

# Information and Assessment

ADVICE ON THE USE OF COUNTRY OF ORIGIN  
INFORMATION IN THE ASYLUM PROCEDURE

**Advisory  
Report**



Adviescommissie voor  
Vreemdelingenzaken



## **ACVZ**

The Advisory Committee on Migration Affairs (ACVZ) is an independent advisory body established by law. The Committee advises the government and Parliament on migration. It examines policy and legislation and indicates possible areas of improvement. The ACVZ issues practical recommendations aimed at solving both existing and anticipated problems.

## **Colophon**

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# Summary

Information about the situation in the asylum seeker's country of origin is of great importance for the assessment of asylum applications. This information helps answer the question of whether the asylum seeker is eligible for an asylum residence permit. For this, the Immigration and Naturalisation Service (IND) usually refers to the reports drawn up by the Ministry of Foreign Affairs, i.e. the Official Country Reports. If there are no Official Country Reports or none have been recently published (as was the case for almost half of the first asylum applications in 2018), the IND often uses Country of Origin Information (COI) from other sources for assessing asylum applications. There are also other organisations that draw up reports on the situation in the countries of origin of asylum seekers that are more or less similar to the Official Country Reports. In addition, information is also available via, for example, news reports.

The Minister for Migration has asked the Advisory Committee on Immigration Affairs (ACVZ) for advice on how the IND can best make use of other sources of information such as the above, in the absence of a general Official Country Report. The Minister finds it problematic that the use of COI sources, other than the Official Country Reports, is not embedded in a clear and transparent manner within the policy-making and implementation process and the legal protection framework. As a result, it is not clear when such a source can or cannot be used and when a source can be considered reliable. She also asks whether it is possible to classify the sources in an order of ranking. In this Advisory Report, we respond to the following request for advice:

## **Request for advice**

In the absence of a current Official Country Report, how can other public COI sources be used as effectively as possible in the areas of policy and decision-making, implementation and legal protection and to what extent can these sources be ranked?

We will answer the main question based on the following sub-questions:

1. What are the criteria that can be distinguished in legislation and regulations, case law and literature that are relevant for the analysis and use of COI?
2. In the absence of an Official Country Report, what is currently regarded as a useful and unusable source for assessing the situation, in terms of safety or otherwise, in the countries of origin? How is this handled through policy/implementation/case law?
3. What is the working method and role of the European Asylum Support Office (EASO) with respect to the collection, presentation and analysis of COI?
4. What COI do other European countries use as a basis for their policy-making and implementation process and legal protection framework?
5. What are the advantages and disadvantages of using public COI other than the Official Country Reports?

In response to the request for advice, we have carried out a case law and literature study, examined 54 IND case files and consulted policy officers, academics and representatives of various interest groups.



### *Criteria for analysing COI*

There are useful manuals available setting out criteria for the collection, presentation, analysis and use of COI. The most recent are those issued by the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) and the EASO. Policy makers, interviewers and case workers, lawyers and judges can consult these manuals to assess whether the COI has been produced in a correct manner. The main criteria are:

- **Relevance:** the information is directly related to the fact, event or case that is being investigated and/or assessed in the context of the asylum application
- **Reliability:** the information comes from a reliable source, taking into account the source's political and ideological context, as well as its mandate, methodology and motivation
- **Balance:** the information is derived from several types of sources
- **Topicality:** the COI is up to date
- **Accuracy:** the COI is presented such that it is accurate, undistorted and in accordance with the real situation
- **Transparency:** the used information is public and the sources are fully referenced, allowing readers to independently verify and evaluate the information
- **Traceability:** every piece of information can be traced back to the source

These criteria are based on a number of general principles of good governance, i.e. the principle of due care, the obligation to state reasons and the principle of fair play (see the Glossary for an explanation of these concepts).

### *Current practice in the Netherlands*

The IND's Country and Language Research and Expertise Team (TOELT) plays a key role within this organisation in collecting COI. The TOELT answers questions from interviewers and case workers and prepares internal reports to help them use COI when assessing an asylum application. The Country of Origin Information Department of the Dutch Council for Refugees (VWN) performs a similar role for lawyers who assist asylum seekers.

The 54 IND case files we examined have shown that, in the absence of an Official Country Report, IND staff and lawyers often take COI into account that is relevant to the asylum application, including the reports prepared by other organisations and also frequently news reports, websites and social media. In general, they also paid attention to the balance and topicality of the sources. However, in the case files examined, the sources were seldom explicitly tested for reliability. In addition, all parties involved did not always use the sources in an accurate and transparent manner and these sources were often not or not easily traceable by the other parties involved.

### *Growing role of the EASO*

The EASO, set up in 2011, has quickly become a major provider of COI, and its role is expected to grow further in the coming years. The extent of this role will depend on whether or not the European Commission's proposal to transform the EASO into an asylum agency is adopted. The envisaged European Union Agency for Asylum is expected to ensure a more structured

and streamlined production of COI at the European Union level, thereby also preventing a duplication of efforts. The aim is to achieve this via a networking approach, where national COI departments will work together with one another.

#### *Description of practices in Austria, Poland and the United Kingdom*

In other European countries, there are interesting organisational structures and partnerships that provide relevant insights. In Austria, for example, the ACCORD organisation - part of the Red Cross - plays an important role in collecting and researching COI and providing training to migration authorities as well as to members of the judiciary and legal profession. In the UK, the migration authorities prepare combined thematic COI and policy notes and an independent COI committee reports on these notes to the Independent Chief Inspector of Borders and Immigration.

#### *Conclusions and recommendations*

'Information' is crucial to be able to comply with the principle of due care, the obligation to state reasons and the principle of fair play. Without proper information about the actual situation in the asylum seeker's country of origin, the IND cannot properly assess whether or not to grant asylum status. If the asylum seeker is uncertain about why an application has been rejected, he/she cannot make a well-considered decision about whether or not to pursue further proceedings with the help of his/her authorised representative. Without clarity about the information used by the IND, the court cannot express a proper opinion on the quality of the decision.

It is not possible and undesirable to rank the available sources in advance. The most important thing is that the used sources must meet the quality criteria of relevance, reliability, balance, topicality, accuracy, transparency and traceability.

The ACVZ concludes that a more meticulous and consistent method of collecting, using and presenting sources of COI will improve the quality of decision-making within the asylum process. This will make it possible to fulfil the principle of due care, the obligation to state reasons and the principle of fair play better than at present. The ACVZ's recommendations are focused on achieving this.

#### **Recommendation 1: Improve the collection and publication of thematic COI reports by the TOELT**

If no Official Country Report is available, the IND should itself collect and publish COI from relevant sources more systematically than at present. This task may be assigned to the TOELT, to be possibly carried out in collaboration with the VWN's Country of Origin Information Department. The information should be based on public sources and it should be regularly updated and archived after a reasonable period of time (for example, two years). The quality criteria can be better met by following this method.

#### **Recommendation 2: Build in an external quality assessment for the TOELT's COI reports**



An assessment by an external panel can help guarantee the quality of COI reports and increase the level of support. The UNHCR, VWN and external country experts could play a role on such a panel.

**Recommendation 3: Publish and set out COI in a systematic manner in decisions as well as in country-specific asylum policies**

If a decision is based on COI, this should be substantiated in an accurate, transparent and traceable manner, which is currently not generally the case. Staff training, the use of templates and clear-cut instructions within the organisation can help solve this problem.

In the absence of Official Country Reports, country-of-origin policies are currently not being published often, even though policy guidelines are circulated internally at the IND. To better meet the quality criteria of topicality, transparency and traceability, policies for countries of origin should be updated and published in the Aliens Act Implementation Guidelines based on, and preferably at the same time as, the publication of the TOELT's COI reports.

**Recommendation 4: Invest further in an EU partnership for collecting and making COI more transparent**

There has been increased European cooperation in the area of COI since the establishment of the EASO in 2011. The ACVZ considers this a positive development because this can help prevent a duplication of efforts and allow countries to make optimal use of each other's expertise in the area of specific themes and language skills. In the context of this cooperation, the Netherlands can appeal to the EASO to fill in the gaps in existing knowledge by producing more COI about the smaller countries of origin and by translating reports from other Member States into, at least, English. The ACVZ also advocates an active role for the Netherlands in further developing a European dual system for collecting COI from the EASO as well as from the NGOs under the ACCORD umbrella.

# Table of Contents

<b>Chapter 1 Introduction</b>	<b>11</b>
<b>1.1 Background</b>	<b>12</b>
1.1.1 Assessment of asylum applications in the Netherlands	12
1.1.2 Role of COI in the assessment of an asylum application	13
<b>1.2 Request for advice</b>	<b>16</b>
<b>1.3 Study method</b>	<b>18</b>
<b>1.4 Reading guide</b>	<b>18</b>
<b>Chapter 2 Criteria for analysing COI</b>	<b>21</b>
<b>2.1 Available checklists and manuals</b>	<b>22</b>
<b>2.2 Pre-existing portals for finding COI</b>	<b>23</b>
<b>2.3 Overview of the main criteria</b>	<b>23</b>
2.3.1 Relevance	24
2.3.2 Reliability	24
2.3.3 Balance	25
2.3.4 Topicality	25
2.3.5 Accuracy, transparency and traceability	25
<b>2.4 Applying and using an order of ranking</b>	<b>26</b>
<b>Chapter 3 Current practice in the Netherlands</b>	<b>31</b>
<b>3.1 Qualifying the special status of Official Country Reports</b>	<b>32</b>
<b>3.2 Use of COI in practice is evaluated against the criteria</b>	<b>33</b>
3.2.1 Relevance	33
3.2.2 Reliability	34
3.2.3 Balance	36
3.2.4. Topicality	38
3.2.5 Accuracy, transparency and traceability	38
<b>3.3 Use of policy rules and court judgments in the legal interpretation of COI</b>	<b>39</b>
<b>Chapter 4 Description of the working method of EASO, Austria, Poland and the United Kingdom</b>	<b>43</b>
<b>4.1 EASO</b>	<b>44</b>
4.1.1 Organisation	44
4.1.2 COI reports	44
4.1.3 Country Guidance	45
4.1.4 EASO methodology	45
4.1.5 European Union Agency for Asylum (EUAA)	46
<b>4.2 Austria</b>	<b>47</b>
4.2.1 Organisation	47
4.2.2 Länderinformationsblätter (LIB) and content management system	48
4.2.3 ACCORD	49
4.2.4 Contact judge	50



<b>4.3 Poland</b>	<b>50</b>
4.3.1 Organisation	50
4.3.2 Use of other public sources if own reports are not available	51
<b>4.4 United Kingdom</b>	<b>51</b>
4.4.1 Organisation	51
4.4.2 Country Policy and Information Notes (CPINs)	53
<b>Chapter 5 Conclusions and recommendations</b>	<b>59</b>
<b>5.1 The more sources the better (?)</b>	<b>60</b>
<b>5.2 Advantages and disadvantages of using public sources other than the     Official Country Reports</b>	<b>60</b>
<b>5.3 Potential solutions</b>	<b>64</b>
<b>5.4 Key recommendations</b>	<b>74</b>
<b>Literature and illustrations</b>	<b>79</b>
<b>List of abbreviations</b>	<b>85</b>
<b>Glossary</b>	<b>89</b>
<b>List of respondents</b>	<b>93</b>
<b>Appendices</b>	<b>97</b>





## Chapter 1

# Introduction

**In this chapter, we first describe how asylum applications are assessed in the Netherlands and the role played by COI. Subsequently, we describe the request for advice and the study methods.**

## **1.1 Background**

This Advisory Report concerns the use of information on the countries of origin of asylum seekers for the assessment of their asylum application. Below, we briefly describe the way in which asylum applications are assessed in the Netherlands. After that, we will clarify the role that COI plays in this.

### **1.1.1 Assessment of asylum applications in the Netherlands**

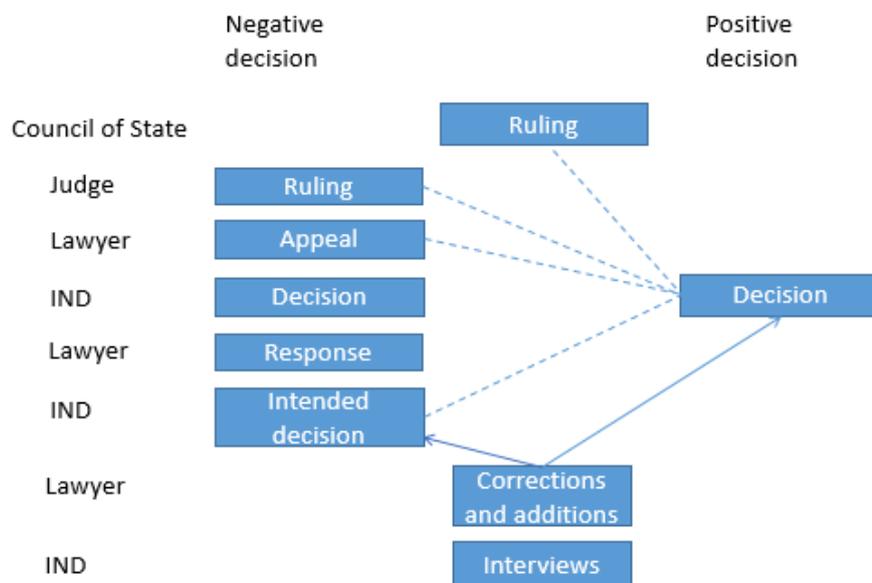
If a foreign national is seeking asylum in the Netherlands, he or she may submit an application for asylum at the Ter Apel registration centre. An asylum procedure is then initiated in which the IND, on behalf of the Minister for Migration, assesses whether the person is eligible for an asylum residence permit. During the asylum procedure, an IND officer will interview the asylum seeker about the reasons for the asylum application. In addition, the asylum seeker may submit documents (e.g. arrest warrants, convictions, newspaper articles) to substantiate the asylum account.<sup>1</sup> The asylum seeker does not have to prove his or her right to asylum, but must make a plausible case and cooperate as best as possible in the IND's investigation into the motives for seeking asylum. On the other hand, the IND officer must also assist the asylum seeker in substantiating the asylum application. This is known as the 'duty of cooperation'.<sup>2</sup> In this way, the IND must try to gain the best possible understanding of the reasons behind the asylum application, so that a decision can be made regarding this.

Article 29 of the Aliens Act 2000 (Vw) lists the conditions under which a foreign national may obtain asylum in the Netherlands. This is applicable if he or she:

- Is a Convention refugee, i.e. a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion and/or membership of a particular social group
- Has been able to demonstrate plausibly that he or she has well-founded reasons for believing that expulsion will give rise to a genuine risk of serious harm comprising any of the following:
  - Death penalty or execution
  - Torture or inhuman or degrading treatment or punishment
  - Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict
- Has a family member who has recently been granted an asylum residence permit<sup>3</sup>

If the IND decides to reject the application, the officer will first issue a 'notice of intention to reject the asylum application', accompanied by the reasons for this. The asylum seeker's lawyer may subsequently submit a response arguing why the application should nevertheless be granted. The IND then decides whether to grant or reject the application. If the IND rejects the application, the asylum seeker's lawyer may submit an appeal to the court. The court may declare the appeal to be well-founded or unfounded.<sup>4</sup> Both the IND and the asylum seeker's lawyer may submit an appeal against the judgment of the court to the Administrative Jurisdiction Division of the Council of State (ABRvS) (hereinafter: the Council of State) (see Figure 1). Thereafter, an appeal may also be lodged with the Court of Justice of the European Union (hereinafter: CJEU) or with the European Court of Human Rights (hereinafter: ECHR). These last steps are not included in the diagram displayed below.

**Figure 1: Parties involved and steps in the Dutch asylum procedure**



### 1.1.2 Role of COI in the assessment of an asylum application

Usually, it is not possible to be certain about 'the facts' that are important for the assessment of the asylum application (Severijns, 2019). This is mainly because the question that needs to be answered is whether the asylum seeker faces a risk of persecution (see the grounds for asylum listed above) and/or of being subjected to inhuman treatment or of becoming a victim to arbitrary violence in an armed conflict *in the future*. Secondly, the IND is usually required to express an opinion on events occurring *in the country of origin* of the asylum seeker.<sup>5</sup> These are often countries that are located far from here and where there may be a chaotic situation as a result of war or crisis, which makes it difficult for the IND to obtain information about that country. The IND officer must then make a risk assessment of the

expected level of risk in case of return and take a decision regarding the asylum application based on this (Severijns, p. 24). The assessment is primarily based on the statements made by the asylum seeker. In addition, some documents may be present that can help substantiate the asylum claim. The IND considers all of this against the background of what is generally known about the situation in the country concerned. For assessing the latter, the IND often refers to the Official Country Reports issued by the Ministry of Foreign Affairs (whether or not in combination with other sources of COI). These Official Country Reports describe the general security and human rights situation in the country of origin. The information in the Official Country Reports is aimed at reducing uncertainty about whether the asylum seeker faces the risk of persecution, inhuman treatment or arbitrary violence in his or her country of origin in the future (Severijns, p. 3).

### **Special status of Official Country Reports in Dutch asylum practice**

Official Country Reports are an important source of information within Dutch asylum practice. In case law, these are designated as 'expert opinions'. If the Official Country Reports provide information in an impartial, objective and clear manner and indicate the sources from which this information is derived, the Council of State believes that the Minister for Migration is justified in assuming that the information provided in the expert opinion is correct. This applies to both general and individual Official Country Reports. If there are concrete grounds for doubting the accuracy or completeness of the Official Country Report, the Minister may only base his asylum decision on the Official Country Report if further investigations have been carried out 'on this matter and after confirmation of the relevant information'.<sup>6</sup> The above-mentioned 'concrete grounds' refer to whether the evidence from the sources (invoked by the asylum seeker) gives rise to any doubts concerning the accuracy or completeness, as well as the topicality, of the Official Country Report.

Official Country Reports are referred to when drawing up the country-specific asylum policy. The country-specific asylum policy is included in Part C7 of the Aliens Act Implementation Guidelines (Vc).<sup>7</sup>

It often occurs that someone from a particular country of origin submits an asylum application but there are no or no recent Official Country Reports available for this country. For example: 20,353 first-time asylum applications were submitted in 2018, of which almost half (at least 9,386) involved asylum seekers from countries for which no Official Country Reports were available or only Reports that were five years or older were available.<sup>8</sup> In addition, due to a rapidly changing security situation in the country in question, it has also occurred that an earlier published Official Country Report contained wholly or partially outdated information even at the time of publication.<sup>9</sup> The process of preparing an Official Country Report is time-consuming. As a result, it may take some time before an updated current Official Country Report is published. Thereafter, it also takes a few months before policy conclusions are drawn based on the Report.<sup>10</sup> Finally, it is possible that the information in an Official Country Report does not sufficiently address, for example, a certain group of persons, whereas information contained in other documents goes into this in more detail.

If there are no Official Country Reports available or none have been recently published, the IND often consults COI from other sources for the assessment of asylum applications (see Chapter 3 and Appendix 3). In addition to the Ministry of Foreign Affairs, international organisations such as the United Nations High Commissioner on Refugees (UNHCR) and the European Union (EU), other governments, and NGOs such as Amnesty International and Human Rights also publish reports containing COI. These reports are more or less similar to the Official Country Reports issued in the Netherlands. In addition, information about the countries of origin of asylum seekers can be found via, for example, news reports, websites and social media. The digital work environment of the IND contains internal country of origin pages with links to policy, COI, legal information and information required for implementation.<sup>11</sup>

Chapter 4 and Appendix 1 contain a more detailed description of the organisations (in addition to the Ministry of Foreign Affairs) that play a leading role in collecting COI and drafting COI reports.

#### **Country and Language Research and Expertise Team (TOELT)**

At the IND, the TOELT plays a key role in the collection of COI. This team currently consists of 14 country of origin specialists, 3 linguists and 22 staff members of the Regional Information Centres (RIC), which are present at all the processing locations of the IND.

The tasks of the RIC staff and the TOELT's country of origin specialists are as follows:<sup>12</sup>

- **Answering questions**  
Interview and decision-making officers of the IND can ask RIC staff and the TOELT's country of origin specialists questions regarding COI. The country of origin specialists handle about 2,000 questions a year and RIC staff about 10,000. The country of origin specialists deal with the questions that need clarification and background information, while RIC staff members mainly provide factual information such as maps.
- **Preparation of documents containing COI**  
The TOELT's answers to questions from officers are written down in the form of questions and answers and distributed internally via the digital work environment. The country of origin specialists also prepare 30 to 50 reports per year, which are not accessible to the public. These reports are entirely based on information from other sources. In publicly available documents, IND officers refer to the underlying sources and not to the TOELT reports.
- **Preparation of the Terms of Reference for the Official Country Reports of the Ministry of Foreign Affairs**  
For preparing the Terms of Reference, TOELT requests input from socially relevant organisations such as the VWN.
- **Provision of information for policy on safe countries of origin**  
The country of origin specialists provide COI for the policy on safe countries of origin that is drawn up by the Migration Policy Department (DMB) of the Ministry of Justice and Security. This policy is public.<sup>13</sup>
- **Contribution to the work of EASO** The TOELT's country of origin specialists participate in EASO expert groups, contribute to COI reports prepared by EASO and/or contribute to the peer review of these reports. EASO's reports are public. For a description of EASO's role in preparing and publishing COI, see Chapter 4.

## Country of Origin Information Department of the Dutch Council for Refugees (VWN)

The VWN's COI department offers a service for lawyers that is comparable to the services provided by the TOELT for IND officers. This Department has four paid staff members, who are assisted by volunteers. A VWN documentalist is also present at all registration centres.

The tasks of the VWN's COI department are:

- **Answering questions**  
The VWN assists lawyers in collecting COI. To this end, the VWN draws up a document (called 'Query Response') in which an answer is provided to a question relating to a specific case, based on various sources. This provides a picture of the situation in the country or for the group or individual concerned. In addition to public sources, the VWN also occasionally consults experts.
- **Preparation of documents containing COI**  
The VWN also publishes 'Frequently Asked Questions' containing COI applicable to multiple cases. It has also drawn up an 'A to Z' list for a limited number of countries of origin, with an overview of information, case law and policy relating to these countries. All the aforementioned documents are published in the VluchtWeb database managed by the VWN, which is available to subscribers (lawyers, VWN staff, other NGOs and the courts). These documents can also be requested via the VWN Helpdesk. Finally, the VWN publishes a newsletter called the 'UPdate' every week where relevant case law, COI and policy are identified and interpreted. It also analyses new Official Country Reports in this newsletter. A subscription to the UPdate is open to everyone.
- **Acting as a discussion partner for the government**  
The drafters of the Official Country Reports contact the VWN to find out whether it has any useful sources that the Ministry of Foreign Affairs can use. The VWN can also provide input for the Terms of Reference included in an Official Country Report. If the VWN identifies any problems in the implementation practices surrounding the use of COI, it will discuss this with the IND.
- **Commenting on the work of EASO**  
The VWN comments on EASO's COI reports together with the UK's Asylum Research Centre (ARC Foundation). In addition, the VWN is a member of EASO's NGO Working Group.

