subject Related Briefing about religions in Guinea describes the possibility of state protection and the possibilities of an IPA in Guinea. The document describes how a human rights activist explained that when an applicant is being persecuted by his family for religious reasons, he will most likely be able to settle elsewhere since his family will not search for him elsewhere.[120] Finally, a CEDOCA Subject Related Briefing about forced marriage in Guinea points out that woman who are victim of forced marriage, can normally flee and settle elsewhere, and find protection with family members, mostly on mother's side. They will often be able to find a new husband.[121]

Interviews with a lawyer and NGOs suggest that in some cases the IPA is not applied on a case-by-case basis. For example, they say the policy towards IPA to exclude Afghan applicants from subsidiary protection based on Article 15(c) QD is very generalized and can hardly be called a case-by-case approach.[122] In one decision, CALL referred to the UNHCR Eligibility Guidelines for assessing the international protection needs of Asylum Seekers from Afghanistan of 17 December 2010 and indicated that *"single males and nuclear family units may, in certain circumstances, subsist without family and community support in urban and semi-urban areas with established infrastructure and under effective Government control"* (and that the applicant does not prove that he would have a different profile).[123] This seems

[114] Council of State, 29 September 2010 (no. 208.120).
[115] CALL, 25 October 2012 (no. 90.362).
[116] CGRS internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 5.
[117] CGRS internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 2.
[118] Interview with CALL judge 4 July 2013.
[119] CEDOCA Subject Relate Briefing "Kosovo. Situatie van Rom, Ashkali en Egyptenaren in de gemeente Pejë/Pec", 20 January 2010.
[120] CEDOCA Subject Related Briefing "Guinea. Religions", June 2012, p. 6.
[121] CEDOCA Subject Related Briefing "Guinea. Le mariage", April 2012, p. 17.
[122] Interview with lawyer 5 July 2013; Interview with Flemish Refugee Action staff 8 July 2013; Interview with Belgian Refugee Council staff 9 July 2013.
[123] CALL, 21 December 2012 (no. 87.988).

to indicate that there is a general assumption that Kabul is always a valid IPA, unless the applicant would be able to prove that this is not the case.[124]

iv. Scope of Application.

There is no statistical information available that could identify the number of cases for each country of origin where IPA has been applied.

Based on interviews with stakeholders, it seems that IPA is being applied very frequently to deny subsidiary protection status based on Article 15(c) QD to Afghan applicants, who are said to be able to settle safely in Kabul or Jalalabad. In the case files that were reviewed for this research, 18 Afghan applicants claimed to originate from an area that generally qualifies for subsidiary protection under Article 15(c) QD, and 9 of these were refused protection because an IPA was deemed possible. A staff of an NGO also indicated that applicants from Guinea are quite regularly being denied protection based on the possibility of an IPA, often to the capital Conakry.[125]

There is no group or categories of applicants that would be excluded from the IPA systematically.[126] However, the CGRS internal guidelines on IPA point out that it can be assumed that IPA for an unaccompanied child should be considered as unreasonable, and that only in exceptional circumstances, notably when it is clear that the child could effectively count on his/her family or a network, IPA could be applied.[127]

v. Application if technical obstacles to return.

Belgium never transposed Article 8(3) QD 2004. A decision of the Council of State makes it clear that technical obstacles to travel to the specific area for relocation should be investigated when applying IPA.[128] Indeed, a CALL decision of three judges[129] can be found where the applicant was granted subsidiary protection status because relocation within Russia was deemed not possible for technical reasons, being the system of internal residence permits ("propiska"). A CALL judge stated that he assumes that CGRS reviews whether there are technical obstacles, and will not apply the IPA if this would be the case. The judge indicated that he himself does not review this in every case, but definitely will when the applicant raises it in his appeal against a CGRS decision.[130]

C. ASSESSMENT OF FACTS AND CIRCUMSTANCES.

The CGRS internal guidelines on IPA point out that the CGRS bears the burden of proof that all cumulative conditions for an IPA have been met.[131]

[124] Belgian Refugee Council, "L'enfant dans l'asile : prise en considération de sa vulnérabilité et de son intérêt supérieur", June 2013, p. 69, available at : http://www.cbar-bchv.be/Portals/0/Information%20juridique/Asile/Analyses/L%27enfant%20dans%20l%27asile.pdf
[125] Interview with INTACT staff 24 June 2013.
[126] CALL Judge and CGRS interviews.
[127] CGRS internal guidelines on internal flight alternative or internal relocation, 27 August 2013, p. 2.
[128] Council of State 214.686, 18 July 2011.
[129] CALL 12 March 2010 (no. 40.110).
[130] Interview with CALL judge 4 July 2013.
[131] CGRS internal guidelines on internal flight alternative or internal relocation, 27 August, p. 1.

The CGRS internal guidelines on actors of protection state that it is indeed CGRS that needs to prove that an effective protection is available. It is, however, up to the applicant to explain why he did not or could not ask for protection of an actor of protection.[132]

A CALL judge claimed that it is in principle the state that bears the burden of proof on these two elements, referring to a decision of the Council of State, which annulled a decision since it merely stated that the applicant did not prove that it would be impossible to settle elsewhere in his country of origin to escape the persecution he fears.[133] Several CALL decisions state that the wording of Article 48/5 §3 Aliens Act makes it clear that it is the asylum authorities that bear the burden of proof on IPA. For example, a CALL decision of June 2011 states that *"the spirit of Article 48/5 §3, which is a restrictive disposition, as the formulation chosen by the legislator, indicate that it is the administration who will need to prove what she claims, being, on the one hand, that there is a part of the country of origin where the applicant has no reason to fear persecution nor any real risk of serious harm and, on the other hand, that one can reasonably expect that he stays in this part of the country. The authorities also have to prove that she took into account the general circumstances of the country and the personal situation of the applicant." (Translation by author)*[134]

From the case analysis it seems that CGRS has not always applied this correctly. In quite some cases that have been reviewed, CGRS very clearly motivated why they think an IPA is possible, making an assessment of both the personal circumstances of the applicant and the general circumstances of the region where the applicant would return often based on various sources of COI they added to the file. However, in some other cases, CGRS wrote in the final decision that the applicant did not make credible that he or she could not settle elsewhere in his country of origin, seemingly indicating that it is the applicant who bears the burden of this proof. Indeed, in some cases, CALL criticized the motivation of the decision taken by CGRS and reminded the fact that it is CGRS that bears the burden of proving an IPA is possible.

When determining whether there is a risk of persecution in the proposed protection region, a CALL judge indicated that on this point there is a shared burden of proof, since the matter relates to the existence of a well-founded fear of persecution in general, where it is the applicant that needs to present credible facts in the context of objective information that was gathered by CGRS. The standard of proof on this point would not be different than on the rest of the protection claim. Indeed, in one of the case files (Iraq) that was reviewed, CALL stated that it is up to the applicant to prove that he also should fear his persecutors in Al-Zoubayr, which he did not do. In another case (Iraq), both CGRS and CALL stated that the applicant did not make sufficiently credible that his problems were more than merely local and he could not settle with his family in Al-Zoubayr to escape the problems with his persecutors. In another case (Kosovo), CGRS stated that the applicant did not prove "that her problems would be more than local."[135]

[132] CGRS internal guidelines on actors of protection, 27 August 2013, p. 2.
[133] Interview with CALL judge 4 July 2013; Council of State, 13 February 2012 (no. 218.078).
[134] CALL, 17 June 2011 (no. 63.338). See also: CALL, 11 January 2010 (no. 36.856); CALL, 5 March 2010 (no. 39.789).
[135] See also three cases of applicants from Russia: (1) CGRS, 28.02.2013 (RUS152MNSNO): In this case CGRS said the applicant did not make credible that his persecutors would do the effort to look for him elsewhere in Russia. (2) CGRS, 18.07.2012 (RUS162FNSNO): In this case, CGRS states that the applicant's claim that she could not live elsewhere in Russia because the situation is just as problematic everywhere for persons of Armenian origin, is not credible because it is not coherent with CGRS' information. (3) CGRS, 26.07.2012 (RUS163MNSNO): In this last case, the argument that the applicant's persecutors would have the money and the connections to track him down anywhere in Russia is not found credible.

D. DECISION QUALITY.

i. Country of Origin Information.