## 1.2 Request for advice

On 8 July 2019, Minister for Migration Broekers-Knol asked the ACVZ to discuss the use of other sources of COI. When no or no recent Official Country Report is available, the Minister finds it problematic that these other sources of COI are not assigned a more transparent and permanent role in policy-making, implementation and legal protection.<sup>14</sup> This despite the fact that in many cases, she believes that there is sufficient COI available from other sources to allow for decisions to be made and policy to be formulated. Therefore, it is not clear for the Minister when a source of COI can or cannot be used. Furthermore, she also wants to know whether it is possible to rank the sources in some way, so that, by applying this ranking, other documents containing COI can be used properly and be considered reliable.

Based on the Minister's request, we have formulated the following request for advice:

#### **Request for advice**

In the absence of a current Official Country Report, how can other public COI sources be used as effectively as possible in the areas of policy and decision-making, implementation and legal protection and to what extent can these sources be classified in an order of ranking?

We will answer the main question based on the following sub-questions:

1. What are the criteria that can be distinguished in legislation and regulations, case law and literature that are relevant for the analysis and use of COI?
2. In the absence of an Official Country Report, what is currently regarded as a useful and unusable source for assessing the situation, in terms of safety or otherwise, in the countries of origin? How is this handled through policy/implementation/case law?
3. What is the working method and role of EASO with respect to the collection, presentation and analysis of COI?
4. What COI do other European countries use as a basis for their policy-making and implementation process and legal protection framework?
5. What are the advantages and disadvantages of using public COI other than the Official Country Reports?

#### *Scope*

Our Advisory Report does not address the role played by the Ministry of Foreign Affairs in the current Dutch system for the collection, analysis and presentation of COI. Neither does this Report deal with the quality of the Official Country Reports. However, in the context of our response to the request for advice, we often speak in general terms about the criteria to be met by a COI report. This particular context also applies to the Official Country Reports of the Ministry of Foreign Affairs, since these are also COI reports.

The Advisory Report limits itself to discussing the use of other public sources of COI for the following purposes:

#### 1) Assessment of the content of an asylum application

This means that the Report only concerns the use of COI relating to the asylum seeker's country of origin and the third countries where the asylum seeker may have a right of residence (referred to as 'safe third countries', not to be confused with safe countries of origin). Hence, the use of COI in the context of the assessment of a Dublin request is excluded from this Report. In addition, COI required for assessing whether medical treatment facilities are present and available upon return has not been included in the Advisory Report.

## 2) Formulation of country-specific asylum policy

### 1.3 Study method

We have used various methods to find an answer to the questions posed. We have examined literature and case law. In addition, we have consulted policy officials, academics and interest groups. A list of all the persons consulted is included at the end of the Advisory Report. Finally, we have reviewed 54 IND case files of asylum seekers who received an initial decision regarding their application in 2018 and who came from 11 countries for which no or no recent (maximum two years old) general Official Country Report was available in 2018.<sup>15</sup> In Appendix 3, we discuss the methods of the case file review in more detail.

### 1.4 Reading guide

We deal with the sub-questions in chronological order in Chapters 2 to 5.2. We present solutions and four key recommendations in Sections 5.3 and 5.4.

<sup>1</sup> For more information about the asylum procedure, see [this Infographic](#) on the website of the IND.

<sup>2</sup> Article 4 of the EU Qualification Directive.

<sup>3</sup> See: [IND Corporate Brochure](#).

<sup>4</sup> The court may declare the appeal to be well-founded and uphold the legal consequences or itself take a decision regarding the case. In the latter case, the court shall deny the asylum application.

<sup>5</sup> An exception involves cases in which asylum seekers invoke events that have occurred in the Netherlands after their departure from the country of origin ('refugee *sur place*').

<sup>6</sup> ABRvS 12 October 2001, ECLI:NL:RVS:2001:AD5964, paragraph 2.3.4.

<sup>7</sup> Aliens Act Implementation Guidelines C7/1. Parliamentary Papers reveal that this may involve general as well as thematic Official Country Reports.

<sup>8</sup> Based on an inventory in June 2019 of non-EU countries with at least five asylum applications or asylum decisions in 2018 and for which no Official Country Report or only an Official Country Report older than five years was available at that time. This concerns 'at least' 9,386 applications because the source Asylum Trends indicates the number of asylum applications between one and five with a star (\*), and we therefore do not know the exact number of applications involving these countries. This concerned five of the countries listed below.

The inventory is based on: Asylum Trends, December 2018. <https://ind.nl/over-ind/Cijfers-publicaties/Paginas/Asieltrends.aspx> (first-time asylum applications); Eurostat table: First instance decisions on applications by citizenship, age and sex, Annual aggregated data (rounded) (migr\_asydcfsta), consulted on 3 June 2019 (First instance decisions) and <https://www.rijksoverheid.nl/ministeries/ministerie-van-buitenlandse-zaken/documenten?type=Ambtsbericht&pagina=1> (Official Country Reports).

This concerns the countries Albania, Algeria, Angola, Azerbaijan, Bahrain, Bangladesh, Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Central African Republic, Colombia, Cuba, Djibouti, Dominican Republic, Egypt, El Salvador, Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Honduras, India, Indonesia, Israel, Ivory Coast, Jamaica, Jordan, Cameroon, Kazakhstan, Kenya, Kyrgyzstan, Congo, Kosovo, Lebanon, Liberia, Mali, Morocco, Mauritania, Mexico, Moldova, Mongolia, Montenegro, Myanmar, Nepal, Nicaragua, Niger, Uganda, Ukraine, Uzbekistan, Palestinian Territories, Saudi Arabia, Senegal, Serbia, Sierra Leone, Sri Lanka, Suriname, Tajikistan, Tanzania, Togo, Trinidad and Tobago, Chad, Tunisia, Turkey, Turkmenistan, Venezuela, Vietnam, USA, Belarus, Zimbabwe, South Sudan and South Africa.

<sup>9</sup> See *Parliamentary Papers II*, 2018-19, 19637, No. 2506, concerning Libya. Due to the lack of clarity about the future development of the security situation, a moratorium on decisions and departures was announced at that time.

<sup>10</sup> For example: on 31 October 2019, the Ministry of Foreign Affairs issued a General Official Report on Turkey. On 4 February 2020, the Minister for Migration informed the House of Representatives of the intention to modify the country of origin policy for Turkey in

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response to this Official Country Report. *Parliamentary Papers II*, 2019-20, 19637, No. 2578.

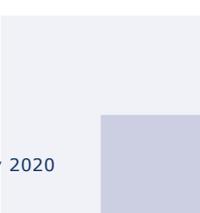
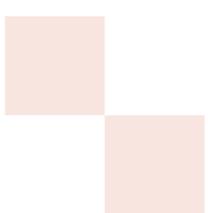
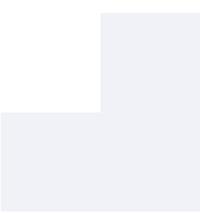
<sup>11</sup> At the time of our study, there were pages covering the following countries of origin: Afghanistan, Armenia, Azerbaijan, Burundi, China, DRC, Eritrea, Ethiopia, Guinea (Conakry), Iraq, Iran, Ivory Coast, Libya, Nepal, North Korea, Ukraine, Russian Federation, Somalia, Sri Lanka, Sudan, Syria, Turkey and Uganda (IND Written Information (TOELT)).

<sup>12</sup> IND interviews (TOELT) 14 March and 18 September 2019.

<sup>13</sup> See ABRvS 1 February 2017, ECLI:NL:RVS:2017:209, paragraph 5.1. Here, based on an explanation provided by the Minister for Migration, the Council of State explains the Minister's working method with respect to the policy on safe countries of origin.

<sup>14</sup> *Parliamentary Papers II*, 2018-19, 19637, No. 2521.

<sup>15</sup> Algeria, Azerbaijan, Central African Republic, Cuba, Egypt, Jordan, Myanmar, Saudi Arabia, Turkey, Uganda and Venezuela.





## Chapter 2

# Criteria for analysing COI

**This chapter focuses on the criteria for analysing COI. These criteria are set out in manuals and checklists. Legislation, regulations and court judgments also outline the criteria to be met by COI. These documents are discussed first in this chapter. After that, we will discuss the question of how far the sources of COI can be arranged in an order of ranking.**

## **2.1 Available checklists and manuals**

Literature shows that the question posed by the Minister for Migration about when a source of COI can be regarded as reliable has emerged since the 1990s.<sup>16</sup> Since then, a number of organisations have responded to this by developing specific criteria for the collection, presentation, analysis and use of COI. These criteria have in the meantime been standardised and included in various manuals and checklists, where they are elaborated in detail.<sup>17</sup> In addition, these documents provide tools for dealing with the criteria in practice. The manuals are primarily aimed at COI researchers, but decision-making officers, policy officers, lawyers and judges can also use these manuals to assess whether COI meets the criteria. Our study also shows that COI researchers from governments, international organisations and NGOs are largely in agreement regarding the methodology to be used for collecting COI. However, there is an ongoing debate between COI researchers about how COI should be presented in a report and how to draw conclusions based on this information. We will return to this in Section 2.3.5.

The first manual for the collection, presentation, analysis and use of COI was prepared by **ACCORD** in 2004.<sup>18</sup> In 2006, the **International Association of Refugee Law Judges (IARLJ)** followed up on this initiative taken by ACCORD. In 2008, the **Common EU Guidelines for Processing COI** were set forth under the chairmanship of the Netherlands. These guidelines are often cited even today. Building on the work of its predecessors, EASO published the **Country of Origin (COI) Report Methodology** in 2012. This was revised in 2019.

The most recent manuals are ACCORD's [revised manual](#) of 2013 and EASO's [methodology](#) of 2019.

The European Commission strives to harmonise the collection and use of COI, and has assigned EASO as the agency in charge of this effort (Cohen Henriquez, 2016). The Preamble to the EU Asylum Procedures Directive states that, during implementation, Member States must take into account the relevant guidelines developed by EASO (also see Appendix 3). Section 4.1 focuses on the increasing role played by EASO in the area of COI.<sup>19</sup>

The leading organisations ACCORD and EASO sometimes work together to reflect on methods and the training of COI researchers. An example of this cooperation is

the [conference](#) organised jointly in October 2019, which was well attended by COI researchers from governments, international organisations and NGOs.

**Conclusion: ACCORD's manual of 2013 and EASO's methodology of 2019 can serve as guides for working with COI. In view of this, the ACVZ does not consider it necessary to introduce a new instrument and create a new checklist or manual.**

## 2.2 Pre-existing portals for finding COI

Until recently, there were two prominent international portals for accessing COI: [Refworld](#) from UNHCR and [Ecoi.net](#) from ACCORD. However, as of 1 January 2019, UNHCR has designated Ecoi.net as the 'main global leading COI portal', so COI on Refworld will no longer be updated from 1 January 2019 onwards. Refworld will focus exclusively on relevant court judgments, laws and regulations worldwide and its own policy documents.<sup>20</sup>

EASO has a public [portal](#) for COI. The COI reports of EASO and the Member States are published on this portal. In addition, IND officers have access to INFORMIND, an internal portal that provides access to COI.

COI researchers are responsible for managing Ecoi.net, the EASO portal and INFORMIND, so the information posted on these portals is filtered by them before being posted. The Ecoi.net site explains the criteria for selecting sources of information and lists the organisations that ACCORD considers to be reliable suppliers of information. The ACCORD manual contains an appendix with a list of generally reliable sources.

The manuals highlight the risks of case workers, lawyers or judges directly searching for information on the internet: as a result of this, they may leave a 'digital footprint' that provides authorities in the country of origin with information from which they can identify a person (or a member of a particular group that is regarded negatively) who has applied for asylum (ACCORD, 2013, p. 156; Immigration New Zealand, 2019). IND officers are not allowed to use their own computer to search for personal information concerning the asylum seeker. The targeted search for information relating to persons is done by other departments on secure computers.<sup>21</sup>

**Conclusion: in the absence of an Official Country Report, policy makers, asylum case workers, lawyers and judges can easily access COI from other sources via Ecoi.net and the EASO country portal.**

## 2.3 Overview of the main criteria

The main criteria for collecting, presenting, analysing and using COI are listed below. A number of these criteria are also laid down in national or international

legislation and case law. This is further elaborated in Appendix 2. The descriptions of the criteria in this section are derived from the manuals of EASO and ACCORD. Although there are nuanced differences between these manuals, by and large they agree on the criteria to be used.<sup>22</sup>

### **2.3.1 Relevance**

COI is relevant if it is directly related to the fact, event or case that is being investigated and/or assessed in the context of the asylum application (EASO, 2019, p. 12). The relevance criterion is also included in the EU Qualification Directive.<sup>23</sup> The ECHR is of the opinion that governments and UN agencies are particularly well-placed to provide relevant information because they can report from the country in question (see Appendix 2).

In national law, we can trace this criterion back to the formal principle of due care referred to in Section 3:2 of the General Administrative Law Act (Awb): When preparing a decision, the administration gathers the necessary knowledge about the relevant facts and the interests to be taken into consideration. In line with the principle of non-prejudice (Section 2:4 of the Awb) and the general fair play principle of good governance, relevant information must not be withheld or ignored when assessing an asylum application, whether in favour of or against the asylum seeker (also see ACCORD, 2013, p. 36).

### **2.3.2 Reliability**

Reliability means that the information must come from a reliable source, taking into account the source's political and ideological context, as well as its mandate, methodology and motivation (ACCORD, 2013, p. 32). However, according to the manuals, questionable sources may also be taken into consideration if the information is important and no other sources can be found, provided it is explicitly indicated that this involves an unreliable source (EASO, 2019, p. 16; ACCORD, 2013). Our interviews reveal that COI researchers do actually use this approach in practice.<sup>24</sup>

The ECHR designates reports from governments, UN agencies and reputable non-governmental organisations as reliable and objective sources (see Appendix 2). In addition, governments, international organisations and the NGOs Human Rights Watch, Amnesty International and Freedom House have generally built up a good reputation among users of COI reports.<sup>25</sup> In response to parliamentary questions, the Minister for Migration previously answered that it is not required to request an Official Country Report if there are a sufficient number of other good public sources that can be used as a basis for taking an asylum decision. The Minister stated that this is the case with regard to the situation in Bahrain and Venezuela and, in response to parliamentary questions, cited reports from Amnesty International, Human Rights Watch, various UN organisations, the United States, the United Kingdom and Canada.<sup>26</sup>

There are some examples of COI reports from governments that have been criticised for being unreliable, such as the KhAD/WAD Official Country Report issued by the Ministry of Foreign Affairs in 2000 and a report of a Danish fact-finding mission in Eritrea (which also had implications in the UK).<sup>27</sup> Following the KhAD/WAD Official Country Report, the guidelines for drawing up Official Country Reports have been adjusted.<sup>28</sup> Last year, there was a discussion about a general Official Country Report on Iran, based on which the Minister for Migration decided to no longer classify transgender people as a 'group that merits special attention'.<sup>29</sup> However, given the number of COI reports drawn up by governments in recent years, such discussions seem to have been limited to a small minority of cases. The objectivity and working method of the US Department of State has come under criticism before (Poe, 2001), and mistrust of this organisation has further increased during the Trump presidency.<sup>30</sup>

### **2.3.3 Balance**

COI is said to be used in a balanced way when multiple and different types of sources are consulted to obtain the most complete picture possible (ACCORD, 2013, p. 32). The EU Asylum Procedures Directive states that Member States must ensure that persons processing asylum applications have access to different sources. The ECHR also emphasises the importance of using different types of sources (see Appendix 2).

The criterion of balance can be traced back to the principle of non-prejudice (Section 2:4 of the Awb) and the general fair play principle of good governance. Based on this criterion, a COI researcher is expected to carry out the investigation in a neutral manner, such that it is not focused on the granting or rejection of the application. It also follows that a case worker should not put forward any suggestive questions to the COI researcher, expressing a preference for either a positive or negative decision (ACCORD, 2013, p. 34).

The manuals indicate that the widest possible spectrum of sources must be striven for: for example, governments, international organisations and NGOs (EASO, 2019, p. 14). However, COI researchers do not follow the journalistic adage of 'one source is no source'. The manuals indicate that if there is only one source, this should be noted in the report and the source should be well defined (EASO, 2019, p. 16; ACCORD, 2013).

### **2.3.4 Topicality**

The COI used must be up to date (EASO, 2019, p. 12). This requirement is also included in the EU Asylum Procedures Directive (see Appendix 2).

### **2.3.5 Accuracy, transparency and traceability**

Accuracy means that the COI must be presented such that it is accurate, transparent and traceable (EASO, 2019, p. 12). This requirement is also laid down in the EU Asylum Procedures Directive (see Appendix 2).

COI is considered transparent if public sources of information are used and the sources are fully referenced, allowing readers to independently verify and analyse the information (ACCORD, 2013, p. 35).

Every piece of information must be traceable to its source. The information must be presented clearly and the meaning of the information must not be distorted by the author of the source (ACCORD, 2013, p. 35). The primary source must be referenced as much as possible to avoid cross-references (round-tripping).<sup>31</sup>

The criteria of accuracy, transparency and traceability represent the principle of due care (Section 3:2 of the Awb), the obligation to state reasons (Section 3:46 of the Awb) and the principle of fair play. When these criteria are properly applied, it gives the asylum seeker the opportunity to verify and correct or supplement the information used.

In Section 2.1, we mentioned that there is virtually no debate among COI researchers about the methodology to be used. However, there are a few exceptions to this such as with regard to drawing conclusions or COI-related conclusions, making analyses, applicable text sections and synthesising (i.e. merging information from different sources). Some respondents emphasise that synthesising improves readability and accessibility.<sup>32</sup> On the other hand, a number of respondents note that - unlike when working with original citations from sources - the nuance of individual passages can be lost during the process of merging and articulating texts, that texts are more difficult to trace back to the source, and that different synthesis report writers might arrive at different outcomes.<sup>33</sup> With respect to drawing conclusions from COI, it has been noted that it is easier for the case worker to link a conclusion to a text if this text explicitly concludes that a situation has improved or deteriorated compared to the previous reporting period. A number of respondents stress the fact that transparency regarding the sources used is important when drawing a conclusion.<sup>34</sup> In its methodology published in 2019, EASO has further explained the difference between a conclusion based on COI and a legal conclusion (EASO, 2019, p. 19).

**Conclusion: the criteria for verifying COI are relevance, reliability, balance, topicality, accuracy, transparency and traceability. These criteria are based on the underlying general principles of good governance, i.e. the principle of due care, the obligation to state reasons and the principle of fair play.**

## 2.4 Applying and using an order of ranking

All leading bodies in the area of COI reject the idea of classifying sources in an order of ranking. This also applies to the exclusion of sources in advance (ACCORD, 2013; EASO, 2019, p. 14; EU Argo Project, 2008). An exception to this rule is that it is prohibited to consult the authorities of the countries of origin when assessing a specific asylum application because of the possible danger that this may pose for

the person concerned and any of their family who have remained behind (UNHCR, 2013).

Social media sources are not excluded in advance, but the question of 'who' the source actually is must be examined more thoroughly, and this question often cannot be answered by persons who are not experts in the field of data technology.<sup>35</sup> If this is the case, the source must be classified as 'questionable' (ACCORD, 2013; Immigration New Zealand, 2013).

The respondents engaged in COI research or analysis indicate, without exception, that they do not apply a ranking system to the sources or their reliability. With or without reference to the aforementioned manuals, they indicate that there is no hierarchy of sources and that it is complicated or impossible to determine such a ranking. Some respondents emphasise that making such a ranking is not desirable or they question the desirability of a system in which sources are identified in advance as being authoritative.<sup>36</sup> The reason given for this is that although the source may be reliable, this does not necessarily apply to the information from this source.<sup>37</sup> In addition, it has been indicated that both the source as well as the information provided by this source must always be investigated.<sup>38</sup> The determining factor is not the status of the source but its content and reliability.<sup>39</sup> The UK Upper Tribunal (see Chapter 4) has concluded:

'No judicial decision has the power of crystallising the facts of the real world to an extent where not reality, but what has been said about it is the guide.' (Thomas, 2008, p. 517)

While the EU Asylum Procedures Directive identifies a number of authoritative organisations as sources of COI, the Council of State has determined that the information contained herein is inconclusive and that other sources should be consulted, if available.<sup>40</sup> The Council of State underscores the fact that COI users have a responsibility to continue to reflect critically on the reliability of both the source and the information provided and not simply rely on information furnished by the relevant authority for the source. In this context, the Council of State also refers to the duty to verify, which implies that the Minister for Migration must check, as in the case of a recent Official Country Report, whether the information is transparent and accurate.<sup>41</sup>

The Division further emphasised that the most important thing is that the best COI is available for each individual case.<sup>42</sup> This will therefore have to be assessed per individual case and per report (or other document) based on the methods used. The criteria mentioned by several respondents in this context are the content, topicality, transparency, objectivity, relevance and reliability of the information.<sup>43</sup> Another opinion that was frequently raised is: the greater the number of sources or the more information available, the better.<sup>44</sup>

COI reports may become outdated due to more recent developments in a particular country. This is why a number of interviewees indicate that, in some cases, information in newspaper articles may be more relevant than that contained in reports prepared by authoritative organisations.<sup>45</sup>

All respondents agree that there should always be room to contribute information. This is in line with the recent advice of the Council for Public Administration (ROB) *Zoeken naar waarheid: over waarheidsvinding in de democratie in het digitale tijdperk* [Searching for truth: about establishing truth in a democracy in the digital age] in which ROB concludes (ROB, 2019, p. 42):

'In order to establish the truth, it is important that claims to truth, especially those made by people in power, are contested on a continuous basis. This requires institutions that make it possible to investigate these claims, such as by enforcing transparency, having third parties conduct external investigations, ensuring that multiple opinions are proportionately heard and by avoiding deviation from the truth by applying and enforcing rules.'

**Conclusion: in a democracy, it should always be possible to dispute claims to truth, which is why prominent organisations and respondents reject the idea of creating a hierarchy of sources. They consider the ranking of sources to be complicated, impossible and undesirable.**

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<sup>16</sup> ACVZ, 2006, 2008, 2016; Damen, 2008; Fötsch, 2018; van der Bergh 2014; Van Reenen, 2012; Verbaas, 2016; Vogelaar, 2016; Wallage & van Binsbergen, 2017; Zwaan & van Breda, 2015.

<sup>17</sup> EASO, 2019; ACCORD, 2013; Gyulai, 2011; EU Argo Project, 2008; IARLJ, 2006; UNHCR, 2004.

<sup>18</sup> The target group for this manual consists of COI researchers, decision-making officers of the migration authorities, legal assistance providers, judges and anyone who works with COI. See (ACCORD, 2013, p. 13).

<sup>19</sup> Recital 10 of the Preamble. For designating countries of origin as safe, the Asylum Procedures Directive even explicitly mentions the methodology developed by EASO under Recital 46 of the Preamble.

<sup>20</sup> Interviews ACCORD 21 January 2020 and UNHCR Geneva 13 January 2020.

<sup>21</sup> Interview IND, 18 February 2020.

<sup>22</sup> Interview ACCORD, 21 January 2020.

<sup>23</sup> Article 4(5) opening words and (c) of the Qualification Directive.

<sup>24</sup> Interviews IND (TOELT) 18 September 2019, ACCORD 21 January 2020, UK Home Office 14 January 2020, UNHCR Geneva 13 January 2020, VWN 24 October 2019, ARC Foundation 14 January 2020.

<sup>25</sup> Interviews IND (TOELT) 18 September 2019, VWN 24 October 2019, ACCORD 21 January 2020, UK Home Office 14 January 2020, Van der Kist 23 December 2019, UNHCR Geneva 13 January 2020, Division 26 September 2019, Helsinki Foundation for Human Rights 17 January 2020.

<sup>26</sup> *Parliamentary Papers II*, Session Year 2018-19. Appendix to the Proceedings 1974; *Parliamentary Papers II* 2018-19 19637 No. 2456.

<sup>27</sup> Brouwers & Bogaers, 2018; ACVZ, 2008; Breda van & Zwaan, 2014; Breda van & Zwaan, 2018; Wallage & van Binsbergen, 2017; Danish Immigration Service, 2014; IAGCI, 2015; Kist van der, Dijstelbloem, & de Goede, 2018; Rosset & Liodden, 2015; Independent Chief Inspector of Borders and Immigration, 2018.

<sup>28</sup> Written information, Policy and Operations Evaluation Department (IOB, Ministry of Foreign Affairs), 23 March 2020.

<sup>29</sup> Ministry of Foreign Affairs, March 2019; *Parliamentary Papers II*, 2018-19, 19637, No. 2508; COC, 9 October 2019: Maintain optimal protection for LGBT asylum seekers from Iran

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<https://www.coc.nl/international/behoud-optimale-bescherming-voor-lhbt-asielzoekers-uit-iran>; Iranian Lesbian & Transgender Network, 11 February 2020: 6RANG letter to Dutch government regarding its asylum policy for Iranian LGBTQI <http://6rang.org/english/2563>.

<sup>30</sup> Case file review, Interview Van der Kist 23 December 2019, IND (TOELT) 18 September 2019, Division 26 September 2019, UNHCR Geneva 13 January 2020.

<sup>31</sup> An example of a cross-reference is when an NGO refers to UNHCR in a report and UNHCR refers back to the NGO in a subsequent report.

<sup>32</sup> Interviews ACCORD 21 January 2020, VWN 24 October 2019, DMB 26 March 2019, UK Home Office 14 January 2020.

<sup>33</sup> Interviews VWN 24 October 2019, ACCORD 21 January 2020, ARC Foundation 14 January 2020.

<sup>34</sup> Interviews VWN 24 October 2019, ACCORD 21 January 2020, UK Home Office 14 January 2020.

<sup>35</sup> ACCORD, 2013, pp. 140-142; Ardalan, 2013; ACVZ, 2012; EASO, 2019; EU Argo Project, 2008; IARLJ, 2006; UNHCR, 2004.

<sup>36</sup> Interviews UNHCR The Netherlands 31 October 2019, UNHCR Geneva 13 January 2020, Division 26 September 2019, UK Home Office 14 January 2020.

<sup>37</sup> Interviews Vogelaar 17 October 2019, IND (TOELT) 18 September 2019, IND (SUA) 26 September 2019, UNHCR Geneva 13 January 2020, UK Home Office 14 January 2020, ACCORD 21 January 2020.

<sup>38</sup> Interviews Vogelaar 17 October 2019, UNHCR Geneva 13 January 2020, IND (TOELT) 18 September 2019.

<sup>39</sup> Interview Division 26 September 2019, IND (TOELT) 18 September 2019, UK Home Office 14 January 2020.

<sup>40</sup> ABRvS 1 February 2017, ECLI:NL:RVS:2017:209, 5.3.

<sup>41</sup> Interview Division 26 September 2019.

<sup>42</sup> Interview Division 26 September 2019.

<sup>43</sup> Interviews Division 26 September 2019, UNHCR Geneva 13 January 2020, ARC Foundation 14 January 2020, IND (TOELT) 18 September 2019, written answers Department for Refugee Procedures, Office for Foreigners Poland 5 February 2020.

<sup>44</sup> Interviews IND (TOELT) 18 September 2019, Zwaan 11 September 2019, Division 29 September 2019 and IND (SUA) 26 September 2019.

<sup>45</sup> Interviews Division 29 September 2019 and UNHCR The Netherlands 31 October 2019.





## Chapter 3

# Current practice in the Netherlands

**This chapter focuses on the question of how IND officers, lawyers and judges conduct their activities in the absence of any or any recent Official Country Report from the Minister of Foreign Affairs. In addition, we evaluate their actions based on the criteria defined for COI or how it is used. Subsequently, we will also examine the legal interpretation of COI by the IND, lawyers and judges. This chapter is largely based on our case file review. The results of this review are described in Appendix 3.**

In the previous chapter, we mentioned that the professional group of COI researchers has developed clear criteria for the way in which COI should be collected, presented, analysed and used. As a result, even in the absence of an Official Country Report, it is perfectly possible to assess COI from other sources based on these criteria. The question we answer in this chapter is what, in the absence of an Official Country Report, is currently regarded as a useful or less useful source of COI. The key question is to what extent the COI used by IND officers, lawyers and judges, when an Official Country Report is missing, meets the defined criteria.

#### **Useful background information for this chapter**

IND officers can independently look up COI via the internal web pages and/or via other portals or the internet. They can also consult the TOELT. Lawyers can approach the VWN's COI department. A detailed description of the working method of both the TOELT and VWN's COI department can be found in Section 1.1.2. Section 1.1.1 describes how the Netherlands assesses asylum applications and the various parties and steps involved in the Dutch asylum procedure.

### **3.1 Qualifying the special status of Official Country Reports**

In the introductory chapter, we mentioned that the Official Country Reports of the Minister of Foreign Affairs are designated as 'expert opinions' in Dutch asylum law. Before we proceed to discuss the manner in which other sources of COI are used in practice, we would first like to qualify this special status of Official Country Reports in Dutch asylum practice. Even if an Official Country Report is available, the IND, lawyers and judges often involve sources of information other than these Reports in the assessment of asylum applications (Zwaan & van Breda, 2015).<sup>46</sup> This is illustrated in two of the rulings issued by the Council of State on 18 December 2019 (on the overall security situation in Afghanistan and on the situation of the Hazara ethnic minority group). In these rulings, the Council of State refers not only to the general Official Country Report but also to two reports from EASO, a report from UNHCR, a report from the United Nations Assistance

Mission in Afghanistan (UNAMA) and a report from the US Department of State. Moreover, the ruling mentions that 'a limited number of sources' have been cited for the sake of readability, but this does not mean that all the other sources submitted by the IND and the lawyer have not been taken into account in the ruling. The other sources are listed in an appendix. Hence, in these two rulings, the Council of State recognises the Official Country Report to be equally important as reports from other organisations, though not more important.<sup>47</sup>

**Conclusion: the special status attributed to the Official Country Report does not mean that other sources are not included or taken into account. This is also more in line with the requirement in the EU Asylum Procedures Directive that persons dealing with asylum applications must have access to different sources.**

## **3.2 Use of COI in practice is evaluated against the criteria**

### **3.2.1 Relevance**

The case file review shows that IND officers often use COI relating to the personal circumstances of the asylum seeker. For this, they are assisted by members of the TOELT (for a description of their duties, see Section 1.1.2). In the search for information specifically relating to the asylum account, sources such as local newspapers, websites and social media are consulted. In our opinion, the IND has used an overabundance of sources in a number of cases - a 'shotgun blast of information', so to speak, whereby all the possible information that could give some strength to the decision has been added. In some other cases, the lawyer has successfully argued in court that relevant information was not taken into account in the assessment of the asylum application.

Lawyers also often take into consideration information relating to the asylum seeker's personal circumstances. We have seen a few cases in which the included information did not seem to have any relevance to the asylum application or where the judge felt that the relationship between the information and the asylum account was not sufficiently clear. Lawyers also applied the 'shotgun blast' tactic in a number of cases.

According to the EU Asylum Procedures Directive, EASO, UNHCR, the Council of Europe and other relevant international or international human rights organisations are considered to be relevant sources.<sup>48</sup> These sources have been used relatively little in the case files examined. UNHCR only had recent documents available for one of the 11 countries we studied (Venezuela), and EASO for three of the countries (see the next section for more details). In addition to international organisations, the ECHR also indicates governments as a relevant source, because they are often represented locally. In the absence of Official Country Reports, the

IND, lawyers and courts often use reports from other governments. In Section 3.3. we will discuss the use of these sources in more detail.

**Conclusion: sources that are labelled 'relevant' in the EU Asylum Procedures Directive are used to a relatively lesser extent, partly because these organisations do not regularly report on the less common countries of origin of asylum seekers. In most cases, both the IND as well as lawyers pay attention to the relevance of sources. In some cases, we believe that an excessive number of sources have been used.**

### 3.2.2 Reliability

In the vast majority of case files examined by us, the IND, lawyers and the court have generally assumed that the COI used was reliable. This applied not only to information from COI reports prepared by COI researchers, but also news articles from international and national press, websites and social media. However, it was often verified whether there were multiple sources that could confirm the information (cross-checking).<sup>49</sup> In a few cases, the reliability of the sources used was brought into question because the lawyer or an IND colleague cast doubt upon this. The notes prepared by the TOELT and the VWN's COI department for case workers and lawyers show that the accuracy of the sources used were verified by the COI researchers only in a few cases.<sup>50</sup> It is important to note in this context that the EASO and ACCORD manuals are not quick to reject sources, regardless of their origin. They mainly stress the importance of validating sources through cross-checking and corroboration (ACCORD, 2013, p. 134; EASO, 2019, p. 15).

The case law study shows that, in the examined decisions where the Council of State used COI, it did not indicate the degree of reliability of the source of this information. In many cases, the Council of State summarises or cites the submitted source without devoting any consideration to its reliability.<sup>51</sup> In the earlier-mentioned judgment regarding Afghanistan, the Council of State noted that the information from the different sources used does not differ in essence from each other.<sup>52</sup> Here too, we see the practice of cross-checking and corroboration.

**Conclusion: in general, COI researchers are not quick to discard a source as unusable. This approach is in line with the guidelines in the EASO and ACCORD manuals, but decision-making officers, lawyers and judges are not attentive to this. They generally assume that the sources are reliable as long as they corroborate one another and a colleague or other party does not explicitly question the source.**

In Section 2.3.2, we have identified governments, international organisations and the NGOs Amnesty International, Human Rights Watch and Freedom House as the sources that are generally labelled as 'reliable'.<sup>53</sup> In the case file review, we have discussed the use of these sources in the light of this. This has yielded the following results:

- In the reviewed case files, the IND, lawyers and the Council of State made extensive use of reports from the US Department of State.
- Reports from other European countries were also used, but less often than those from the US Department of State. These reports involve, almost without exception, reports written in English, i.e. from the UK Home Office.
- Reports from the NGOs Human Rights Watch, Amnesty International and Freedom House were also widely used by all parties involved in the case files examined by us. For asylum applications relating to LGBTI issues, the IND often consulted ILGA World.
- Reports from organisations that are explicitly mentioned in the EU Asylum Procedures Directive lagged behind in this respect: the IND only used reports from international organisations in 2% of the case files examined, and lawyers in 5% (for EASO, see next bullet point). As noted above, these organisations often do not report regularly on countries from which relatively few asylum seekers originate.
- In the case files studied, the IND did not consult EASO at all, while lawyers only referred to EASO once (in the Turkey: Country Focus report of November 2016). It should be noted that EASO has prepared COI reports for only three of the 11 countries of origin we reviewed<sup>54</sup> (Algeria, Egypt and Turkey). However, EASO published an extensive COI report on Turkey in November 2016, which the IND did not use either. This is surprising, especially since the TOELT contributed to the peer review of this report (EASO, 2016).

Furthermore, Parliamentary Papers show that the Minister for Migration, when reassessing countries of origin in the context of the safe countries of origin policy, has in particular made use of American sources, i.e. reports from the US Department of State and Freedom House. This arises from a decision to follow the Canadian system in this area.<sup>55</sup> However, the EU Asylum Procedures Directive also mentions 'information from EASO, UNHCR, the Council of Europe and other relevant international organisations' as a source for assessing the policy on safe countries of origin.<sup>56</sup>

**Conclusion: reports from a number of governments, international organisations and some NGOs have a reputation for being reliable. This reputation is based partly on law and partly on their established name and stature. The case files we studied made extensive use of COI reports from some governments and NGOs with a good reputation, with a strong preference for English-language sources.**

In general, the case workers of the IND and the lawyers who assist asylum seekers are not professional COI researchers. This is partly compensated by the fact they are assisted, respectively, by COI researchers from the IND and the VWN (see Chapter 1). In addition, they often consult COI reports of organisations with a good reputation (whether or not after the intervention of the TOELT or VWN or after consulting internal web pages, Ecolnet, Refworld portals or the EASO COI

portal).<sup>57</sup> However, in the case file review, we also encountered a number of cases in which the case worker and/or lawyer has searched for information via a search engine such as Google. From the efficiency and professionalism perspective, there is much to be said in favour of a working method in which case workers and lawyers consult COI researchers and/or comparable reports from other organisations. A model in which every case worker and lawyer independently conducts source research is very time-consuming, and also increases the risk of the source research being carried out in a careless and uncontrolled manner, because the officer is not or insufficiently trained for this task.

The duty to verify also applies to reports from organisations that are generally regarded as reliable.<sup>58</sup> This is even more important since the COI researchers, who prepare these reports, tend not to easily reject a source as inadmissible.

The COI reports are generally not used as primary sources, and some organisations do not use precise source references (see Appendix 1 in this regard). In addition, many organisations (just like the Ministry of Foreign Affairs) use confidential primary sources. Also, COI reports often refer to one another or to the same news items. As a result, there is a risk that, even though there appear to be many different sources that support the information, these may ultimately all be traceable to a single primary or original source (ACCORD, 2013, p. 87; EASO, 2019, p. 13). Finally as an aside, it is important to note that if an IND officer or a lawyer refers to a report from a reliable organisation, the information is assigned greater significance than if the same information were cited as, for example, 'according to a message on Facebook, the web page of a local action group and a casual passer-by who was interviewed on the street...', while this might ultimately be the source of the information. The information acquires, as it were, an aura of reliability and authority, simply by being included in a report by a leading organisation.

**Conclusion: in the absence of an Official Country Report, the use of reports from other countries, international organisations and certain NGOs offers many advantages from the point of view of efficiency and due care. However, the duty to verify remains applicable in these cases as well. COI reports are not based solely on primary sources of information. Using these sources entails the risk of losing sight of the primary source and giving the information more weight than it actually deserves.**

### 3.2.3 Balance

The case file review shows that, in the absence of an Official Country Report, the IND, lawyers and the judiciary often consult a wide array of different types of sources in their assessment of the asylum application.<sup>59</sup> However, there is some inconsistency between case workers, lawyers and judges: in some cases, no sources were used at all while more than 20 were used in others. The literature shows that there is also a lot of inconsistency between case workers (as well as between judges) in the use of COI in other countries as well.<sup>60</sup>

Incidentally, it is not always necessary to use COI. Some asylum seekers can sufficiently substantiate their asylum application with documents relating to themselves and sometimes the statements of the asylum seekers themselves are implausible or insufficiently compelling, as a result of which COI becomes unimportant in such cases.<sup>61</sup>

The decision-making officers of the IND have access to many different sources of COI, and they make regular use of these sources. They consult internal web pages and the portals of Ecoi.net, Refworld and EASO and also search for information directly on the internet.<sup>62</sup> They often approach the TOELT with questions regarding the situation in the countries of origin (see 1.1.2 above).

In the majority of the case files that we examined, both the IND and the lawyers used COI from all kinds of sources. They referred to reports from governments and NGOs, but also frequently to newspapers and news channels/sites. Both the IND and the lawyers also regularly consulted Google, social media, YouTube and other websites.<sup>63</sup>

In some cases, in the absence of an Official Country Report, there are insufficient sources available to the case worker, lawyer or judge for handling the case (for example, for the countries of Myanmar,<sup>64</sup> Central African Republic<sup>65</sup> and Mongolia<sup>66</sup>). Language also forms an obstacle.<sup>67</sup> Apart from Dutch-language sources, the sources used by the IND in the case files we examined were almost exclusively in English, so even though other sources may be available, the IND officers do not consult them because of the language barrier. For example, we found [several COI reports](#) for the Central African Republic on the EASO portal in French, but these have not been taken into account in decision-making.

On the other hand, there is actually an overabundance, rather than a shortage, of sources in many cases and it is often unclear why certain sources are selected and others are not.<sup>68</sup> At the Council of State hearing in the aforementioned cases concerning Afghanistan, the rapporteur mentioned that both parties had submitted many reports and at some point the State Advocate referred to 'the large number of reports'.<sup>69</sup>

Members of the legal profession have access to various sources via the Ecoi.net, Refworld and VluchtWeb portals. They may also consult the VWN country desk (see Chapter 1).

For the rulings in the reviewed case files, judges have, without exception, only taken into account COI submitted by the parties, but have not consulted any sources on their own initiative.<sup>70</sup> The Council of State has also followed this approach in all the cases we studied; however, in various cases where no or no recent Official Country Report about the country in question had been published, the Council of State has also taken into account for its decision, in view of the

cross-case significance of the judgment and the level of topicality, one or more documents submitted after the court had issued its ruling.<sup>71</sup> Some of the rulings included an appendix listing the sources taken into consideration by the Council of State. The number of documents involved ranged from a few to 71 items.<sup>72</sup>

**Conclusion: the requirement that the officers who take decisions on asylum applications should have access to multiple sources, as laid down in the EU Asylum Procedures Directive, is being met. In practice, both IND officers and lawyers use a multitude of varied sources and therefore meet the 'balance' criterion. In some cases, insufficient resources are available. Language remains an obstacle. On the other hand, there is often even an overabundance of sources.**

### 3.2.4. Topicality

The case files examined showed that the IND usually uses the most recent report from an organisation and many recent news items are also consulted. In a few cases, the IND used older sources, sometimes with the remark that there is no indication of the situation having changed since the time in question. In two cases we reviewed, the judge stated that the IND had consulted outdated COI in its decision.

Based on the reviewed case, it appears that the lawyers and the judiciary usually pay attention to the topicality of sources. As mentioned earlier in Section 3.2.3, the case law study has shown that, in view of the cross-case significance of the judgment and the level of topicality, the Council of State has taken one or more documents that were submitted after the court had issued its judgment into account in its decision.<sup>73</sup>

**Conclusion: in most cases, the requirement that current information should be used in the assessment of the asylum application, as laid down in the EU Asylum Procedures Directive, has been met.**

### 3.2.5 Accuracy, transparency and traceability

In the examined case files, there is no uniform practice of including source citations in the intended decisions, final decisions and defence statements of the IND and the responses and appeals submitted by the lawyers. In a number of cases, both the IND and the lawyers cite the COI used for each relevant element via a footnote and with a link to the location of the information. However, they also often limit themselves to a phrase such as 'It appears from public sources' without any source citations or completely fail to mention that COI has been used even though this is evident from other documents in the case file. Sometimes IND officers and lawyers summarise the sources used in a general manner at the end of an intended decision, final decision, response, defence statement or notice of appeal, or they simply add these as an appendix without specifying which sources of information are associated with which element of the assessment. It was observed that this method of working is also common among judges.

Besides a correct citation of sources, language also plays a role in determining the accuracy criteria relating to COI. We came across one case file in the review where the lawyer had drawn attention to the fact that a relevant word from a UK Home Office report had been wrongly translated by the case worker.

**Conclusion: in many of the reviewed case files, the use of sources by IND officers, lawyers and judges was inaccurate and sources were often not or not properly traceable.**

### 3.3 Use of policy rules and court judgments in the legal interpretation of COI

Even if sufficiently good information about the situation in a country of origin has been found, there are still a few more steps to be taken by the IND officer before a decision can be made. The asylum account must be interpreted in light of the available COI and a legal opinion must be formulated based on this. Does the situation in the country of origin in this case mean that an asylum resident permit must be granted? Our study shows that this legal interpretation of COI is more often the subject of discussion than the COI itself.<sup>74</sup> In the previous section, we established that case workers, lawyers and judges generally assume that the COI found is reliable if there are multiple sources that can corroborate this information. The aforementioned ruling of the Council of State concerning Afghanistan does not, apart from in one case, pass any judgment on the reliability of the more than 20 sources used. Neither was the reliability of these sources the main focus at the hearing. The main subject of the hearing was the legal interpretation of the COI for Afghanistan: is the situation in Afghanistan serious enough to rule that the situation there is as described in Article 15c of the EU Qualification Directive and should Hazaras be classified as an at-risk group or vulnerable minority group as formulated in the Aliens Act?<sup>75</sup>

For the countries of origin for which the Ministry of Foreign Affairs has drawn up an Official Country Report, the country-specific part of the Aliens Act Implementation Guidelines (Part C7) contains policy rules as a guide for the legal interpretation of COI. In addition, policy rules are drawn up for the countries that fall under the safe country of origin policy, which are subsequently sent to the House of Representatives<sup>76</sup> and published in the Government Gazette. However, there is no public policy in the Netherlands for other countries of origin of asylum seekers. To fill this gap, the IND's Implementation Advice Staff Department (SUA) issues internal guidelines to case workers for the legal interpretation of the available COI. This is often done on request and in an unsystematic manner. Also, the guidelines are not regularly updated. These guidelines can be found in many places within the IND's digital working environment in the form of, for example, Q&A models or information reports. These internal guidelines are not public.<sup>77</sup> In the absence of a country of origin policy, besides using the internal guidelines, the

case workers of the IND also make use of the case law of the Council of State for the legal interpretation of COI. The lawyers also use case law and sometimes the Query Responses and Frequently Asked Questions of VWN, as well as the VWN's knowledge based on its decision-making practices.

In the United Kingdom, the UK Home Office draws up comprehensive policy guidelines based on the rulings of the UK Upper Tribunal (see Section 4.4.). UNHCR also draws up documents concerning the legal interpretation of COI. Case workers from other countries (Sweden, Germany) sometimes consult the UK policy guidelines for the legal interpretation of COI.<sup>78</sup> Although we have not encountered this in our case file review, case law shows that this also happens in the Netherlands.<sup>79</sup> In our case file review, we have come across lawyers occasionally referring to a policy document from the UK or from UNHCR.

#### **Conclusions:**

**The legal interpretation of COI is more often a subject of discussion than the COI itself.**

**In many cases where no general Official Country Report is available, a public country of origin policy is missing. An exception to this is the safe country of origin policy. In the absence of a public country of origin policy, the IND's SUA draws up internal guidelines on the legal interpretation of COI on request and in a less-than-systematic manner.**

**The Council of State regularly issues decisions to guide the legal interpretation of COI, even in cases where there is no general Official Country Report. This helps in promoting consistency.**

<sup>46</sup> Interviews Council of State 26 September 2019 and Zwaan 11 September 2019.

<sup>47</sup> ECLI:NL:RVS:2019:4200; ECLI:NL:RVS:2019:4202.