Article 27 of the Royal Decree on CGRS procedures states that "*The Commissioner-General [CGRS] carries out the assessment of an application for international protection on an individual, objective and impartial basis and includes taking into account:*

> *(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;*
> *(…)" (translation by author)*[136]

CEDOCA develops a great number of 'subject related briefings' and 'response documents', which are an analysis of a large number of sources of COI, focusing on a certain region or topic. These documents are not publicly available, but merely serve protection officers of CGRS to have information at hand for status determination. When a protection officer relies on such a CEDOCA document, it will be added to the administrative file and it can be consulted by the applicant or his lawyer after the decision has been taken. When the applicant appeals against a CGRS decision, the complete administrative file, including the CEDOCA documents, will be transferred to CALL for review. Some of the CEDOCA documents that were consulted specifically mentioned the possibility of freedom of movement or internal protection alternative.[137]

The last sentence of Article 8(2) QD 2011 has not been transposed into Belgian Law ("Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office"). However, the Memorandum to the proposal of the law that partially transposed the QD 2011 in the Aliens Act refers to this element and underlines that CGRS will rely on precise and up-to-date information from relevant sources such as UNCHR and EASO.[138]

CEDOCA regularly updates its subject related briefings, but the Belgian Refugee Council pointed out that in some cases quite old COI is being used in CGRS' files.[139] According to an interview with a CALL judge, it was made clear that the judge would not hesitate to annul a decision and refer a case back to CGRS if the COI added to the file was not sufficiently up to date. The judge said that some situations are so volatile, that COI older than a year will not be accepted.[140] From the case analysis it appears that COI is generally up to date. In none of the case files that were reviewed, the COI seemed insufficiently up to date. In none of the

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[136] Original text : "*Le Commissaire général examine la demande d'asile de manière individuelle, objective et impartiale en tenant compte des éléments suivants :*
a) tous les faits pertinents concernant le pays d'origine au moment de statuer sur la demande d'asile, y compris les lois et règlements du pays d'origine et la manière dont ils sont appliqués; (…)"
[137] See for example: CEDOCA Subject Relate Briefing "Kosovo. Situatie van Rom, Ashkali en Egyptenaren in de gemeente Pejë/Pec", 20 January 2010; or CEDOCA Subject Related Briefing "Guinea, Religions", June 2012.
[138] Chamber Document 53 2555/001 and 53 2556/001, p. 10-11.
[139] Belgian Refugee Council, "La crainte est-elle fondée? Utilisation et application de l'information sur les pays dans la prcédure d'asile", June 2011, p. 39.
[140] Interview with CALL judge, 4 July 2013. The report of the Belgian Refugee Council on the use of COI by the Belgian asylum authorities also refers to numerous CALL case law that underlines the importance of recent COI.

case files where IPA or AP was applied, the applicant added COI to the file that was more recent or challenged the COI based on its content being outdated.

An applicant can submit COI at any stage of the procedure or comment on the COI CGRS added to the file. However, CGRS often only adds COI to the file after the substantive interview, and the applicant will only be informed about this COI upon notification of the first instance decision. However, he/she will be able to challenge the accuracy of the COI at the appeal stage.[141] According to our interview with a CALL judge, this is not done enough in practice.[142] A lawyer who was interviewed, as well as several staff of NGO stakeholders, agreed that it is not easy for an applicant to find sufficient COI that is likely to challenge the COI that was added by CGRS, as it has great resources through its CEDOCA service, as well as a European-wide information network that is not accessible to the applicant.[143]

In one of the cases that were reviewed, CGRS claimed that the applicant, recognized as a refugee in Burundi, could and should have asked the national authorities for protection. CALL however stated that on the point where CGRS claims that the applicant was perfectly capable of asking the authorities for protection, and that no security incidents are known to CGRS, the applicant has added several documents that indicate security problems in Burundi, especially in relation to the need for subsidiary protection based on Article 48/4, §2(c) Aliens Act (relating to Article 15(c) QD). CALL annulled the decision and sent the file back to CGRS for further investigation on this point.[144]

ii. Templates, Guidance and Trainings.

Every protection officer at CGRS prepares the interview and the questions to be asked individually, depending on the grounds for the asylum application.[145] In some of the files reviewed, the transcripts of the interview had a specific section on IPA. The wording of the questions about the possibility of an IPA is often very different depending on the interview. This seems to imply that there is no generalised practice throughout all sections of CGRS.

CGRS has internal ***guidelines*** on the IPA, written in 2003. The guidelines have been replaced by a newer set of guidelines (August 2013).