<sup>48</sup> Recital 39 of the Preamble, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive). According to the EU Asylum Procedures Directive, the situation in the countries on the safe countries of origin list should also be regularly assessed by Member States based on sources of information derived from EASO, UNHCR, the Council of Europe and other relevant international organisations. See Recitals 46 and 48 of the Preamble and Article 37(3) of the EU Asylum Procedures Directive. When applying the 'safe country of origin' concept, Member States should 'take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including EASO Country of Origin Information report methodology,( ), as well as relevant UNHCR guidelines'. In national regulations, Article 3.105ba(2) of the Aliens Decree (Vb) contains the COI sources Member States may use to base their assessment of a country as a safe country of origin. The situation in these countries of origin must be reviewed regularly.

<sup>49</sup> This is how the EASO manual defines cross-checking and corroboration:

'Cross-checking involves checking a range of different sources to test whether different and unrelated sources report similar or different information about a fact/issue/topic. Cross-checking is a means to corroborate or contrast information.'

'Corroborating information supports or strengthens the accuracy and reliability of information by finding matching information from multiple and different kinds of sources with accounts of what occurred that are independent of one another.'

<sup>50</sup> Case file review.

<sup>51</sup> Exceptions are the aforementioned judgments of 18 December 2019

(ECLI:NL:RVS:2019:4200; ECLI:NL:RVS:2019:4202), which indicate that there is doubt regarding the reliability of one particular source (CIGAR). However, the Council of State nevertheless took this information into account because the information in this source did

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not differ in essence from that in the other sources and the criticism of this organisation related to previous information.

<sup>52</sup> ECLI:NL:RVS:2019:4200; ECLI:NL:RVS:2019:4202.

<sup>53</sup> There is, however, some debate concerning reports from the US Department of State.

<sup>54</sup> Algeria, Azerbaijan, Central African Republic, Cuba, Egypt, Jordan, Myanmar, Saudi Arabia, Turkey, Uganda and Venezuela

<sup>55</sup> *Parliamentary Papers II*, Session Year 2018-19, 19637, No. 2448.

<sup>56</sup> Article 37(2) and (3), EU Asylum Procedures Directive. Article 3.105ba(2) and (3), Vb 2000.

<sup>57</sup> The information on these portals has been reviewed by COI experts before being posted.

<sup>58</sup> Section 3:2 of the Awb; Interview Council of State 26 September 2019.

<sup>59</sup> This does not imply that no other sources will be used if an Official Country Report is available. However, this is not included in the scope of our Advisory Report and we have therefore not examined this situation.

<sup>60</sup> Blake, 2013; Gibb & Good, 2013; Immigration Advisory Service (IAS), 2009, 2010; Independent Chief Inspector of Borders and Immigration, 2017; Stern, 2013; Vogelaar, 2016, 2017; UNHCR, 2013; Wissing, Maes, & Lepoivre, 2011.

<sup>61</sup> Case file review, interview IND (SUA) 26 September 2019.

<sup>62</sup> Case file review.

<sup>63</sup> Case file review.

<sup>64</sup> Case file review, interview Council of State 26 September 2019.

<sup>65</sup> Case file review.

<sup>66</sup> Interview IND (TOELT) 18 September 2019.

<sup>67</sup> Interviews Council of State 26 September 2019, IND (SUA) 26 September 2019, EASO/ACCORD meeting.

<sup>68</sup> Interviews IND (TOELT) 18 September 2019, VWN 24 October 2019, Vogelaar 17 October 2019, case file review, case law study.

<sup>69</sup> Multi-judge division session of the Aliens Chamber of the Council of State 30 September 2019. Case numbers 201904651/1V2 and 201905739/1V2.

<sup>70</sup> In accordance with Section 8:69(1) of the Awb, the judge must respect the scope of the proceedings.

<sup>71</sup> ABRvS 14-12-2018, ECLI:NL:RVS:2018:4026, ABRvS 14-12-2018, ECLI:NL:RVS:2018:4027 and ABRvS 14-12-2018, ECLI:NL:RVS:2018:4028 about Kachin and non-Rohingya Muslims in Myanmar. ABRvS 21-3-2018, ECLI:NL:RVS:2018:915 on the general security situation in Afghanistan and particularly in Ghazni. ABRvS 4-1-2018, ECLI:NL:RVS:2018:1, ABRvS 4-1-2018, ECLI:NL:RVS:2018:2, ABRvS 20-7-2016, ECLI:NL:RVS:2016:2123 and ABRvS 20-7-2016, ECLI:NL:RVS:2016:2124 on the general security situation in Libya and particularly in Benghazi and Tripoli. ABRvS 20-10-2017, ECLI:NL:RVS:2017:2781 on the designation of Tunisia as a safe country of origin. ABRvS 4-4-2017, ECLI:NL:RVS:2017:885 and ABRvS 4-4-2017, ECLI:NL:RVS:2017:891 on vulnerable foreign nationals who are obliged to return to Bulgaria under the Dublin Regulation. ABRvS 8-3-2017, ECLI:NL:RVS:2017:630 on the designation of Algeria as a safe country of origin. ABRvS 21-11-2016, ECLI:NL:RVS:2016:3083 on a relocation option in Baghdad. ABRvS 4-3-2016, ECLI:NL:RVS:2016:671 on foreign nationals from China who are part of a house church.

<sup>72</sup> ABRvS July 2016, ECLI:NL:RVS:2016:2123.

<sup>73</sup> These are cases in which the Council of State adopts a cross-case approach. These cases concern the general security situation or the status of vulnerable groups in certain countries of origin. The Council of State explains its working method in the summary judgment of 3 April 2019, ECLI:NL:RVS:2019:1060, paragraph 16.2.

<sup>74</sup> Case file review, interview Council of State 26 September 2019, case law study.

<sup>75</sup> Multi-judge division session of the Aliens Chamber of the Council of State 30 September 2019. Case numbers 201904651/1V2 and 201905739/1V2.

<sup>76</sup> See e.g. *Parliamentary Papers II*, 2017-18, 19637, No. 2392.

<sup>77</sup> Case file review, interview IND (SUA) 26 September 2019.

<sup>78</sup> Interview UK Home Office, 14 January 2020.

<sup>79</sup> The Hague Court, hearing location Middelburg, 20/7/2017. ECLI:NL:RBDHA:2017:8743





## Chapter 4

# Description of the working method of EASO, Austria, Poland and the United Kingdom

## **In this chapter, we broadly describe how EASO, Austria, Poland and the United Kingdom deal with COI.**

### **4.1 EASO**

#### **4.1.1 Organisation**

EASO, set up in 2011,<sup>80</sup> assists Member States in implementing the Common European Asylum System. Its tasks include the organisation, promotion and coordination of activities relating to COI. This includes in particular:

- gathering 'relevant, reliable, accurate and up-to date information' on countries of origin of asylum seekers in a 'transparent and impartial manner' by 'making use of all relevant sources of information, including information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union';
- preparing reports on countries of origin based on the information gathered;
- setting up, developing and maintaining a portal site with COI;
- developing a common format and approach to present, monitor and use COI;
- analysing COI in a transparent manner with the aim of streamlining the assessment criteria as much as possible, where the outcome of the meetings of one or more working groups are used where necessary. The purpose of this analysis is not to instruct Member States on the asylum decision to be taken<sup>81</sup>

#### **4.1.2 COI reports**

EASO collects COI and prepares joint COI reports. This is done via a networking approach. EASO has 10 different COI networks where COI researchers from the Member States are represented.<sup>82</sup> If the Member States have insufficient capacity for this, EASO also produces COI reports itself. According to the IND, cooperation within these networks has had a positive effect on the mutual exchange of information between COI researchers from the various Member States.<sup>83</sup>

The decision to prepare a COI report depends on several factors, including available capacity and prioritisation by the strategic network. This network is composed of the heads of service of the COI teams in the Member States (including the TOELT).<sup>84</sup> The COI reports are subject to a system of peer review by COI researchers from Member States other than that of the author of the report. The NGOs ARC Foundation and VWN also issue a joint commentary in which they assess EASO's COI reports based on the methodology (for example, see ARC and DCR, 2017 and 2018). Furthermore, EASO manages and maintains the self-developed [EASO COI Portal](#), an online portal containing COI reports from different Member States. EASO also offers training modules on how to handle COI.

In recent years, EASO has built up a reputation among members of the judiciary.<sup>85</sup> Respondents note that the quality of EASO's COI reports has improved over the

years.<sup>86</sup> Some of them appreciate the fact that the reports often quote directly from COI sources, so that the original texts are preserved as much as possible. Others see the mere summing up of facts and events, without any conclusion or synthesis, as a negative aspect. A number of respondents indicate that investing in the preparation of COI reports in the context of the EU seems an obvious choice in view of budgetary considerations.<sup>87</sup>

Respondents mention that the available EASO COI reports may deviate from the specific COI request from a Member State. As a result, the COI gathered by EASO may not necessarily be relevant or of importance for decision-making in a particular Member State and vice versa.<sup>88</sup>

#### **4.1.3 Country Guidance**

On 21 April 2016, the Council of the European Union, chaired by the Netherlands, agreed to establish a senior-level policy network to be coordinated by EASO. The task of this network is to jointly assess and interpret the situation in the most important countries of origin based on EASO COI reports, in light of the EU Qualification Directive and the EU Asylum Procedures Directive.<sup>89</sup> The main purpose of the network is to support policy development at EU level. In June 2018, the first product of this network, the first EASO Country Guidance note (on Afghanistan) was published. Since then, the network has prepared Country Guidance documents for two other countries of origin, and has updated the first one. Based on this updated Country Guidance, a change has been made in the Dutch country-specific asylum policy.<sup>90</sup> The Country Guidance states that it is not binding on Member States and the Council of State has also stated the same.

A number of respondents note that there is a tension between the harmonisation of country-specific asylum policies within the EU and the sovereign state concept and national autonomy of Member States.<sup>91</sup> They also believe that there should be no 'cherry picking' when changing the country-specific asylum policy on the basis of the Country Guidance, i.e. by only adopting what is in line with Dutch policy. In addition, some respondents note that there is a need for transparency not only in how the assessment for the Country Guidance has been made, but also with regard to the considerations based on which conclusions from the Country Guidance have or have not been incorporated in the national asylum policy. For example, the Minister states in a letter to the House of Representatives in September 2019 without any further explanation that, following the publication of the EASO Country Guidance on Afghanistan, Mazar-e-Sharif and Herat may be designated as internal protection alternatives but that the update does not otherwise give reason to adjust the country-specific policy towards Afghanistan.<sup>92</sup>

#### **4.1.4 EASO methodology**

In 2012, EASO published the Country of Origin Information (COI) Methodology, which was subsequently revised in 2019.<sup>93</sup> The use of this methodology is binding for the preparation of EASO COI reports (EASO, 2019, p. 9). When implementing the EU Asylum Procedures Directive, the Preamble states that Member States

should take into account the relevant guidelines developed by EASO.<sup>94</sup> The Preamble to the EU Asylum Procedures Directive also designates the EASO COI Methodology as the method to be used for designating a country as a safe country of origin.<sup>95</sup>

None of the respondents mentioned having used the EASO methodology as a manual. However, until the June 2019 revision, the 2014 ACCORD manual was more current than the EASO methodology. As far as the revised methodology is concerned, respondents have commented that a valuable addition is EASO's explanation of a COI-based conclusion, because there was some confusion regarding this. At the same time, there has also been criticism of the methodology because of what it says about the practice of synthesising and COI-based conclusions. See Section 2.3.5 for the discussion among COI researchers on this topic.

#### **4.1.5 European Union Agency for Asylum (EUAA)**

The cooperation within EASO networks, growing role of EASO and development of the EASO COI methodology are mentioned by respondents as important developments for the future.<sup>96</sup>

The development of EASO's role will partly be determined by the intended change from its status as a supporting agency to that of an agency of the European Union.<sup>97</sup> In May 2016, the European Commission submitted a Proposal for a regulation establishing the asylum agency and repealing the earlier regulation establishing EASO.<sup>98</sup> The objective of this Proposal is 'to strengthen and develop EASO into a fully fledged agency that will provide extensive operational support, facilitate the implementation of the CEAS and promote its functioning'. The agency will have a stronger mandate and more extensive tasks. In contrast to the regulation establishing EASO, this Proposal devotes an entire chapter to COI. It includes articles on the following: COI-related tasks of the agency at the Union level, European COI networks, a common analysis of COI and the identification of safe countries of origin and safe third countries.<sup>99</sup>

The Preamble to the Proposal states:

'The European Union Agency for Asylum should ensure a more structured and streamlined production of information on countries of origin at the level of the European Union. It is necessary for the Agency to gather information and draw up reports providing for country of origin information by making use of European networks on country of origin information so as to avoid duplication and create synergies with national reports. Furthermore, to ensure convergence in the assessment of applications for international protection and the nature and quality of protection granted, the Agency should, together with Member States, engage in and develop a common analysis providing guidance on the situation in specific countries of origin.'

In the Explanatory Memorandum to the Proposal, the Commission states:

'Another new task for the Agency is to assist the Commission in regularly reviewing the situation in third countries that are included in the common EU list of safe countries of origin. When considering adding another third country to that EU list of safe countries, the Commission could request the Agency to provide it with information on that particular third country.'

Following a provisional political agreement between the Presidency of the Council of the European Union and representatives of the European Parliament on all 12 chapters of the Proposal in June 2017, work on the Proposal has been postponed pending negotiations on the full reform of the Common European Asylum System.<sup>100</sup>

An amended Proposal was adopted by the European Commission in September 2018, based on the conclusions reached by the European Council on June 2018.<sup>101</sup> This amended Proposal does not include any changes in the chapter on COI. The amended Proposal, after its adjustment, has not received sufficient support in the Permanent Representatives Committee<sup>102</sup> because of its content and the 'package' approach. A European Parliament committee has also rejected the changes to the amended Proposal. In November 2019, the Presidency of the Council of the European Union stressed the importance of transforming EASO into a European Asylum Agency.<sup>103</sup>

## 4.2 Austria

### 4.2.1 Organisation

In Austria, the government institution responsible for deciding on applications for asylum is the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*, BFA), which forms part of the Federal Ministry of the Interior. The Country of Origin Information Unit ([Staatendokumentation](#)) is the BFA department with legal responsibility for gathering information on which to base asylum decisions. Staatendokumentation has 27 employees.<sup>104</sup> There is also an advisory council –with representatives from international organisations, higher courts and ministries –that advises the head of the BFA on the supervision of Staatendokumentation and makes recommendations for the implementation of measures (e.g. with regard to criteria).<sup>105</sup> Staatendokumentation produces five main products:

- *Anfragebeantwortungen* (AFB). These are answers to specific questions raised by institutions. In some cases, finding an answer to these questions is delegated to ACCORD.
- *Länderinformationsblätter* (LIB). These are reports containing a general description of the situation in countries of origin and Dublin Convention signatories with regard to facts that may be relevant to asylum and immigration cases.

- *Kurzinformationen* (KI). These short information messages outline the latest developments and facts that relate to incidents in countries of origin.
- *Analysen*. These are scientific articles with information on specific topics.
- *FFM-Berichte*. These are reports of fact-finding missions.<sup>106</sup>

When compiling these products, Staatendokumentation refers to the *Methodologie der Staatendokumentation* (Country of Origin Information Unit methodology) document, which contains mandatory instructions with regard to the aforementioned products. The methodology is based on criteria determined by the advisory council and based on European standards: neutrality and objectivity, usefulness, validity, transparency, quality control, data security and documentation/traceability.<sup>107</sup>

Austria has no publicly available country-specific asylum policies.<sup>108</sup> However, the list of countries designated as safe countries of origin is available to the public.<sup>109</sup>

If the BFA decides to reject an application for asylum (or grant subsidiary protection status), the asylum seeker in question has the right to appeal to the *Bundesverwaltungsgericht* (Federal Administrative Court). The NGOs *Verein Menschenrechte Österreich* (Human Rights Association Austria) and *ARGE Rechtsberatung (Diakonie und Volkshilfe)* (ARGE legal counselling) offer legal assistance during the appeal proceedings. ACCORD answers questions of legal assistance providers about country of origin information. The principal seat of the Federal Administrative Court is in Vienna, with auxiliary seats in three other cities. Most Federal Administrative Court judges consult the LIB, which are official documents in the German language that are updated regularly. However, there is occasional discussion about these documents being used by the judiciary, given that they were authored by one of the parties before the court.<sup>110</sup>

Under certain circumstances, Federal Administrative Court judgments may be appealed to the *Verwaltungsgerichtshof* (Supreme Administrative Court) or the *Verfassungsgerichtshof* (Constitutional Court). To be granted leave to appeal to the Supreme Administrative Court, the appellant must argue successfully that the issues to be resolved are of major legal importance, that there is no case law on these issues or that there is no uniformity of law regarding this case law. The Supreme Administrative Court considers EASO and UNHCR reports to be important sources that must be taken into account, if available. A potential obstacle is presented by the fact that German is the official language for the proceedings. If one of the parties objects to the use of an English-language source, it may not be used. The court must then wait for an official translation to be produced.<sup>111</sup>

#### **4.2.2 Länderinformationsblätter (LIB) and content management system**

The LIB are the most important product of Staatendokumentation. The BFA generally uses these reports as a basis for asylum decisions in which country of origin information plays a role.<sup>112</sup> When preparing the LIB, Staatendokumentation primarily relies on readily available public sources, such as the US Department of

State, Germany's Federal Ministry of the Exterior, the UN, NGOs such as Amnesty International and Human Rights Watch and news items from e.g. the BBC. However, there is no standardised list of sources.<sup>113</sup> LIB are prepared for the top 10 countries of origin of asylum seekers. Since 2019, however, Staatendokumentation is in the process of switching to a content management system named (COI-CMS). It is expected that the CMS will be fully operational in June 2020. Staatendokumentation expects that in this system they can contain data for the top 40 of countries of origin of asylum seekers because the system will have greater flexibility. Parts can be updated separately without reviewing the full document.

For the most part, LIB consist of quotations from the sources used.<sup>114</sup> They can only be consulted by the BFA, Austrian courts and BFA-approved national and international partners (including other governments and EASO)<sup>115</sup> through a separate, secure portal on the Ecol.net website. Staatendokumentation also makes information 'publicly' available to NGOs, but they must take out a paid subscription for access.<sup>116</sup>

#### **4.2.3 ACCORD**

[ACCORD](#)<sup>9</sup> (part of the Red Cross) and the Austrian federal government have established a unique partnership with respect to country of origin information. Founded in 1999, ACCORD has been a main country of origin information actor since before the foundation of Staatendokumentation in 2006. ACCORD employs five country of origin information researchers, including persons with knowledge of Arabic and Russian. In addition, it employs several persons to maintain its database Ecol.net. The various Austrian parties that use ACCORD information include the BFA, the Federal Administrative Court, NGOs, lawyers and legal advisers. In the first instance, decision-makers who have questions pertaining to country of origin information turn to Staatendokumentation. Staatendokumentation is one of ACCORD's main clients when it comes to country of origin queries. It forwards queries from both decision-makers and the Federal Administrative Court to ACCORD for a response. Moreover, Federal Administrative Court judges may also send queries to the Country of Origin Information Unit and to ACCORD directly. Finally, ACCORD also receives queries from NGOs and lawyers.

ACCORD's main activity is formulating responses to queries. It responds to between 300 and 500 queries each year. Responses take the form of short documents of between five and 20 pages in length on a specific case or topic. In addition, ACCORD produces between three and six larger reports annually. The majority of these are reports for UNHCR, with which ACCORD has signed an agreement. In principle, all ACCORD products are available to the public, although ACCORD occasionally withholds products from publication because of the lack of relevance to other cases or to protect sources. ACCORD also carries out fact-finding missions, although not on a regular basis. In some instances, it prefers contacting experts on the scene via email or Skype.

ACCORD manages the online country of origin database Ecol.net. This database was set up in 2001. The BFA has responsibility for and manages a secure portal on Ecol.net with products of Staatendocumentation (see paragraph 4.2.2).<sup>117</sup>

ACCORD and the Austrian federal government also work together on training. A key tool is the 2013 manual (ACCORD, 2013), which was originally intended for the production of training material. ACCORD trains both new BFA employees and Federal Administrative Court employees. Just like EASO, ACCORD organises a four-week training course each year, using the same EASO training material. EASO also commissions ACCORD to provide training material.

#### **4.2.4 Contact judge**

In order to build up their expertise, the Federal Administrative Court judges who deal with asylum cases have been assigned specific countries. For every group that deals with cases involving asylum seekers from a specific country, one judge serves as a point of contact. This is the contact judge (*Ansprechsrichter*). The responsibilities of one employee include gathering country of origin information and forwarding this to the contact judge.<sup>118</sup> The contact judge is responsible for coordinating and disseminating this information among the group of judges. The information is uploaded to a computer folder that all members can access. In addition, group members consult regularly on the latest developments in the countries of origin and legal aspects. This unofficial structure ensures that knowledge levels remain high.<sup>119</sup>

### **4.3 Poland**

#### **4.3.1 Organisation**

In Poland, the government institution responsible for preparing country of origin reports is the Country of Origin Information Unit, which comes under the Office for Foreigners' Department for Refugee Procedures. It also provides written answers to questions from employees and, in some cases, management or the Border Guards. Although reports are available for all countries of origin of asylum seekers, these are only prepared and updated on request.<sup>120</sup> Of those seeking asylum in Poland in 2019, 64% come from the Russian Federation (Chechnya).<sup>121</sup> The internal guideline is that a report produced by the Country of Origin Unit may not be older than around six months. Until 2015 the gathered country of origin information was available to the public through a [website](#), but since then the country of origin information is only made available to parties involved in a case. These parties have the right to publish the report that has been used in that case and also country of origin reports can be published upon request. Poland has no country-specific asylum policies. Due to the relatively low number of applications for asylum, the Department believes a case-by-case approach is the more obvious way to proceed.<sup>122</sup>

Legal assistance to asylum seekers is provided by lawyers, legal assistants and NGOs during the appeal phase.<sup>123</sup> One organisation that offers legal assistance is the Helsinki Foundation for Human Rights. Due to a lack of funds, however, this is limited to those cases most suited to strategic legal proceedings. Until 2015, this organisation received support from the Asylum, Migration and Integration Fund (AMIF), through the Polish government. But since then the Polish government no longer divided the money of this fund between NGOs. As a consequence, the Helsinki Foundation for Human Rights has produced only a single report, on Chechnya (Klaus, Ostaszewska-Zuk & Szczepanik, 2017). This report has been translated into English.<sup>124</sup>

The judiciary does not carry out any autonomous investigations into country of origin information, but verifies whether the authorities consider all relevant known information and information submitted by a lawyer when making decisions.<sup>125</sup>

#### **4.3.2 Use of other public sources if own reports are not available**

If no country of origin report is available, Department for Refugee Procedures employees have the option of referring to sources made publicly available by other organisations (both nations and NGOs). Employees are trained in the use of country of origin information sources. The criteria for using country of origin information are relevance, topicality, internal and external coherence with other country of origin information and other evidence, including statements made by the asylum seeker in question. Sources are further assessed on whether they are public, whether they are often used and cited, whether they are updated regularly, whether the organisation can be verified and whether they cite underlying sources. All material that may assist in assessing the application for asylum is permissible. The asylum seeker him- or herself may also supply country of origin information. Generally speaking, statements made by relatives or persons who travelled to a country for personal reasons or for tourism are considered less reliable or subjective. The same goes for press reports in sources that prove difficult or impossible to verify, such as 'niche' African newspapers that any person can pay to publish an article about themselves, as checks of Polish diplomats verified.<sup>126</sup> That said, there is little discussion in Poland about sources of country of origin information. Most disputes in Poland concern the credibility of asylum seeker statements. As a consequence, according to the Helsinki Foundation for Human Rights, there is no relevant case law on country of origin information.<sup>127</sup>

## **4.4 United Kingdom**

### **4.4.1 Organisation**

In the United Kingdom (UK), the government institution responsible for deciding on applications for asylum is the Home Office. The Country Policy and Information Team (CPIT, which comes under the Policy Unit's International Directorate) is responsible for supplying country of origin information for the purpose of deciding

on applications for asylum. This team currently consists of 19 members. They produce five main products:

- [\*Country Policy and Information Notes \(CPINs\)\*](#). These are public, themed documents that contain country of origin information as well as guidelines for decision-makers regarding specific issues arising from applications for asylum. At the time of writing, 41 CPINs were active and in use.<sup>128</sup>
- *Medical CPINs*. These are public reports on medical and health issues. These reports exclusively contain country of origin information and at most a general advice for decision-makers, such as a reference to case law. However, the team members do not judge the country of origin information.
- *Country Background Notes*. These public reports provide a general overview of the situation in a particular country and include a non-exhaustive list of the main issues raised in applications for asylum. They contain no guidelines.
- *Origin verification tools*. These are internal documents designed to aid in establishing the country of origin of undocumented asylum seekers.
- *Answers to requests for information*. These are internal documents that answer questions raised with the team by decision-makers. Around 1,200 questions are raised each year.<sup>129</sup>

When preparing these products, the team uses the ACCORD manual and the common EU guidelines as a frame of reference.