In the cases reviewed, CGRS often referred to UNHCR Eligibility Guidelines. These guidelines are also often mentioned in CEDOCA documents. Very occasionally, references are made to UNHCR Guidelines on Internal Flight or Relocation Alternative of 2003. In some CALL decisions, reference can be found to the Michigan Guidelines on the Internal Protection Alternative. [146]

The ***training*** of protection officers is done with material based on the European Asylum Curriculum modules.

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[141] Interview with Mr. Dirk Van Den Bulck, 24 July 2013
[142] Interview with CALL judge, 4 July 2013.
[143] Interview with lawyer 5 July 2013; Interview with Flemis Refugee Action staff, 8 July 2013; Interview with Belgian Refugee Council staff, 9 July 2013.
[144] CALL, 24.05.2012 (DRC41FRNO), http://www.rvv-cce.be/rvv/index.php/nl/component/docman/doc_download/47895-a81707
[145] Interview with Mr. Dirk Van Den Bulck (Commissioner General at CGRS), 24 July 2013.
[146] CALL, 31 August 2012 (no. 86.701); CALL, 27 August 2012 (no. 86.308); CALL, 6 July 2012 (no. 84.285); CALL, 14 June 2012 (83.014); CALL 69.566, 28 October 2011 (no. 83.014); CALL, 29 July 2012 (no. 65.323); CALL, 17 June 2011 (no. 63.338).

VI. National Recommendations.

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

General Recommendation:

- When making use of the concepts of actors of protection and of the internal protection alternative, the Commissioner General on Refugees and Stateless Persons should apply its guidelines on actors of protection and on the internal protection alternative.

Actors of Protection:

- Non-State actors should never be considered as actors of protection. Non-state actors cannot be held accountable under international law and may only be able to provide protection which is temporary and limited in its effectiveness.
- The decision maker needs to ensure that protection is non-temporary, and thus establish that the factors which formed the basis of the refugee's fear of persecution may be regarded as having been permanently eradicated in that there are no well-founded fears of being exposed to acts of persecution or a risk of serious harm.
- Applicants are not required in law, and should not be required in practice, to exhaust all possibilities to find protection in the country of origin prior to their flight. The assessment of protection needs is forward-looking, taking into consideration the applicant's prospects in case of return to the country of origin.

Internal Protection Alternative:

- Because the IPA is a discretionary provision under the Qualification Directive and is neither a principle of international law nor mentioned in the 1951 Refugee Convention, Belgium must give first priority to its protection duties under international law and need not considered the IPA at all.
- If the IPA is proposed or applied, the CGRS and CALL must indicate a specific location within defined boundaries. This location should be easily identifiable by the applicant. The location must be indicated in advance to the applicant and the applicant must be given the opportunity to respond before the decision is taken.
- CGRS and CALL need to distinguish clearly between the assessment of the inclusion criteria and the assessment of criteria for IPA. The assessment of the reasonableness to settle in the region of relocation does not require a nexus to the 1951 Geneva Convention.
- The IPA should not be applied unless it is demonstrated that the applicant will be able to safely and legally traverse each stage of the journey required to travel from Belgium to the identified protection region, including gaining admittance.

Procedural aspects:

- The internal protection alternative should only be applied (if at all) in the context of a full asylum procedure, not for example, in accelerated or border procedures because of the complex nature of the IPA inquiry and especially the need to assess the individual needs of each applicant against conditions in a particular part of the country of origin.

- If the internal protection alternative may be applicable to the applicant, he/she must be provided with information explaining the concept and its significance, either in written form or through their legal representative, or both. If the internal protection alternative is to be considered, the applicant must be promptly be made aware of this possibility and given the opportunity to present evidence and arguments against it prior to the first instance decision.

- The IPA should be assessed on a case by case basis.

- It is the responsibility of the CGRS to establish the facts and circumstances that support each element of the internal protection alternative. While the applicant may be expected to cooperate in this assessment, he/she should not bear the burden of proving the IPA is not feasible or that any element required to apply it is missing.

- The decision maker should have particular regard to country of origin information which describes the position of women, LGBTI persons and children in the proposed region of relocation.

- The facts should be established before considering protection needs and analysing the availability of an Internal Protection Alternative. Any analysis of the availability of the IPA should be clearly distinguished and separated from credibility assessment.

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