If the Home Office decides to reject an application for asylum, the asylum seeker in question has the right to appeal to the Immigration and Asylum Tribunal. The NGOs ARC Foundation and Asylos can support legal assistance providers with case-specific country of origin information reports. However, many legal assistance providers in the UK do this research themselves and can also contact a country of origin expert, who will prepare a report specifically for the relevant case and/or give evidence during the hearing. The perception among legal assistance providers is that in some cases this is more likely to lead to a successful outcome than the use of more general country of origin information, as the information is better tailored to the person in question. The fact that legal assistance providers may apply for funding to instruct an expert and that the time available to legal assistance providers in the preparation of asylum cases is often extremely limited is also likely to play a role.<sup>130</sup>

Immigration and Asylum Tribunals sit throughout the country. Judges on these tribunals often study country of origin products prepared by the Home Office and set great store by them, although they do not have the same special status as official country reports in the Netherlands. In addition, the judiciary holds UNHCR reports in high regard.<sup>131</sup> Senior immigration judges, who sit in London, issue landmark rulings on the legal interpretation of country of origin information. The main objective of these rulings, [\*known as Country Guidance Decisions\*](#), is to promote consistency when it comes to judgments and decisions (Thomas, 2008).

In recent research on the Country Guidance Decisions Vogelaar (2019) concluded:

'The assessments are based on a comprehensive range of COI, including information from expert witnesses, governmental agencies, United Nations agencies, non-governmental organizations, and news agencies. However, the country guidance determinations would benefit from a more uniform, structured approach to improve the transparency of the assessment of the reliability of information and the balancing process of COI.' (Vogelaar F. , 2019)

All tribunal judges are bound by these rulings. In the strict legal sense, this does not apply to the Home Office. Nevertheless, it would make little sense not to change the existing policy after such a ruling, given that all appeals against a rejection would be upheld otherwise. By consequence, the Country Policy and Information Team amends any relevant CPINs following a Country Guidance Decision if required.<sup>132</sup> Asylum and Immigration Tribunal decisions may be appealed.

The Independent Chief Inspector supervises all parts of the migration law decision-making process, including the gathering and use of country of origin information. He is assisted in this by a panel named the Independent Advisory Group on Country Information (IAGCI). This panel is currently chaired by an academic. In addition, it comprises four other academics, a UNHCR representative, a representative of the Asylum and Immigration Tribunal and a representative of legal assistance providers.<sup>133</sup> At the request of the Independent Chief Inspector, the panel issues between three and four reports a year, each with a specific focus on a particular CPIN. To this end, the panel hires an external party (usually a country of origin expert) who compiles the report on the basis of predetermined criteria. The author of the report, the panel and the Independent Chief Inspector then discuss the report's recommendations with CPIT, following which the Independent Chief Inspector compiles another report. In 2006, the ACVZ issued the advisory note *Transparent en Toetsbaar* (Transparent and Verifiable), in which it recommended setting up a similar independent supervision system for official country reports (ACVZ, 2006). This recommendation was not followed (see Chapter 5).

#### **4.4.2 Country Policy and Information Notes (CPINs)**

CPINs are the Country Policy and Information Team's most important product. The UK is the only country in Europe to combine the gathering of country of origin information and the formulation of country-specific asylum policies into a single position, unit and document, although UNHCR uses a similar approach for its eligibility guidelines (see Appendix 1).

The Country Policy and Information Team made a conscious decision a few years ago to combine the gathering of country of origin information and the formulation

of policies into a single unit, position and document. It should be noted in this regard that although they are contained in the same document, the policy and country of origin information are described separately. The advantage of this approach is that the entire procedure is conducted under a single roof from beginning to end and is the responsibility of a single person. If one unit were to gather country of origin information and another were to formulate policies, any information read and considered by employees but not ultimately incorporated into the report would be lost. In the view of the head of CPIT, the difference between considering and interpreting sources of country of origin information on the one hand and interpreting them in the light of a legal and policy framework and drawing conclusions on the other is a small one. Furthermore, employees are assisted in preparing CPINs by legal and policy advisers from both the Home Office and the Foreign Office. The preparation phase is followed by a peer review phase, during which experts provide input on the draft note.

#### *Customer focus*

According to the head of CPIT, the current working method (whereby the positions are combined) is better suited to the report end users' needs than if this were not the case. The team produces no country of origin reports that are not translated into policies (e.g. because the policy department has other priorities) or for which there is little use in practice. The same is true of the reverse: the current working method prevents suppliers of country of origin information from setting priorities other than supplying the country of origin information needed for policy development or the decision-making process. In addition, the thematic approach is a better fit with the end users' needs as well. Instead of having to search a vast general report for passages that pertain to the asylum seeker's story, decision-makers can refer to the shorter, themed report straight away and check the same document for any legal conclusions the Home Office has drawn.

#### *Topicality*

Writing a draft CPIN takes around one month, with the peer review phase taking up to another two months. This amounts to a relatively quick and versatile process. This rapid turnaround is possible in part because the country of origin information section of the note mainly consists of direct citations from other country of origin reports instead of synthesis. Also, combining the positions of country of origin information researcher and country of origin policy adviser has led to time savings.

CPINs are generally reviewed every two years. If they are no longer up to date, they are amended or archived. In the latter case, they are removed from the Home Office website but can still be found elsewhere on the internet, for example on the Ecol.net portal.

Each quarter, the team sets priorities based on a list of 12 criteria, including:

- the lapse of the previously mentioned two-year period;
- the influx of asylum seekers;
- specific end user requests;

- an analysis of the questions received by the team (see above);
- a trend analysis;
- upheld appeals;
- Country Guidance Decisions;
- world events;
- fact-finding missions;
- a review by the Independent Chief Inspector or IAGCI.

#### *Transparent and verifiable*

All CPINs are available to the public. This means that the UK's policy for that country of origin is more transparent than the Dutch one if an official country report is not available. In such a case, it is often unclear which country of origin information the Dutch Immigration and Naturalisation Service (IND) uses, because the documents produced by the IND's Country and Language Research and Expertise Team (TOELT) are not publicly available and the sources on which decisions are based are often not stated or not stated accurately (see paragraph 3.2.5 and chapter 5 for more information). Dutch policies or guidelines for decision-makers are not available to the public in such a case either.

The CPINs are overseen by the Independent Chief Advisor and their application in individual cases is subject to judicial assessment (see above), following which a CPIN may be amended if necessary. As the CPINs are available to the public, they are also open to criticism from NGOs and legal assistance providers.

#### *Success of CPINs*

The Home Office itself has concluded that the CPINs meet a need and are more effective than reports with general country of origin information, followed by the formulation of separate country of origin policies. As decision-makers are required to adjudicate on applications for asylum quickly, they have a need for clear guidelines supported by country of origin information that can be applied to the case in question. The CPINs have also attracted international attention –in the previous chapter, we mentioned that decision-makers in other European countries also consult the CPINs. In addition, CPIT has received several delegations in recent years from countries outside Europe with an interest in its working method.<sup>134</sup>

The head of the team thinks there may still be room for improvement when it comes to both speed and customer focus. Another challenge is making the reports more concise without compromising on quality. Younger employees in particular expect to receive short, detailed reports that have been tailored to the case they are dealing with. On the other hand, it should be clear to Asylum and Immigration Tribunal judges on what basis decisions were taken. These competing requirements need to be balanced.

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<sup>80</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

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- <sup>81</sup> Article 4, opening words and (a), (b), (c), (d) and (e) of Regulation 439/2010.
- <sup>82</sup> For the Netherlands, this refers to the IND's TOELT officers. Since 2018, country experts of the Ministry of Foreign Affairs are also increasingly participating in EASO's COI network.
- <sup>83</sup> Interview IND (TOELT) 18 September 2019.
- <sup>84</sup> See answers to Parliamentary Questions No. 1522.
- <sup>85</sup> Interview Division 26 September 2019.
- <sup>86</sup> Interviews ARC Foundation 14 January 2020, VWN 24 October 2019 and IND (TOELT) 18 September 2019.
- <sup>87</sup> Interviews Zwaan 11 September 2019, VWN 24 October 2019, UNHCR Geneva 13 January 2020, UK Home Office 14 January 2020.
- <sup>88</sup> Interviews VWN 24 October 2019 and UNHCR Geneva 13 January 2020.
- <sup>89</sup> Council of the European Union, Outcome of the 3461st Council Meeting, 21 April 2016, Document Number 8065/16, p. 11.
- <sup>90</sup> In line with the Country Guidance on Afghanistan, the Minister for Migration has designated Mazar-e-Sharif and Herat as locations that offer an internal protection alternative. See *Parliamentary Papers II*, Session Year 2019-20, 19637, No. 2527.
- <sup>91</sup> Interviews Zwaan 11 September 2019 and VWN 14 October 2019.
- <sup>92</sup> Interviews VWN 14 October 2019 and UNHCR The Netherlands 31 October 2019. See *Parliamentary Papers II*, 2019-20, 19637, No. 2527.
- <sup>93</sup> This is an updated version of their previous 2012 methodology report.
- <sup>94</sup> Recital 10 of the Preamble, EU Asylum Procedures Directive.
- <sup>95</sup> Recital 46 of the Preamble.
- <sup>96</sup> Interviews IND (TOELT) 18 September 2019, IND (SUA) 26 September 2019, Fötsch 27 September 2019, Zwaan 11 September 2019, Vogelaar 17 October 2019, UNHCR Geneva 13 January 2020, VWN 24 October 2020.
- <sup>97</sup> Interviews Zwaan 11 September 2019, Vogelaar 17 October 2019, VWN 14 October 2019.
- <sup>98</sup> COM(2016) 271 final 2016/0131 (COD) Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and Repealing Regulation (EU) No 439/2010.
- <sup>99</sup> Chapter 3, Articles 8 to 11.
- <sup>100</sup> European Parliament, Legislative Train 02.2020, Strengthening the European Asylum Support Office (EASO), pp. 1-2.
- <sup>101</sup> COM(2016) 633 final 2016/0131 (COD) Amended Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and Repealing Regulation (EU) No 439/2010.
- <sup>102</sup> The Permanent Representatives Committee, also known as Coreper, is composed of ambassadors representing the interests of their own Member State with respect to the European Union.
- <sup>103</sup> European Parliament, Legislative Train 02.2020, Strengthening the European Asylum Support Office (EASO).
- <sup>104</sup> Written information provided by Staatendokumentation, 25 February 2020.
- 2 'According to the law, the COI department is assigned to gather information as basis for the decision-making regarding: 1. To determine if factual evidence can conclude the existence of persecution in a certain country; 2. To assess the credibility of statements provided by asylum seekers and foreigners; 3. To decide if a certain country is considered a safe country of origin or if a safe third country can be considered as such, in accordance with the law.
- <https://www.staatendokumentation.at/site/assets/files/1040/folder-staatendokumentation-english-2016-08.pdf>
- <sup>106</sup> <https://www.staatendokumentation.at/site/assets/files/1040/folder-staatendokumentation-english-2016-08.pdf>
- <sup>107</sup> <https://www.staatendokumentation.at/site/assets/files/1040/methodologie-der-bfa-staatendokumentation-2016-12-20.pdf>
- <sup>108</sup> Written information provided by Staatendokumentation, 25 February 2020.
- <sup>109</sup> As is required by art. 37.4 of the directive 2013/32/EU on common procedures.
- <sup>110</sup> Bundesverwaltungsgericht interview, 3 February 2020.
- <sup>111</sup> Bundesverwaltungsgericht interview, 3 February 2020.
- <sup>112</sup> Bundesverwaltungsgericht interview, 3 February 2020.
- <sup>113</sup> Written information provided by Staatendokumentation, 25 February 2020.
- <sup>114</sup> Written information provided by Staatendokumentation, 25 February 2020.
- <sup>115</sup> Written information provided by Staatendokumentation, 25 February 2020.
- <sup>116</sup> ACCORD interview, 21 January 2020. The cost is €60 per semester. This publicly available information mainly concerns query responses.
- <sup>117</sup> This mostly concerns responses to queries. ACCORD interview, 21 January 2020.
- <sup>118</sup> The employee's other duties include investigating recent news items on Afghanistan in particular.
- <sup>119</sup> Bundesverwaltungsgericht interview, 3 February 2020.
- <sup>120</sup> Written answers provided by the Department for Refugee Procedures, 5 February 2020.
- <sup>121</sup> Eurostat table 'Asylum and first asylum applicants by citizenship, age and sex Annual aggregated data (rounded), consulted on 30 March 2020.
- <sup>122</sup> Written answers provided by the Department for Refugee Procedures, 30 March 2020.

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<sup>123</sup> Written answers provided by the Department for Refugee Procedures, 5 February 2020. <https://www.asylumineurope.org/reports/country/poland>

<sup>124</sup> Helsinki Foundation for Human Rights interview, 17 January 2020.

<sup>125</sup> Written answers provided by the Department for Refugee Procedures, 5 February 2020.

<sup>126</sup> Written answers provided by the Department for Refugee Procedures, 5 February 2020.

<sup>127</sup> Helsinki Foundation for Human Rights interview, 17 January 2020.

<sup>128</sup> For an overview, see: <https://www.gov.uk/government/collections/country-policy-and-information-notes>

<sup>129</sup> Written information provided by Uk Home Office, 8 January 2020.

<sup>130</sup> ARC Foundation interview, 14 January 2020.

<sup>131</sup> UK Home Office interview, 14 January 2020.

<sup>132</sup> UK Home Office interview, 14 January 2020.

<sup>133</sup> UK Home Office interview, 14 January 2020; CPIT, UNHCR Genève interview 13 January 2020.

<sup>134</sup> UK Home Office Interview, 14 January 2020.





## Chapter 5

# Conclusions and recommendations

**In this chapter, we summarise the main findings, followed by a discussion of the possible solutions. The chapter concludes with four key recommendations.**

## **5.1 The more sources the better (?)**

We have examined how, in the absence of an Official Country Report or an up-to-date version thereof, other public COI sources can be used as effectively as possible in the areas of policy and decision-making, implementation and legal protection, and to what extent these sources can be classified in an order of ranking.

The case file review and interviews show that in some cases, when an Official Country Report is missing, other available sources are not sufficient. On the other hand, we believe that in many cases there is an excess of sources (Chapter 3 and Appendix 3). Formisano has previously expressed this problem as follows (Formisano, 2011):

'The current multitude of sources of information paradoxically renders access to good quality Country of Origin Information for refugee status determination procedures quite cumbersome.'

The present use of COI sources has been assessed based on seven criteria: relevance, reliability, balance, topicality, accuracy, transparency and traceability (Section 3.2). Our case file review shows that, in the absence of an Official Country Report, the IND, lawyers and judges are currently using COI from a multitude of varied sources (see Section 3.2.3 and Appendix 3). However, the use of these sources varies (depending on the officer), cannot be always deduced from the decisions taken or other public documents, and does not always occur in a systematic manner (see Section 3.2.5). Yet the criteria of transparency and traceability require persons using COI to present this in a clear and findable manner. An asylum decision or a court judgment carries more authority if the information can be traced and checked. Based on the obligation to state reasons and the principle of fair play, it follows that the asylum seeker has the right to know the information on which the asylum decision is based.<sup>135</sup> Legal aid providers can also strengthen their legal arguments by providing transparent information (ACCORD, 2013, p. 35).

## **5.2 Advantages and disadvantages of using public sources other than the Official Country Reports**

Below, we summarise the advantages and disadvantages of the current approach when no or no recent Official Country Report is available or when such a Report is available.

### *Advantages and disadvantages of working with Official Country Reports*

Although the request for advice focuses on how to proceed if no or no recent Official Country Report is available, this Advisory Report is also relevant in cases where the IND, lawyers and/or the courts use other sources of COI in addition to the Official Country Report. This is often seen in practice, but it is not the focus of our review. Nevertheless, we can formulate a number of advantages and disadvantages of working with Official Country Reports based on our review.

IND officers see many advantages in working with Official Country Reports from the Ministry of Foreign Affairs. These benefits mainly relate to reliability. An advantage of Official Country Reports is that they are often based on fact-finding missions and reports by Dutch representations abroad. During these fact-finding missions, the authors of Official Country Reports speak to sources that usually have first-hand information (primary sources), which is preferable to consulting secondary sources because it helps avoid cross-referencing (Section 2.3.5.).<sup>136</sup> Consulting primary sources is also a way of verifying information from other sources. However, the use of primary sources does not necessarily mean that this information is of better quality. After all, a primary source may also provide incorrect information (ACCORD, 2013, p. 87). One disadvantage of the use of primary sources is that they are often mentioned anonymously, as a 'confidential source' (for protecting the source) in the Official Country Report. As a result, other COI researchers cannot use the information to fill existing gaps in COI. Moreover, this is at odds with the principle (for researching and using COI) of using public information in asylum procedures so that statements and their sources are transparent and traceable. However, this disadvantage can be overcome because the Dutch judge has the opportunity to find out the identity of the source.

Secondly, the process of drafting Official Country Reports is fairly transparent (due to the publication of the Terms of Reference). It is a public source that can be reviewed by the lawyer and the judge. Since the responsibility for drawing up an Official Country Report has been assigned to a different Ministry (Foreign Affairs), the separation between the organisation responsible for processing the asylum applications (IND, an agency of the Ministry of Justice and Security) and the COI provider is greater than when the TOELT provides this information. This may help increase the objectivity of the information and reduce conflicts of interest or the appearance thereof. However, it should be noted that it does still involve the Dutch government, and that the actual effect of the separation between the Ministries is often questioned by outsiders (ACVZ, 2012, pp. 58-59).

Thirdly, it is an advantage that when an Official Country Report is published, the Ministry of Justice and Security develops or adjusts the public country-specific asylum policy and informs the House of Representatives thereof. This promotes consistent decision-making practices and makes the country-specific asylum policy transparent and verifiable.

Finally, an additional advantage of the Official Country Report is that it is a document written in Dutch that focuses on issues within the Dutch asylum practice and has a fixed format. IND officers can, in principle, count on the author of the Official Country Report having verified the sources used against the applicable criteria. If an Official Country Report is absent, the IND needs to play a more active role.<sup>137</sup>

#### *Advantages and disadvantages of using other public sources*

If an Official Country Report is missing or outdated, the Ministry of Justice and Security is responsible for collecting, analysing and presenting COI from other sources. This task is mainly entrusted to the TOELT, but case workers may also collect COI independently (see Section 1.1.2 and Chapter 3).

The first advantage is that the TOELT's working method is more flexible and makes it possible to respond to current events, because current information is provided at the request of the case worker. As a result of this working method, the TOELT also serves as a source of information that is easily accessible even in cases where an Official Country Report is available. In our opinion, the disadvantage of this ad hoc work process is that it is not very systematic. It depends, to a large extent, on whether and, if so, what COI is taken into account by the case worker, leading to varying implementation practices and reduced effectiveness. This can also have a negative impact on efficiency. In addition, the TOELT's method is not transparent to outsiders and their documents are not public.

A second advantage of not having an Official Country Report is that none of the sources are assigned a special status in advance, as is the case with Official Country Reports (see Section 1.1.2), as a result of which all available sources can be viewed with an open mind.<sup>138</sup>

Case workers also search for COI themselves. A disadvantage of this is that the use of other sources of information may become a matter of coincidence, for example, whether or not an IND officer or lawyer is able to find and consult a relevant source. A related disadvantage is that case workers and policy officers, can be overwhelmed by the numerous sources and search options available. Another drawback is that, in the absence of an Official Country Report, the case workers or policy officers themselves have to assess the sources, where otherwise one might assume that the author of the Official Country Report has already done so.

Reports from other sources are not specifically written in response to questions from the Dutch practice. This can make it difficult to draw up a good country of origin policy.<sup>139</sup> In the absence of an Official Country Report, the Netherlands is dependent on the information that the other source decides to share and the used terms of reference. However, this problem can be wholly or partly solved by focusing not just on one but various other reports.

Other governments or organisations also carry out fact-finding missions or have contacts on the ground. In some cases, the organisations that prepare COI reports are based in the country itself, which means that, like the Ministry of Foreign Affairs, they may also have first-hand information.<sup>140</sup> The disadvantage is that if these organisations cite confidential sources, the identity of the source cannot be identified by the Dutch court easily or at all.<sup>141</sup> Another special point of attention when using other secondary sources is that the IND officer, lawyer or judge needs to carefully examine the primary source from which the information of the secondary source is derived. Secondary sources regularly refer to one another, so that the original information communicated by the person or organisation, based on first-hand knowledge, may get lost.

Another drawback that affects the quality of the sources is the unfamiliarity with how other sources have been drawn up and researched.<sup>142</sup> However, some other sources of COI do describe their research methods fairly accurately, such as Human Rights Watch and Freedom House (see Appendix 1).

Finally, an additional disadvantage is that language is an important barrier in terms of access to COI.<sup>143</sup> Information from other sources will often be written in a language other than Dutch, making them less accessible or inaccessible. The case file review shows that if a recent Official Country Report is missing, it is almost always English-language sources that are used (see Section 3.2.2.). This means that a wealth of information in other languages is not being used. In addition, information may also be lost in translation when using English-language sources.

To summarise, we have identified below the eight bottlenecks for which we have formulated solutions. These bottlenecks are as follows:

1. preparation of Official Country Reports is a time-consuming activity.

Due to limited capacity:

2. a limited number of Official Country Reports are published;
3. not all Official Country Reports can be updated annually;
4. following a flexible schedule for preparing Official Country Reports is only possible to a limited extent.

In the absence of an Official Country Report:

5. sources identified as being relevant in the EU Asylum Procedures Directive are used relatively little (Section 3.2.1);
6. it is not always clear why certain sources are or are not chosen (Section 3.2.3); the use of sources by both the IND and lawyers is uneven and often inaccurate and these sources are often not easily traceable or not traceable at all (Section 3.2.5);

7. guidelines for the legal interpretation of COI (in the absence of country-specific asylum policy in the Vc) are not public and have not been developed in a systematic manner (Section 3.3);
8. language is an important barrier in terms of access to information.

## 5.3 Potential solutions

### Ranking is not a solution

Based on our review, we have come to the conclusion that using an order of ranking is undesirable and therefore we will not be able to comply with the Minister's request to rank public sources of COI, 'so that they can be regarded as reliable, just as the Official Country Reports'. However, we present a number of solutions below for the aforementioned bottlenecks and for ways of using public sources of COI other than Official Country Reports in accordance with the developed quality criteria and general principles of good governance in the policy and decision-making process, implementation and legal protection. These solutions lead to four key recommendations that we will outline in the next section. Many of the presented solutions require collaboration between different parties. It is important to hold constructive, realistic and systematic discussions on the required capacity, needs, preconditions and mutual expectations for a more intensive cooperation in the area of COI.

### Potential Solution 1: Thematic COI reports by the TOELT

- The TOELT draws up COI reports based on public COI (Bottlenecks **2 and 6**).
- The TOELT's reports do not contain policy, but rather 'pure COI' and are published separately from policy.
- The TOELT's reports relate to a theme (for example, a specific group of people) (Bottlenecks **1, 2 and 3**).
- A fixed set of indicators for determining whether or not a report is needed (Bottleneck **4**).
- In the reports, the TOELT 'gives the floor', so to speak, to the source as much as possible, with source references (Bottleneck **1, 2 and 3**).
- An external control mechanism monitors quality, neutrality and impartiality (Bottleneck **5 and 6**).
- The TOELT regularly updates or archives COI at reasonable intervals (Bottleneck **3**).
- If no or no recent Official Country Report is available, the Minister for Migration formulates policy based on this thematic report (Bottleneck **7**).

With this potential solution, we address Bottlenecks **1, 2, 3, 4, 5, 6** and **7**.

### *Expertise*

As an expert with the necessary experience in the area of COI research, the TOELT currently prepares all internal COI reports and answers specific questions from case workers (Section 1.1.2). In view of its knowledge and experience, the TOELT is therefore capable of preparing public COI reports that meet the quality criteria. The team may need to be supplemented by one or more social media and data technology experts. A model in which each case worker and policy officer independently conducts source research increases the risk that this research will be carried out in a careless and uncontrolled manner, because the officer is not or not sufficiently trained for this.

### *Transparent and traceable*

In order to prepare these reports in accordance with one of the defined principles for analysing COI, we believe that publicly available and accessible information should be used as much as possible. If the TOELT refers to this information in an adequate and systematic manner (Bottleneck **7**, also see Potential Solution 2), this will improve transparency and traceability. The Minister can use these thematic COI reports to determine policy in the absence of an Official Country Report and the IND can use them for assessing asylum applications (Bottleneck **2**). It is essential that the TOELT works in a systematic manner, according to a fixed pattern, based on the aforementioned manuals or a document based on them and in line with a Terms of Reference tailored to Dutch practice. In this way, the TOELT can avoid superfluous information and focus on elaborating on issues that are relevant to the decision-making practice. From the point of view of transparency and to guarantee quality, it is desirable to make the working method public (Bottlenecks **6 and 7**). The description of the working method in the Country Policy and Information Notes or the methodology published by *Staatendokumentation* can serve as a model for this (see Sections 4.2 and 4.4.). Moreover, the TOELT should prepare the information reports based on triangulation (see Section 2.3.3), where it should in all cases make use of the sources mentioned in the EU Asylum Procedures Directive, if they are available (Bottlenecks **5 and 6**). Following the example of the UK Home Office, a list of indicators may be used for determining when a new COI report needs to be issued.

### *Synthesis and language*

Synthesising the information is an option that offers both advantages and disadvantages. Omitting this step saves time and this may be considered now that more COI is needed (Bottlenecks **1 and 3**). In addition, making a synthesis requires a certain level of expertise in this area. In case of insufficient time or expertise in this area, the TOELT may choose to merely cite the source, without including too many associated sections of text. This would meet the need, as expressed by the Minister, for more frequent reporting (Bottleneck **2**). Since language can be an obstacle, the quoted texts could be translated by a translator (Bottleneck **8**).

### *External quality test*

The principle of non-prejudice (Section 2:4 of the Awb) and the general fair play principle of good governance are important underlying principles for the use of COI. The formal independence of COI researchers from the parties involved in a proceeding can lead to greater impartiality. In any case, ACCORD advises the separation of the COI unit and the decision-making and policy departments, as is currently the case in the IND (ACCORD, 2013, p. 36). The independence, quality of, and support for the TOELT's reports can be enhanced by incorporating an external control mechanism in addition to an internal control mechanism (Bottlenecks **6 and 7**). UNHCR (as a 'relevant source' of COI)<sup>144</sup> and the VWN (as an 'influential source')<sup>145</sup> can play a formal role in this. The approach followed by the UK and EASO can serve as an example. The UK and EASO use a quality control system where external experts review and comment on the content and method of the report. EASO has an agreement with the organisations ACCORD and the ARC Foundation (which works closely with the VWN) to have their COI reports reviewed, particularly the method used in the report. In consultation with the Member States that participate in the preparation of the report, EASO decides whether or not to use this system. Moreover, for complex or non-standardised themes, EASO uses the services of external country experts who mainly review the content, rather than the method.

### *Neutrality, impartiality and topicality*

The TOELT can send its information reports to the Parliament in the same way as the Official Country Reports. This also applies to any policy changes based on the information reports. It is particularly desirable that this happens since the TOELT is more closely associated with the decision-making process than the Ministry of Foreign Affairs. Another option is to take the ACVZ's earlier advice and place the TOELT at a distance from the IND (ACVZ, 2012). At the same time, the study also shows that case workers and policy officers can learn a lot about COI from the COI researchers. From this perspective, a closer cooperation with regard to the exchange of information on the sources, methods and quality of COI would be desirable (Bottlenecks **6 and 7**). The TOELT can ensure that the reports are made publicly available online and regularly updated to provide current information. A reasonable period could also be set for the archiving of reports, so that it is clear that they no longer apply to the current situation (Bottleneck **3**).

### *Capacity*

In the request for advice, the Minister for Migration mentions that a limited capacity at the Ministry of Foreign Affairs results in the issue of a limited number of Official Country Reports, that not all Official Country Reports can be updated annually, and that a flexible schedule for the drafting of Official Country Reports is rarely possible. The TOELT is able to work in a more flexible and demand-oriented manner and can supplement the Official Country Reports by publishing the COI reports as described here. Based on the UK example, we see that a team of similar size to the TOELT is capable of making 41 public thematic COI reports available

concurrently and keeping them up-to-date, besides performing other tasks such as answering questions from decision-making officers.

### **Potential Solution 2: Present COI in a systematic manner in both intended and final decisions**

- Interview and decision-making officers apply a uniform method when referring to COI sources.
- This approach is outlined by the SUA in an IND work instruction.
- The SUA uses the ACCORD and EASO manuals for drawing up this work instruction.
- In public and internal documents, interview and decision-making officers present - for each relevant element of the asylum account - the COI on which this element is based and indicate where this COI was found.

This potential solution is aimed at resolving Bottleneck **6**.

#### *Balance*

The criteria to be met by COI and its source apply not only to the preparation of COI reports, but also to individual asylum decisions. In case of the latter, a legal conclusion is derived rather than a conclusion based on COI.<sup>146</sup> It is therefore important to pay close attention to the ACCORD and EASO manuals when drawing up intended and final decisions. This implies that, in the absence of an Official Country Report, not only is it necessary to consult at least one other source but also other reports and/or news reports from different organisations in order to verify the extent to which these corroborate one another (see Section 3.2.3).

#### *Transparent and traceable*

The case file review shows that in some of the cases, even though COI has been used, this is not reflected in either the intended or final decision. It is therefore advisable to use a uniform method for referring to COI. The explicit mention of the COI that forms the basis of an intended or final decision will ensure that this aspect is actually transparent and traceable. A thorough way to do this would be to refer in footnotes to the COI document and page numbers, so that the used passages can easily be looked up. This can be done based on the guidelines provided in *Leidraad voor juridische auteurs* [Guide for Legal Authors] (Kluwer, 2019). Moreover, the use of insufficient COI or questionable sources should be more explicitly apparent. This working method can be included in a public work instruction.

#### *Use of portals and training*

It is important for case workers to be able to independently analyse COI and not get overwhelmed by the sheer volume of different sources. The starting point for this could be that case workers initially consult the TOELT's COI reports and/or ask a direct question, followed only where necessary by an independent consultation

of a COI database, such as Ecoi.net, that has already been reviewed by other COI researchers. The use of search engines such as Google is best avoided.

Handling COI in individual cases requires a different approach than that for preparing policies or reports. Training (possibly by ACCORD or EASO) on how to search for and use of COI on individual cases should therefore be given a permanent place in the training programme for new officers responsible for taking asylum decisions. The content of the training should depend on the extent to which case workers are required to collect and analyse information independently.

As a possible solution for the limited time available to case workers, several respondents have suggested that case workers can work with predefined templates containing standard considerations with respect to certain groups.<sup>147</sup> The most relevant sources that have said something on this topic can be included in the template. If necessary, the source and its reliability can also be discussed. The standard considerations used should be properly updated and adjusted on a quarterly basis. Working with standard considerations does not release individual case workers from their task of assessing whether the full text of this consideration is appropriate to the decision and the individual circumstances.

### **Potential Solution 3: Specialisation by country**

- Divide case workers into teams
- Include officers with knowledge of local languages in the teams

Case workers can be divided into teams, where they only process asylum applications from asylum seekers from one or a few countries of origin. This will help develop both country-specific expertise and knowledge regarding the specific sources that publish information about a country or region (Bottleneck **6**). Ensuring that the team has knowledge of the common languages in the region will help reduce dependence on English-language sources (Bottleneck **8**). This can result in higher quality decisions and can save time in the long run. The disadvantage of this potential solution is that it makes the organisation as a whole less flexible: if there are a greater or lesser number of asylum applications from a certain region, officers will need to be retrained.

This potential solution addresses Bottlenecks **6** and **8**.

### **Potential Solution 4: Publish country-specific asylum policy in a systematic manner**

- Use the ACCORD and EASO manuals as a basis for this
- Apply a uniform approach for referring to sources of COI in policy documents
- Update policies regularly or at least archive policies after one and a half to two years

The criteria to be met by COI and its source apply not only to the preparation of COI reports, but also to the policies. In the latter cases, a legal conclusion is derived rather than a conclusion based on COI as stated in the EASO methodology.<sup>148</sup> It is therefore important to pay close attention to the ACCORD and EASO manuals when drawing up policies. Country-specific policy is primarily based on COI. For this reason, it is essential for the policy officers who draw up country-specific policy to be also trained in analysing sources and handling COI.

#### *Transparent and traceable*

The recommendations proposed for the intended and final decisions are also applicable here.

#### *Topicality*

At present, country-specific asylum policy is based almost exclusively on the Official Country Reports. As a result, these policies often become obsolete when new developments occur, because no new Official Country Report is yet available.<sup>149</sup> Naturally, policy-making or a policy change must result from thorough research, but the Official Country Report need not be the sole driver for a policy adjustment. As mentioned above, this can also be done based on information from various other sources. The TOELT can play a role in this by preparing COI reports. Furthermore, other relevant information that has emerged after the publication of the Official Country Report must also be taken into consideration. Efforts can be made to publish the policies simultaneously with the COI report. It is also important to publish the existing policy in the Aliens Act Implementation Guidelines and update it regularly. If the policy is not updated, it should be archived after a reasonable period of time.

This potential solution addresses Bottlenecks **4**, **6** and **7**.

#### **Potential Solution 5: Use safe countries of origin system for other country of origin policies**

- Collect information from various sources using Ecoi.net
- Submit this information to the Ministry of Foreign Affairs for verification
- Set up an independent panel for the use of this system

The system used for the list of safe countries of origin could be used to formulate a more comprehensive and transparent country-specific asylum policy, which can replace the internal policy guidelines provided in FAQs and information reports. In this system, the TOELT (by using Ecoi.net) collects information from various sources that is subsequently submitted to the Ministry of Foreign Affairs for a verification of the facts. The Minister for Migration subsequently derives policy conclusions based on this information.<sup>150</sup> It has been noted, however, that the safe countries of origin are those that generally do not have any complex issues relating to the rule of law.<sup>151</sup>

### *Independent COI committee*

If, in the absence, obsolescence or inadequacy of an Official Country Report, a country-specific asylum policy were to be drawn up based on the safe countries of origin system, this would assign a marginal role to the Ministry of Foreign Affairs for the provision of information on the countries of origin for asylum seekers, for the purpose of formulating the country-specific asylum policy for these countries. The Ministry of Foreign Affairs currently plays the role of an independent expert with respect to the drafting of Official Country Reports. The predecessor of the current Minister for Migration has indicated that Official Country Reports are drafted independently of the policy and that the responsibilities of the Minister of Foreign Affairs (COI reports) and those of the Minister for Migration (asylum policy) are strictly separate. At that time, this was a reason for the government to reject the ACVZ's recommendation to establish an independent COI committee, following the example of the United Kingdom (see Section 4.4.1). According to the then Minister for Migration, an independent supervisor would be a 'logical choice' in the absence of such a separation (as might occur in this potential solution).<sup>152</sup>

This potential solution addresses Bottlenecks **4, 5, 6** and **7**

### **Potential Solution 6: Outsourcing**

- Outsource the preparation of COI reports to a specialised organisation
- If necessary, translate the reports into Dutch

There are several organisations that carry out COI research. The Austrian government outsources the drafting of some reports or search assignments to ACCORD (see Appendix 1). In some cases, UNHCR also outsources the preparation of reports to ACCORD or the ARC Foundation. These organisations conduct COI research using the existing manuals, but do not synthesise the information for various reasons. The task of preparing the COI reports could be outsourced to these organisations. The VWN may also be willing to draw up these reports. The reports can be translated into Dutch, if necessary.

This potential solution addresses Bottlenecks **1, 2, 3, 4** and **8**.

### **Potential Solution 7: Start with sources in European law**

The case file review shows that there is sometimes an overabundance of sources, leading to a risk of case workers no longer being able to see the forest through the trees. A possible solution is to limit this risk by advising that the sources explicitly mentioned in European regulations and European case law should be used by all the parties involved as a first step when looking for COI. This would, however, deviate from the manuals stating that primary sources should be used as much as possible. In addition, the sources identified in European law need not necessarily be the best sources when assessed against the criteria set out in Chapter 2. In

addition, the Council of State has previously said that these sources should be used if they are available, but that they are inconclusive and other sources must also continue to be used.<sup>153</sup>

This potential solution addresses Bottlenecks **5** and **6**.

**Potential Solution 8: Public Content Management System (CMS) for sources managed by the TOELT**

- Set up a public CMS with sources that have been assessed against the criteria
- Update this systematically and archive outdated information in a timely manner
- Consider setting up a joint management of the CMS by the TOELT and the VWN's COI department

To clearly show which sources can be used by case workers, the TOELT can maintain a public database for which it will systematically search for sources that meet the criteria, based on the ACCORD and EASO manuals. According to *Staatendokumentation*, such a system will allow the workforce to maintain up-to-date information about more countries without requiring an increase in size (see Section 4.2.2.). Such a system transparently shows the sources that the IND uses or can use to motivate its decisions and helps case workers in their search for sources. The risk is that the system will not be kept properly up to date, as a result of which outdated information may continue to circulate. However, if the system is public, this can also be checked by others. The option of allowing the CMS to be jointly managed by the TOELT and the VWN's COI department may also be considered. After all, our review has shown that there is little debate between COI researchers about the sources of COI, while currently both the VWN and the TOELT are separately collecting information and distributing it internally. Given the overlap in the sources used (see Appendix 3), this will often lead to a duplication of efforts. In Austria, ACCORD and *Staatendokumentation* already cooperate intensively in the area of COI (see Section 5.1).

This potential solution addresses Bottlenecks **1, 2, 3, 4** and **6**.

**Potential Solution 9: Further investment in the development of COI and country of origin policy in the context of the EU**

- Call for a better coordination of the efforts of EASO: fill in the gaps and avoid duplication
- Call for a standard translation of Member States' COI reports into, at the very least, English
- Call for more cooperation and knowledge sharing between COI researchers and policymakers

- Contribute to the further development of a dual system at the European level of EASO on the one hand, and the national NGOs under the ACCORD umbrella on the other

#### *Fill gaps and avoid duplication*

From the efficiency perspective, it is an obvious choice to invest in the further development of COI within the joint networks of EASO (see Section 4.1.). One of the results of our review is that, for the less common countries of origin, there are often no COI reports from EASO and, for the more common countries of origin (such as Afghanistan), many Member States and EASO write extensive reports and update these regularly. As a result, at the European level, there are both gaps in COI and a duplication of efforts. The Netherlands can appeal to EASO to pay more attention to the smaller countries of origin, because the EASO reports on these countries would meet an existing need for information, possibly also in other Member States. The Netherlands can also argue in favour of EASO keeping up-to-date information from the Member States in a CMS for the more common countries of origin, where relevant information and correct source references can be quickly located. The Netherlands can also advocate that all COI reports of other Member States that are issued in the national languages be translated at least into English in the EASO context.

#### *Bridging the gap between COI researchers and policymakers*

The study shows that COI researchers on the one hand, and policy officers and case workers on the other, are not always properly informed about each other's working methods and interpretation of tasks. For example, COI researchers expect case workers and policy officers to carefully read the footnotes in the reports they prepare and then independently consider whether a source can or cannot be used. On the other hand, it turns out that case workers and policy officers often do not have the time to do this, and moreover, they assume that a report must be reliable if it is prepared by an organisation classified as 'reliable'. The UK Home office has chosen to close this gap between the COI researchers on the one hand and the policy officers and case workers on the other, by combining the positions of COI researcher and policy officer. We do not advocate this from the point of view of due care and independence, but it is clear that this approach does meet the need for quick access to information that is more tailored to decision-making practice. The Netherlands can appeal to EASO to invest in efforts to intensify the contacts between COI researchers, policy officers and case workers.

#### *Contributing to the further development of a European dual system*

A dual system is present in many Member States, where both the Member State and NGO employ COI researchers. This has led to the rise of a system of checks-and-balances in various Member States, and it has also led to the creation of a professional group that has developed a methodology for discussing the quality of COI used to substantiate an asylum decision, a notice of appeal or a court judgment. We also see such a system being developed at the European level, in which EASO and ACCORD are playing a key role. We believe that the dialogue

between governments and NGOs can further improve how COI is used in policies, decisions, appeals and rulings. The Netherlands can further contribute to this development through EASO and ACCORD.

This potential solution helps in resolving Bottlenecks **1, 2, 3, 4, 5, 6, 7** and **8**.

### **Potential Solution 10: A more active role for judges**

This can be achieved through:

- Landmark rulings by the Council of State based on a process of strategic litigation
- Setting up a multi-judge division specialised in the judicial assessment of COI

#### *Legal uniformity, legal protection and efficiency*

Another potential solution could involve a more active role played by the judge and more landmark rulings issued by the Council of State (or a multi-judge division) in the interests of legal uniformity and legal protection, for which different sources are explicitly weighed against each other. For example, an important reason for the development of the Country Guidelines method by the Asylum and Immigration Tribunal in the UK was to promote consistency (Section 4.4.). The other reason was efficiency: thanks to this method, every case worker and judge is not required to re-analyse general COI and as a result, they can spend their limited time on the special details of the case. However, it should be noted that the legal system of the United Kingdom is difficult to compare with that of the Netherlands.

#### *General versus individual*

The Council of State has taken its first steps down this path and is currently discussing the possibility of strategic litigation with various partners involved in asylum and migration matters.<sup>154</sup> However, respondents have mentioned the conflict that exists between the general nature of country-specific asylum policy or landmark rulings that refer to groups of people on the one hand, and the circumstances of the individual case on the other. Although there is something to be said for this system from the point of view of efficiency, respondents point out that this is simply not fair, thorough or in the immediate interest of the individual.<sup>155</sup>

Factual information is not binding, but may be considered more or less convincing. Even if the policy is included in a document, judges will not consider this binding. It is up to the judge to examine the information on which this policy is based and to uncover and evaluate the facts.<sup>156</sup>

## 5.4 Key recommendations

Systematically searching for information from other sources, wherever possible confirmed by multiple sources, helps in obtaining accurate and current information.<sup>157</sup> This is a better way of fulfilling the principle of due care. The use and production of publicly available and accessible COI fulfils the obligation to state reasons and the principle of fair play, while also meeting the resulting quality criteria of transparency, traceability, accuracy and topicality. This means that the information can be verified and checked by not only the asylum seeker, but also by experts and even the rest of society (ACCORD, 2013, p. 37).

The COI researchers, policy officers, interview and decision-making officers can launch targeted searches based on the demand from the Dutch practice, via the appropriate portals. This will allow them to delve deeper into issues that are relevant and disregard unnecessary information.

One way to achieve this is to train officers in the collection, presentation, analysis and use of COI. In addition, the TOELT can play an important role as an expert in this area.

### *Strengthen the role of the TOELT*

The TOELT currently plays a key role as an expert in the collection, presentation and analysis of COI for asylum decisions and the formulation of the policy on safe countries of origin. In addition, it drafts internal documents containing COI for case workers. Thanks to the expertise and years of experience of the TOELT in the area of COI, the team members are expected to be able to collect and publish accurate and up-to-date COI from relevant sources in a more systematic and transparent manner. Subsequently, the Minister can, in the absence of a recent Official Country Report, use this COI to formulate policy conclusions and the case workers can also use this information for their work. It is possible that the team may need to be supplemented by one or more experts in the area of social media and data technology. This brings us to the recommendation outlined below.

**Recommendation 1:** Improve the collection and publication of thematic COI reports by the TOELT

### *Explanation*

We believe it is best if the collection and publication is done in a systematic manner, using a fixed method that is published by the TOELT for the sake of transparency. An example of this is the way in which the UK Home Office communicates extensively in the CPINs (Section 4.4.2) and the *Staatendokumentation* on its website (Section 4.2.1) about the methods they use. The EASO and ACCORD manuals can serve as a starting point for the research method and the assessment of sources (Section 2.1). Based on a Terms of Reference, the TOELT can prepare reports in response to signals from, and focused

on, Dutch practice (Section 5.2). The development process should have a built-in flexibility, so that the TOELT can give priority to urgent COI requests if necessary. The TOELT mainly relies on public sources for this. Of course, just as in the case of the Official Country Reports, we believe that the TOELT must provide insight into how it handles any conflicting information. Furthermore, choices can be made to save time, such as whether or not to synthesise and translate texts. It is worth considering storing these COI reports in a CMS, possibly in collaboration with the VWN's COI department. The information must be regularly (for example, every two years at the latest) updated and archived.

Another option is to adopt the same approach followed for the safe country of origin policy, where the TOELT searches through Ecol.net for reliable sources of COI. In many cases, instead of examining the general situation in a country, it will be sufficient for the TOELT to only study specific themes. If the Minister opts for this approach, we believe that the information provided by the TOELT must be made public, which means that the Minister provides full insight into the information that has been collected and used.

#### *Level of support and quality assurance*

As indicated by the ACVZ in its earlier advice, it is difficult for outsiders to distinguish between experts (such as the TOELT) and other IND officers (ACVZ 2012, p. 59). Transparency and openness in communication with the outside world are therefore of great importance. The TOELT is closer to the caseworkers than the Ministry of Foreign Affairs. It is a part of the IND, the organisation that takes the positive or negative asylum decisions and which is one of the parties in a lawsuit if a negative asylum decision is contested. As the Minister's predecessor stated in 2007 with regard to the Dutch system:<sup>158</sup>

'In a number of ways, the Dutch system is more transparent and the Dutch Official Country Reports are more independent. For example, it is only in the Netherlands and Germany that reports on country of origin information are produced by a government agency other than the body that assesses asylum applications. In other countries, there are no country of origin information reports from independent, impartial experts.'

This brings us to the next recommendation, which follows from Recommendation 1.

### **Recommendation 2:** Set up an external quality assessment of the TOELT's COI reports

#### *Explanation*

Following the example of the UK and EASO (Section 4.1 and 4.4), UNHCR (as a relevant source of COI), the VWN (as COI researchers) and independent country experts can play a formal role in this regard. This may improve the quality of the

reports and increase the level of support for the reports. If third-party organisations are assigned a formal role in the process of producing the COI reports, it will be possible to incorporate their vision in the policy conclusions drawn by the Minister. As a result of this, it may be possible to formulate the policy conclusions more quickly and the Minister can indicate how the responses have been dealt with. The TOELT should clearly communicate to the outside world about its tasks in the area of individual decisions and general or thematic country expertise.

#### *Transparent and traceable*

The practice currently uses a multitude of COI sources to substantiate and assess asylum applications, but often not in a systematic, traceable and transparent manner. This brings us to the next recommendation outlined below.

**Recommendation 3:** Publish and set out COI in a systematic manner in decisions as well as in country-specific asylum policies

#### *Explanation*

This applies to COI in intended and final decisions and country-specific asylum policy. Here too, transparency is a key word. If COI is used, it should be accurate, transparent and traceable. This means that a report should not be referred to only in general terms, but that each relevant element should be accompanied by a precise source reference. The guidelines laid down for legal authors can be followed for this (Kluwer, 2019). This will make it possible to verify the information. Training policy officers en caseworkers in the area of COI is important in this respect. Furthermore, the use of templates and fixed formats for COI in intended and final decisions can also introduce a more systematic approach. It is important that the templates and country of origin policies are regularly updated to ensure that they remain sufficiently up to date, or are archived after a reasonable period of time.

#### *European cooperation*

Our review shows that European cooperation in the area of COI has increased with the establishment of EASO. Member States are drafting COI reports jointly, which are then checked by other Member States and in some cases externally by NGOs or country experts. We consider this to be a positive development that can help prevent a duplication of efforts, allow countries to make optimal use of each other's expertise on specific themes as well as each other's language skills, and it is also attractive from a budgetary perspective.

**Recommendation 4:** Invest further in an EU partnership for collecting and making COI more transparent

#### *Explanation*

Within the EU, partnerships between governments, international organisations and NGOs should be encouraged. The Netherlands can appeal to EASO to fill in the

gaps in the existing knowledge by producing more COI about the smaller countries of origin and by translating COI reports from other Member States into, at the very least, English. We also believe that it is relevant to continue and where possible strengthen the active role of the Netherlands in the further development of a European dual system for COI, in which EASO and ACCORD can play a central role.

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<sup>135</sup> Also see Article 16(1) of the Asylum Procedures Directive.

<sup>136</sup> See, for example, *Parliamentary Papers II* 2019-20, 19637, No. 2546, p. 58.

<sup>137</sup> Interview Zwaan 11 September 2019.

<sup>138</sup> Interview Zwaan 11 September 2019.

<sup>139</sup> Interview IND (SUA) 26 September 2019.

<sup>140</sup> ECHR 17 July 2008, ECLI:CE:ECHR:2008:0717JUD002590407 (NA. v. the United Kingdom), paragraph 121.

<sup>141</sup> Interview Zwaan 11 September 2019.

<sup>142</sup> Interview IND (SUA) 26 September 2019.

<sup>143</sup> Interview Council of State 29 September 2019, IND (SUA) 26 September 2019, Vogelaar 17 October 2019 and Fötsch 27 September 2019.

<sup>144</sup> Article 10 of the EU Asylum Procedures Directive.

<sup>145</sup> ABRvS 3 April 2019, ECLI:NL:RVS:2019:1060, paragraph 16.2.

<sup>146</sup> Interview Vogelaar 17 October 2019.

<sup>147</sup> Interviews UNHCR Geneva 13 January 2020 and Vogelaar 17 October 2019.

<sup>148</sup> Interview Vogelaar 17 October 2019.

<sup>149</sup> Interview Council of State 26 September 2019.

<sup>150</sup> ABRvS 1 February 2017, ECLI:NL:RVS:2017:209, paragraphs 5.1 - 5.3.

<sup>151</sup> Interview IND (TOELT) 18 September 2019.

<sup>152</sup> *Parliamentary Papers II* 2012-13, 19637, No. 1606, p. 4: 'I do not accept the recommendation to establish an independent COI committee. This recommendation was also made in the ACVZ Advisory Report of 2006 entitled «Transparant en Toetsbaar, een advies over landeninformatie in het vreemdelingenbeleid» [Transparent and Verifiable. An advisory report on country of origin information in policy in respect of foreign nationals]. As in 2006, the government is not in favour of accepting this recommendation. The main reason for this is that the Dutch system provides for a clear separation between the provision of information on the countries of origin of asylum seekers and the policy in respect of foreign nationals. In preparing the Official Country Reports, the role of the Ministry of Foreign Affairs is that of an independent expert. The Official Country Reports are drawn up independently of my policy and other policy considerations. There is a strict separation between the responsibilities of my Colleague from Foreign Affairs (country of origin information reports) and my responsibilities (asylum policy). In the British context, with which the ACVZ draws a parallel, the country of origin information reports are drawn up by the person responsible for asylum policy, i.e. the UK Border Office. In such a case, an independent supervisor is a logical choice.'

<sup>153</sup> ABRvS 1 February 2017, ECLI:NL:RVS:2017:209, 5.3: 'The list of the sources of information referred to in Article 3.105ba(2) of the Vb 2000 is not exhaustive and compelling, in the sense that the Minister for Migration is barred from taking into account any other sources of information and other factors in his investigation and instruction. For formulating his opinion, the Minister must always take into consideration, when these are available, independent, reliable and objective sources such as information from United Nations institutions and authoritative non-governmental organisations (hereinafter: NGOs, see the judgment of the European Court of Human Rights of 11 January 2007, Salah Sheekh v. The Netherlands, paragraph 136, ECLI:CE:ECHR:2007:0111JUD000194804), or verify other information based on information from these sources. The Minister can therefore also use national sources, such as the general Official Country Reports from the Minister of Foreign Affairs or information from the VWN, because these are usually based on research by foreign governments or intergovernmental organisations or NGOs'.

<sup>154</sup> ABRvS 3 April 2019, ECLI:NL:RVS:2019:1060, paragraphs 11 and 11.1

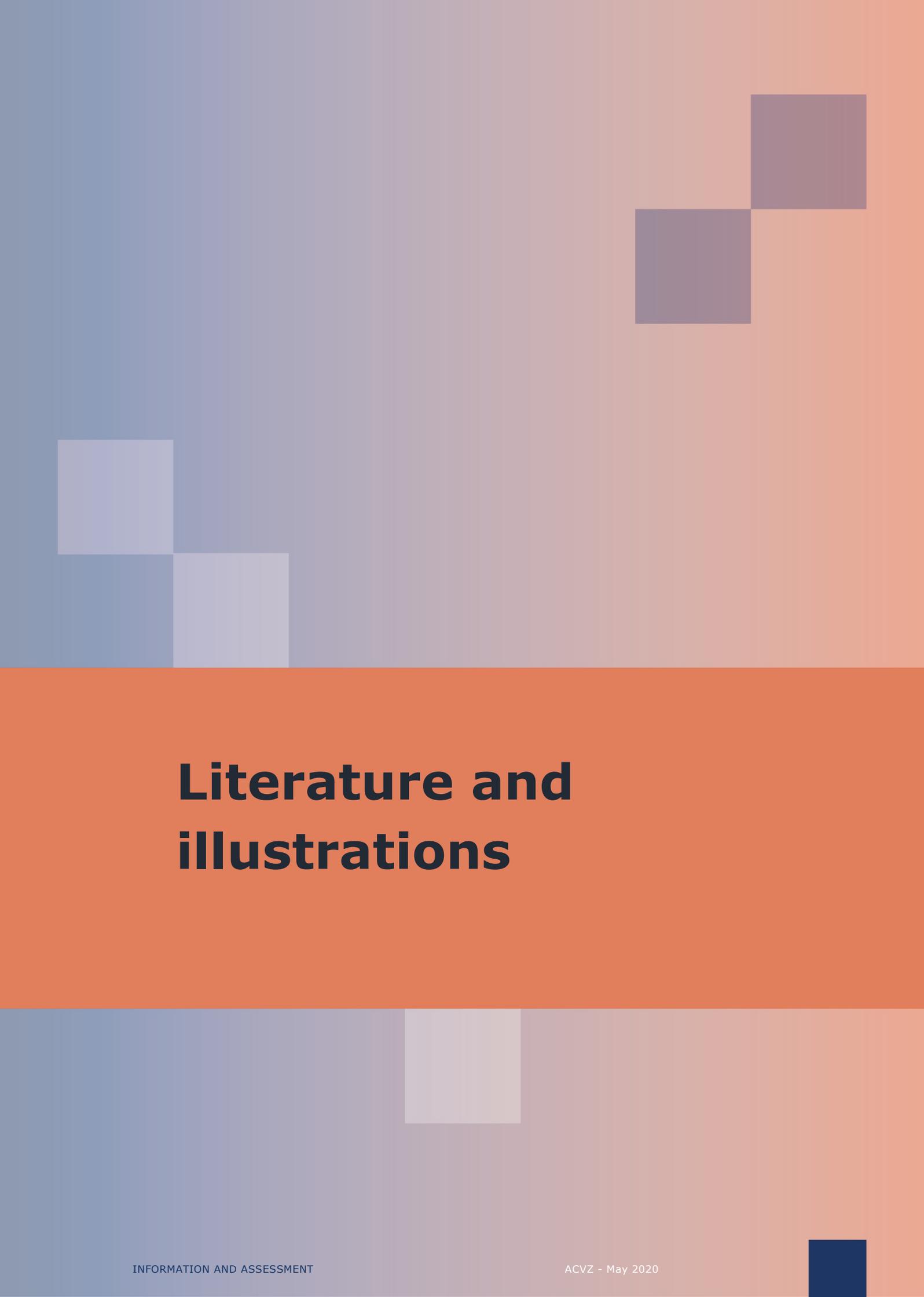
<sup>155</sup> Interviews VWN 14 October 2019, ARC Foundation 14 January 2020 and Van der Kist 23 December 2019.

<sup>156</sup> Interview Council of State 26 September 2019.

<sup>157</sup> Interview Council of State 26 September 2019.

<sup>158</sup> *Parliamentary Papers II* 2006-07, 19637, No. 1128, p. 2.





# Literature and illustrations

## Literature

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**Illustrations:**

Chapter 1 title page: Glenn R. Specht, Shutterstock. PORTOVIEJO, MANABI, ECUADOR, 2 February 2019. Venezuelan refugee family asking for money in an Ecuadorian city, 2 February 2019.

Chapter 2 title page: Esrk, Shutterstock. 2016, Istanbul, Turkey, AKP supporters are cheering after the failure of military coup attempt in Turkey.

Chapter 3 title page: Zurijeta, Shutterstock. Arab women on the street walking.

Chapter 4 title page: Salvacompillo, Shutterstock. Mae Sot, Thailand. April 2012. A child, a refugee from Myanmar, on a mountain of rubbish in the city's rubbish dump.

Chapter 5 title page: Angyalosi Beata, Shutterstock. Lesbian couple hugging outdoors. LGBT rainbow flag.

Appendices front cover: paintings Shutterstock. BRISBANE, AUSTRALIA - JUNE 20: Burmese Rohingya Association members protesting as part of World Refugee Rally.



# List of abbreviations

ABRvS	Administrative Jurisdiction Division of the Council of State ( <i>Afdeling Bestuursrechtspraak van de Raad van State</i> ) (also referred to as 'the Council of State', see Glossary)
ACCORD	Austrian Centre for Country of Origin and Asylum Research
ACVZ	Advisory Committee on Migration Affairs ( <i>Adviescommissie voor Vreemdelingenzaken</i> )
AFB	Anfragebeantwortungen
AI	Amnesty International
ARC Foundation	Asylum Research Centre
Awb	General Administrative Law Act ( <i>Algemene wet bestuursrecht</i> )
BFA	Bundesamt für Fremdenwesen und Asyl
BZ	Ministry of Foreign Affairs ( <i>Ministerie van Buitenlandse Zaken</i> )
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CMS	Content Management System
COC	Dutch interest group for lesbians, homosexuals, bisexuals, trans and intersex persons (LGBTIs)
COI	Country of Origin Information
CPIN	Country Policy and Information Notes
CPIT	Country Policy and Information Team
DCR	Dutch Council for Refugees (English name for <i>Vluchtelingenwerk Nederland, VWN</i> )
DMB	Migration Policy Department ( <i>Directie Migratiebeleid</i> ) (Ministry of Justice and Security)
EASO	European Asylum Support Office
ECHR	European Court of Human Rights
EU	European Union
FAQ	Frequently Asked Questions
HRW	Human Rights Watch
IAGCI	Independent Advisory Group on Country Information
IARLJ	International Association of Refugee Law Judges
IGC	Intergovernmental consultations on migration, asylum and refugees
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
IND	Immigration and Naturalisation Service ( <i>Immigratie- en Naturalisatiedienst</i> )
IOB	Policy and Operations Evaluation Department ( <i>Directie Internationaal Onderzoek en Beleidsevaluatie</i> ), Ministry of Foreign Affairs
JenV	Ministry of Justice and Security ( <i>Ministerie van Justitie en Veiligheid</i> )
KI	Kürzinformationen
LGBTI	Lesbian, Gay, Bisexual, Trans and Intersex persons
LIB	Länderinformationsblätter
NGO	Non-governmental organisation
Q&A	Questions and Answers
RIC	Regional Information Centre (IND)
ROB	Council for Public Administration ( <i>Raad voor Openbaar Bestuur</i> )
SUA	Implementation Advice Staff Department ( <i>Stafdirectie Uitvoeringsadvies</i> ) (IND)
TOELT	Country and Language Research and Expertise Team ( <i>Team Onderzoek en Expertise Land en Taal</i> ) (IND)

UK	United Kingdom
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNHCR	United Nations High Commissioner for Refugees
Vb	Aliens Decree 2000 ( <i>Vreemdelingenbesluit</i> )
Vc	Aliens Act Implementation Guidelines ( <i>Vreemdelingencirculaire</i> )
Vw	Aliens Act 2000 ( <i>Vreemdelingenwet</i> )
VWN	Dutch Council for Refugees ( <i>Vluchtelingenwerk Nederland</i> )



# Glossary

**Council of State:** Administrative Jurisdiction Division of the Council of State. This is the highest asylum court in the Netherlands.

**General principles of good governance:** written and unwritten legal standards that are binding for an administrative body when performing legal or other acts such as taking an asylum decision. The general principles of good governance reflect the rules for interactions between the government (in this case, the IND) and citizens.

**Asylum seeker:** a potential refugee who has submitted an asylum application for which no final decision has yet been issued.

**Principle of fair play:** this general principle of good governance requires administrative bodies to act openly and honestly, provide adequate information to the parties involved, not withhold information, not keep the parties involved in suspense or put improper pressure on citizens (Schlössels & Zijlstra, 2010, p. 398).

**EU Minimum Standards Directive:** see EU Qualification Directive

**EU law or Union law:** European Union law: the entirety of EU treaties, regulations and directives, including the case law of the Court of Justice of the EU. Also referred to as 'acquis'.

**EU Directive:** European Union legislative instrument. A directive contains the objectives that are to be met by Member States. It is up to a Member State to determine how the directive will be implemented. This is done by turning the directive into national laws and regulations.

**EU Asylum Procedures Directive:** European Union directive setting out the common rules for asylum procedures.

**EU Qualification Directive:** European Union directive setting out the joint rules for assessing the content of the asylum applications. Also called the 'Minimum Standards Directive'.

**EU Regulation:** European Union legislative instrument. A regulation is directly applicable in the Member States.

**Court of Justice of the European Union (CJEU):** the court of the European Union which, in cooperation with the courts of the Member States, ensures the uniform application and interpretation of Union law, including directives and regulations dealing with asylum such as the EU Asylum Procedures Directive and the EU Qualification Directive. The Court is based in Luxembourg.

**European Court of Human Rights (ECHR):** the court of the Council of Europe (not to be confused with the European Union). Here, individuals, groups, organisations and countries can lodge a complaint against a Member State of the Council of Europe, by invoking the European Convention for the Protection of Human Rights. The Court is based in Strasbourg.

**Information** intangible knowledge that must be converted into a physical form (such as a report or newspaper article) in order to be expressed (Buckland, 1991).

**Country-specific asylum policy:** policy in which COI is interpreted and legally clarified. Although country-specific asylum policy may contain COI, this policy is intended to provide guidance to decision-making officials for taking their decision with regard to asylum applications. In the Netherlands, a section of the Aliens Act Implementation Guidelines deals with country-specific asylum policy (Vc C7), where COI is interpreted and legal actions are linked to this.

**Country expert:** a person who has a lot of knowledge about a certain country.

**Country of origin information researcher:** a person who conducts professional research into country of origin information that is relevant to the assessment of an asylum application.

**Country of origin information (COI):** information regarding the country of origin or a third country where the person submitting an asylum application comes from and that is relevant to the assessment of the application.

**Obligation to state reasons:** This general principle of good governance stipulates that a decision must be based on sound reasons (Section 3:46 of the Awb). This means that the reason for the decision must be clear from the provided justification. The statement of reasons must also be consistent with the facts.

**Original source:** a source that documents an event, fact or case for the first time (EASO, 2019).

**Primary source:** a source that is directly or closely related to the event, fact or case (source which has first-hand information) (EASO, 2019).

**Secondary source:** a source that reproduces or refers to information from the original or other secondary source (EASO, 2019).

**Safe country of origin policy:** asylum policy for asylum seekers from a country that the Netherlands considers to be a 'safe country of origin'. These are countries where, in the opinion of the Netherlands, the general situation justifies the assumption that the residents, with the exception of explicit exceptions, do not qualify for asylum. The EU Asylum Procedures Directive stipulates that the assessment of whether a country of origin is safe should be based on a range of

information sources and that Member States must regularly review the situation in these safe countries of origin. Member States must also inform the European Commission regarding the countries that have been designated as safe countries of origin. The House of Representatives is kept informed via letters about the assessment and reassessment of safe countries of origin, including the sources on which this assessment is based.

**Refugee:** a person who is currently located outside his or her country of origin and is unable or unwilling to invoke protection of this country because he or she:

- Is a Convention refugee, i.e. a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion and/or membership of a particular social group
- Has been able to demonstrate plausibly that he or she has well-founded reasons for believing that expulsion will give rise to a genuine risk of serious harm comprising any of the following:
  - Death penalty or execution
  - Torture or inhuman or degrading treatment or punishment
  - Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict

**Principle of care (formal):** this general principle of good governance implies that, when preparing a decision, the administrative body must obtain the necessary knowledge about the relevant facts and interests to be taken into consideration (Section 3:2 of the Awb).

# List of respondents

Name	Position	Organisation
Mr C. Hessels	Head of Third Country Research Unit a.i.	European Asylum Support Office (EASO)
Ms K.M. Zwaan	Senior University Lecturer	Radboud University
Ms N. Fötsch	PhD candidate	Radboud University
Ms F. Vogelaar	PhD candidate	Vrije Universiteit
Mr J. van der Kist	PhD candidate	University of Manchester
Ms H. van den Bergh	Senior Consultant Country of Origin Information	Dutch Council for Refugees (VWN)
Mr N. Verheij	Chair of the Aliens Chamber	Administrative Jurisdiction Division of the Council of State
Mr O. van Loon	Aliens Chamber Coordinator	Administrative Jurisdiction Division of the Council of State
Ms I. Ritman	Coordinating Policy Officer	Ministry of Justice and Security
Mr M. Swinkels	Senior Policy Officer	Ministry of Justice and Security
Mr S. de Boer	TOELT Team Leader	Immigration and Naturalisation Service (IND)
Mr R.J. Kuiper	TOELT Senior Country Specialist	Immigration and Naturalisation Service (IND)
Ms M.P. Nahar	SUA Senior Adviser	Immigration and Naturalisation Service (IND)
Mr P.W.B. Zuchowski	Senior Officer	Immigration and Naturalisation Service (IND)
Ms W.P.E. Salemink-Willemsen	Senior Adviser Operations	Immigration and Naturalisation Service (IND)
Mr L. Korlaar	Protection Officer	UNHCR The Netherlands
Ms B. Routledge	Protection Associate	UNHCR The Netherlands
Ms K. Ridderbos	Senior Research and Information Officer	UNHCR Geneva and Independent Advisory Group on Country Information (IAGCI)
Mr M. Kanfash	Representative	Kompass project <i>Nothing About Us Without Us</i>

Ms M. Kiel	IOB Senior Research Officer	Ministry of Foreign Affairs
Ms B. Aerssens	Head of Department	Ministry of Foreign Affairs
Mr R. Spitz	Policy Officer	Ministry of Foreign Affairs
Ms L. Williams	Founding Director	Asylum Research Centre (ARC Foundation)
Mr M. Stares	Head of Country Policy and Information Unit	UK Home Office
Ms K. Komorniak	Head of Unit	Department of Refugee Procedures, Office for Foreigners, Poland
Ms M. Górszczyńska	Human Rights Lawyer	Helsinki Foundation for Human Rights
Ms M. Klajn	PhD candidate	Leiden University
Mr R. Jawhari	COI researcher	ACCORD
Mr T. Schrott	Head of Department	<i>Staatendokumentation</i>
Ms B. Simma	Judge	<i>Bundesverwaltungsgericht, Austria</i>

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ROHINGYAS  
LIVES  
DO MATTER

ROHINGYAS  
ARE  
HUMAN  
TOO

BURMESE ROHINGYA ASSOCIATION IN  
QUEENSLAND - AUSTRALIA

# Appendices

## Appendix 1: Important providers of COI

With its Official Country Reports, the Ministry of Foreign Affairs is the most important provider of COI in the Netherlands. EASO is playing an increasingly large role and we expect this role to expand in the coming years (see Section 4.1.). However, other governments, international organisations and NGOs also draw up reports on the overall human rights and security situation in asylum seekers' countries of origin and/or on the situation of certain groups in those countries. In this Appendix, we describe the organisation and operation of other COI providers that, besides EASO, play or could play a role in the assessment of asylum applications in the Netherlands in the absence of an Official Country Report from the Ministry of Foreign Affairs. We have limited ourselves to the organisations that the Minister for Migration mentions in the request for advice. An organisation that is mentioned in the Minister's letter, namely, the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC), has been omitted, since this organisation does not produce any publicly accessible COI.

This overview is far from complete: in practice many more sources are used. You can read more about this in Appendix 3.

### **United Nations High Commissioner for Refugees (UNHCR)**

Governments bear the primary responsibility for determining whether someone should be deemed as a refugee within the meaning of the Refugee Convention. The Netherlands does this via the asylum procedure (see Section 1.1.). However, as the guardian of the Refugee Convention, UNHCR is mandated to determine refugee status in countries that are not party to the Refugee Convention or that do not have a fair or efficient asylum procedure (approximately 50 to 60 countries). In 2017, UNHCR registered 252,100 new asylum applications, making the organisation the second-largest processor of asylum applications worldwide. In addition, UNHCR works with governments to support them in setting up and implementing an asylum procedure.<sup>159</sup>

To support the case workers (at UNHCR itself as well as immigration service officers and judges) in the assessment of asylum applications, UNHCR issues country-specific policy guidelines (known as 'Eligibility Guidelines and International Protection Considerations'). Apart from general COI, these documents also include legal interpretations of the criteria for refugee status, considered on the basis of the specific profile of asylum seekers, the human rights and security situation in the country of origin, as well as the prevalent social, economic and humanitarian conditions. The guidelines are formulated based on UNHCR's own COI research, information provided by the global network of field offices (UNHCR is present in 134 countries)<sup>160</sup> and COI reports prepared by other organisations, including the US Department of State, Amnesty International, Human Rights Watch and the International Crisis Group.<sup>161</sup> The guidelines are published on Refworld. Therefore,

UNHCR publishes COI and policy guidelines in a single document (although, just as in the case of the UK Home Office, these are separate from each other).<sup>162</sup>

Occasionally, UNHCR also publishes documents containing only COI, without any policy guidelines. It does so mainly in situations where the organisation, due to its presence in countries of origin, has direct access to relevant information that is difficult for other parties to access.<sup>163</sup> Furthermore, UNHCR sometimes issues Non-Return Advisories and Safe Third Country Papers that set out, respectively, country-specific policies regarding return and the availability of international protection in third countries.<sup>164</sup> Finally, the organisations ACCORD and the ARC Foundation sometimes prepare a general COI report without policy guidelines at the instructions of UNHCR.<sup>165</sup>

After consulting Refworld for the 11 countries we examined, we found that UNHCR had no reports for some countries (Algeria, Cuba, Saudi Arabia, Turkey and Uganda), and in some cases, their reports were older than two years (Azerbaijan, Central African Republic, Egypt, Jordan and Myanmar). Up-to-date documents were only available for Venezuela.<sup>166</sup>

UNHCR uses the ACCORD manual when drawing up its reports. Furthermore, UNHCR attaches great importance to the use of public sources and tries to minimise the number of references to anonymous sources. Its method for preparing reports does not differ considerably from that of other organisations that also draw up such reports, including the Dutch Ministry of Foreign Affairs. This is because there is a broad consensus on the methods of COI research (see Section 2.1.).<sup>167</sup>

### **UN Human Rights Council**

The UN Human Rights Council is made up of 47 UN Member States elected by the General Assembly. The Council conducts reviews of the human rights situation in all UN member states every four and a half years. The aim is to improve the human rights situation in UN member states and address human rights violations. The Council draws up reports regarding this, based on which the member states submit their response.<sup>168</sup> In the 54 case files we examined, the IND did not use these reports and lawyers used them nine times. While doing so, the lawyers consulted reports of the Human Rights Council more often than those of UNHCR.

### **US Department of State**

The Bureau of Democracy, Human Rights, and Labor of the US Department of State annually produces Country Reports on Human Rights Practices in which the Bureau addresses internationally recognised individual, civil, political and labour rights as described in the Universal Declaration of Human Rights and other international agreements.<sup>169</sup> In practice, the Bureau publishes a report on almost all countries every year. This is prompted by the legal obligation to report annually to Congress on all countries that receive US aid and/or are members of the UN. In addition,

the Bureau supplements this by publishing, on its own initiative, reports on countries for which it has no legal obligation to do so.

For the reports, the Bureau uses information obtained from its own embassies and consulates, civil servants, NGOs and international organisations, legal experts, journalists, scientists, unions and reports from other organisations. The diplomatic posts draw up the concepts, after which the Bureau, in collaboration with other Department of State units, consults additional experts on the relevant topics and carries out the review and editing. The guiding principles for this are that the reports must be objective, thorough and honest. The Bureau ensures that the reports all follow the same methodology, standard format and structure. In addition to these Country Reports on Human Rights Practices, the Department of State also produces a few more thematic reports, including the International Religious Freedom Report.<sup>170</sup>

The US Department of State reports are extremely popular with COI researchers as well as with policy officers, case workers, lawyers, and judges.<sup>171</sup> This is mainly because they report annually on almost all countries, always use the same methodology and have a standard format and structure, which makes it easy to find and compare information. UNHCR and NGOs also use these reports for strategic reasons, because they know that the administration and the judiciary have confidence in this organisation.<sup>172</sup> Moreover, the International Religious Freedom Report fulfils the need for information when assessing asylum applications involving persecution on account of religious beliefs.<sup>173</sup> The fact that it is in English will also contribute to its popularity.

The US Department of State generally has a reputation for being reliable, although the reports have occasionally been criticised; in particular, those dealing with countries where the US has significant political interests are approached with some degree of caution. This attitude of caution has increased further under Trump's presidency.<sup>174</sup> The references in the US Department of State reports do not meet the criteria of accuracy, transparency, and traceability, because they are sometimes missing and are often very general in nature. In view of this, it is remarkable to note that this source is used so often, also by COI researchers.

### **UK Home Office**

The Country Policy Information Team (CPIT) of the UK Home Office is responsible for drawing up COI reports, all of which are public. In the 54 case files we reviewed, these reports, after those of the US Department of State, were the most commonly used reports from other governments. The literature study and interviews show that the reports are also popular among end users outside the UK. It is likely that this is partly because these are composed in English. The reports are thematic in nature, are regularly updated and often contain policy rules in addition to COI. We describe the UK Home Office reports in detail in Section 4.4.

### **Amnesty International (AI)**

Amnesty International (AI) is an NGO that operates worldwide to improve human rights. In this context, the organisation publishes various types of documents, ranging from news reports to thematic reports and annual reports on human rights and violations of these rights in different continents and/or countries.<sup>175</sup> The organisation has built up a good reputation among both researchers and users of COI. In the 54 cases files that we studied in the context of this Advisory Report, both the IND and the lawyers regularly consulted news reports and reports from AI (see Appendix 3).

To gain insight into the way in which AI reports, we took a closer look at some of their documents that we came across during our case file review. This includes the reports entitled 'Amnesty International Report 2016-17. The State of the World's Human Rights' (Amnesty International, 2017) and 'Turkey: No end in sight: Purged public sector workers denied a future in Turkey' (Amnesty International, 2017) as well as the [news report](#) headed 'Amnesty International Public Statement. Algeria: Time to end impunity for past and present abuses'. These publications are a mixture of a factual overview, the organisation's opinion regarding the issues in question and, in the last two documents, the actions considered necessary by AI.

In these documents, AI partly uses its own research material and can therefore be regarded as the original source. In addition, AI has also used news reports and reports from other organisations in order to prepare these publications (just like the other providers of country information), so in this respect, AI can also be considered as a secondary source of information. Source referencing practices vary. In the annual report, sources are sometimes missing or only the name of the organisation is mentioned. Frequently, only one source is mentioned to substantiate a statement. However, the report entitled 'Turkey: No end in sight: Purged public sector workers denied a future in Turkey' contains more accurate source references. The identity of the persons interviewed for this report is usually confidential for source protection purposes, making it impossible for users of COI to verify this information.

### **Human Rights Watch (HRW)**

Human Rights Watch (HRW) is an NGO that focuses on investigating and reporting human rights violations worldwide. In this context, the organisation publishes reports and news reports.<sup>176</sup> Just like AI, the organisation has a good reputation among researchers and end users of COI. In the case files that we examined, both the IND and lawyers regularly made use of publications of the HRW, so we have taken a closer look at three of the publications that we came across during the case file review: two reports entitled 'World Report of 2018. Events of 2017.' (Human Rights Watch, 2018) and 'Killing Without Consequence. War Crimes, Crimes Against Humanity and the Special Criminal Court in the Central African Republic.' (Human Rights Watch, 2017) and a news report from August 2017.<sup>177</sup>

The examined publications of the HRW are, just like those of AI, a mixture of a factual account, the opinion of the organisation and the actions necessary in the opinion of the organisation. The HRW makes extensive use of its own research material and can in these cases be regarded as the original source. In addition, HRW has also used news reports and reports from other organisations in order to prepare these publications (just like the other providers of country information), so in this respect, HRW can also be considered as the secondary source of information.

In the World Report of 2018, source references are missing in several places. For a number of points, organisations are referred to as a source, without further mention of the exact location of the information. The Killing Without Consequence investigation report is based on interviews, with each documented incident confirmed by multiple sources. As in the case of AI, most of the interviews conducted by the HRW are confidential for the purposes of source protection, which means they cannot be traced by end users of COI. The secondary sources in the extensive appendices to the Killing Without Consequence report are meticulously referenced. Furthermore, the organisation relies a great deal on its own materials, including news reports that have been released in response to incidents. The news report we examined contains hyperlinks to the underlying documents.

### **Freedom House**

Freedom House is an American NGO that aims to promote democracy and freedom worldwide. The nature of the organisation is described on its website as both 'bipartisan' and 'nonpartisan'.<sup>178</sup> Freedom House is best known for the annual report entitled 'Freedom in the World' dealing with civil and political rights worldwide, but it also publishes other reports concerning freedom on the internet and other specific topics.

We have also examined three reports from this organisation that we found in the case file review, i.e. Freedom in the World Report 2016 (on Algeria) (Freedom House, 2017), Freedom in the World Report 2017 (on Venezuela) (Freedom House, 2018) and Freedom on the Net Report 2017: Manipulating Social Media to Undermine Democracy (on Saudi Arabia) (Freedom House, 2018).

The Freedom in the World reports do not contain any direct source references. A general list of newspapers and organisations involved in the investigation is considered sufficient. The reports are written by external researchers using a method based on their own field research as well as a consultation of other sources. The reports are subjected to a peer review process by experts and Freedom House staff.<sup>179</sup>

The Freedom on the Net report is drawn up per country by one or more researchers from the region based on a public questionnaire with scores. The draft report subsequently undergoes a peer review within the region, after which Freedom House staff members carry out a fact check. Some of the persons who report on

the countries remain anonymous at their own request. The individual country reports contain precise source references in the footnotes.

## Appendix 2. Legal framework

In this Appendix, we list the criteria included in legislation, regulations and policy with respect to COI. In addition, we describe the relevant case law of the ECHR and the Council of State.

### 1. Union law

#### 1.1 EU Asylum Procedures Directive

The EU Asylum Procedures Directive states in the Preamble that Member States should ensure that they have 'precise and current information' from 'relevant sources' when assessing whether there is a situation of uncertainty in an asylum seeker's country of origin.<sup>180</sup> As an example of relevant sources, the Preamble mentions EASO, UNHCR, the Council of Europe and other relevant international organisations. When implementing the EU Asylum Procedures Directive, Member States should, as laid down in the Preamble, take into account the relevant guidelines developed by EASO. Member States should ensure that the designated personnel are properly trained and should therefore provide them with the appropriate training opportunities. This training should include the element 'issues relating to the production and use of information on countries of origin'. Member States should also take into account the relevant training programmes offered by EASO.<sup>181</sup>

Pursuant to the EU Asylum Procedures Directive, Member States are required to ensure that 'accurate and current information' is collected from various sources about the 'general situation in the countries of origin' of asylum seekers and that the persons who process the asylum applications have access to this.<sup>182</sup> As an example of the 'various sources' referred to above, the EU Asylum Procedures Directive mentions (as in the Preamble) EASO and UNHCR as well as relevant international human rights organisations. In a procedure for revoking the asylum residence permit, the competent authority should have access to 'precise and up-to-date' information on the general situation in the country of origin from various sources such as EASO and UNHCR.<sup>183</sup>

#### *Safe country of origin*

Under the EU Asylum Procedures Directive, Member States should base their assessment of a safe country of origin on a 'range of information sources, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations'.<sup>184</sup> According to the Preamble, when Member States designate a country as a safe country of origin, they should take into account the guidelines and operational manuals, COI and methodology developed by EASO for reporting on COI, as well as the relevant UNHCR guidelines.<sup>185</sup>

## **1.2 EU Qualification Directive**

The EU Qualification Directive sets out the conditions to be met to give the asylum seeker the benefit of the doubt despite the lack of evidence to support his or her statements. One of the conditions to be met is that the applicant's statements (provided they are coherent and plausible) must not conflict with the available general and specific information that is 'relevant' to this application.<sup>186</sup>

## **1.3 EU Asylum Procedures Regulation**

The EU Asylum Procedures Regulation is intended to eventually replace the EU Asylum Procedures Directive. The proposed regulation states that the determining authority should take into consideration all 'relevant, accurate and current' information when examining an asylum application.<sup>187</sup>

## **2. National law, policy and rules**

### **2.1 General Administrative Law Act (Awb)**

The Awb states that, when preparing a decision, the IND must obtain the necessary knowledge about the relevant facts and interests to be taken into consideration.<sup>188</sup> The Awb also stipulates that a decision must be properly substantiated.<sup>189</sup> In addition, it states that the IND is obliged to ensure that the adviser's investigation has been carried out with due care.<sup>190</sup>

### **2.2 Aliens Act 2000 (Vw)**

The Vw stipulates that an asylum application may be rejected as manifestly unfounded, if the asylum seeker has made manifestly inconsistent and contradictory, apparently false or clearly unlikely statements that are in conflict with 'sufficiently verified' information about the country of origin, which means that the statements regarding the asylum application lack persuasive power.<sup>191</sup> A foreign national may be given the benefit of the doubt if all the conditions of Article 31(6) of the Vw are met, including (c): 'the statements of the foreign national have been found to be coherent and plausible and do not conflict with available general and specific information relevant to his application.' The Vw further stipulates that granting an asylum application must also be in line with the policy pursued by the Minister of Justice and Security after consultation with the Minister of Foreign Affairs.<sup>192</sup> In this context, the earlier ACVZ Advisory Report of 2006 entitled '*Transparant en Toetsbaar*' [Transparent and Verifiable] stated that this is a basic point of departure for the fact that the COI in the general Official Country Reports forms the basis for the country-specific asylum policy (ACVZ, 2006, p. 20).

### **2.3 Aliens Decree 2000 (Vb)**

The Vb stipulates that the foreign national should have access to the information in the case file that is or will be the basis for a decision, unless the disclosure of this information or sources would endanger the national security, safety of the organisations or persons who provided the information or the safety of the person or persons to whom the information relates. Moreover, access to the information

in the case file need not be granted if, by doing so, the interests of the investigation could be harmed by the competent authorities of the Member States or the international relations of the Member States.<sup>193</sup> This information, which forms the basis for a decision, may consist of COI or expert advice on specific matters.<sup>194</sup>

## **2.4 Aliens Regulation**

The requirement under Union law, that the Member State must ensure that the determining authority has accurate and up-to-date information from relevant sources when assessing an asylum application, is stipulated in the Aliens Regulation.<sup>195</sup>

## **2.5 Aliens Act Implementation Guidelines (Vc)**

With respect to the country-specific asylum policy and return policy, the Minister for Migration works according to a fixed framework. This includes an explicit assessment of the security situation in the countries of origin of asylum seekers. This assessment is mainly based on Official Country Reports produced by the Ministry of Foreign Affairs.<sup>196</sup> The Minister for Migration attaches a policy conclusion to these Official Country Reports and subsequently reports this to the States General. For example, the Minister writes in the letter of 11 July 2018 to the House of Representatives about the country of origin policy for Afghanistan that, although the security situation in Afghanistan is worrying, return is possible after an individual assessment of the asylum application.<sup>197</sup> Based on an Official Country Report from the Ministry of Foreign Affairs of 15 June 2018 on the security situation in Afghanistan, the Minister has decided that it is no longer reasonable to deport certain at-risk groups such as Afghan families with underage children. The Minister also points out that, although the ECHR judges the situation in Afghanistan to be worrying, it also states that return is possible in individual cases. Foreign nationals from Afghanistan may file their objection to deportation via a proceeding under administrative law. The Dutch judge assesses this directly based on international human rights conventions. Ultimately, the judge comes to a conclusion regarding the lawfulness of an intended expulsion.

In the Vc, the following is stated under the heading 'Burden of proof for credibility':

'An Official Country Report from the Minister of Foreign Affairs is an important source of information for the IND about the situation in the country of origin. An Official Country Report from the Minister of Foreign Affairs is an expert opinion. The IND can also use information from other objective sources to assess the situation in the country of origin. The IND classifies information from other sources and research by third parties as an expert opinion if the information is provided in an impartial, objective and transparent manner, with an indication of - as far as possible and justified - the sources of this information. The IND assumes that an expert opinion is correct, unless it has concrete reasons for doubting the accuracy, completeness or topicality of the opinion. The IND initiates or instructs the initiation of further investigations in order to confirm or refute the concrete

grounds for its doubts regarding the accuracy, completeness or topicality of an expert opinion. If further investigation confirms the concrete grounds for doubting the accuracy, completeness or topicality of an expert opinion, the IND includes this information in the assessment of the credibility of the statements made by the foreign national.'<sup>198</sup>

The IND does not regard the following, under any circumstances, as a concrete reason for doubting the accuracy, completeness or topicality of an expert opinion:

'a single invocation by the foreign national of a source that is not referred to in the expert investigation, where this source is not of such scope and weight that it raises any doubts regarding the accuracy, completeness or topicality of the expert opinion.'

According to the Vc, the IND takes into account all documents relating to the asylum account, as submitted by the foreign national, in the assessment of the asylum application. In principle, the IND finds all these documents relevant for the assessment of the above and, if relevant documents are missing, the IND will assess whether this can be attributed to the foreign national. When assessing the credibility of the asylum account, the IND considers whether the lack of documents is attributable to the foreign national. To demonstrate that this is not attributable to the foreign national, his or her asylum account must in all cases correspond with what is otherwise known. According to the IND, this is understood to be public information from objective sources about the situation in the country of origin.<sup>199</sup> In order to assess whether the foreign national is subject to persecution on account of his or her attributed sexual orientation, the Vc states that the IND should obtain public information from an objective source in all cases.<sup>200</sup>

In assessing whether the authorities in the country of origin are able or willing to offer effective protection, the IND always takes into account information about the general situation in the country of origin as obtained from Official Country Reports and reports from international organisations. If general information from an objective source on the country of origin shows that general protection is not possible or that applying for it in advance is futile or even dangerous, the asylum seeker will not be required to demonstrate that the authorities are unable to offer him or her protection.<sup>201</sup>

The IND assesses whether there is an internal flight or relocation alternative in an individual case based on accurate and current information about the country of origin available from relevant sources. On the basis of the same information, the Minister for Migration may, in advance, accept or exclude the existence of this alternative for certain population groups or for foreign nationals who come from a part of the country where there is arbitrary violence owing to an armed conflict.<sup>202</sup>

## 2.6 Work Instruction 2014/10

In the context of indicators for the credibility of the asylum account, the IND states the following in Work Instruction 2014/10:

'The statements of the foreign national are compared with statements provided by others and with objective sources. The Official Country Reports of the Minister of Foreign Affairs are often the most important objective source. An Official Country Report is an expert opinion. If no general Official Country Report is available, the assessment is based on information from other objective sources. This should, in particular, include similar official country reports from other countries and reports from international organisations and NGOs.'<sup>203</sup>

## 3. Case law

### 3.1 The Council of State

In one case, the Minister for Migration argued that, in his negative asylum decision, he had sufficiently substantiated the claim that protection was provided by the authorities in Colombia. The reason for this was that he had referred to public sources in this decision. The Council of State did not agree with the Minister in this matter, commenting:

'The reference on that page [*of the decision*] to "public sources", without any source reference, is too vague and makes it impossible for the foreign national to respond to this and for the court to verify this. Furthermore, although, as he argues, the Minister for Migration has referred to other sources elsewhere in the decision, this was in a different context and the statement of reasons does not show, as already assessed by the court, that the Colombian authorities generally provide protection.'<sup>204</sup>

However, in another case, the Council of State concurred with the Minister's view that it was not clear to what extent the sources that the Yemeni Women Union had consulted on behalf of Amnesty International were objective, independent and reliable. The court had previously considered that the letters from the Yemeni Women Union proved that the foreign national faced a genuine risk of being treated in a manner that is in violation of Article 3 of the Convention. However, the Council of State made the following assessment:

'Although the study was carried out on the instructions of Amnesty International by the Yemeni Women Union, considered to be a reliable and knowledgeable organisation by Amnesty International, and the study was conducted under the supervision and approval of Amnesty International, it is not clear to what extent the sources that the Yemeni Women Union has consulted for drafting the letters can be classified as objective, independent and reliable. Nor is there clarity regarding the information and research methods used for the conclusions. The only description of the

sources used by the Yemeni Women Union for the study as provided in the first letter is insufficient in this respect, because of the vagueness of this description. After all, the sources referred to in this first letter are merely cited as "reliable source within the company of Shihab Thabet", "her cousin", and "someone who belongs to the same area family".<sup>205</sup>

#### *Cross-case approach*

In its summary judgment of April 2019, the Council of State explains that, in some cases, it provides a more detailed substantiation in the interests of legal uniformity, legislative development and legal protection in general, with the aim of informing legal practice. It explains that, based on the legislative history of the Vw, the term 'legal uniformity' refers to the uniformity of case law at the various hearing locations for the administration of justice in respect of foreign nationals. It may be that different hearing locations have different opinions about, for example, the general security situation in the countries of origin while, according to the Council of State, this should be the same regardless of the location of the court that is hearing the case.<sup>206</sup>

As examples of cases in which the Council of State provides more detailed substantiation, it mentions cases for which an appeal has been submitted to the organisation and those relating to similar or the same topics. These case files involve issues that are current and relevant in more than one case at the time. This may relate to matters about the current security situation in countries of origin or about the way in which the Minister for Migration must assess asylum applications from specific groups.<sup>207</sup> For such cases, the Council of State has been following a fixed approach for several years. Informing legal practice in an adequate and prompt manner is the most important consideration for this approach. The Council of State selects one or more cases based on the grievances involved, the considerations taken into account in the court judgment and cases involving negative asylum decisions. Such cases can serve as a pilot when the Council of State is later required to take decisions in similar cases. The Council of State often deals with these cases via hearings. Before the hearing, the Council of State sends the parties questions in writing and gives them the opportunity to answer these before the start of the hearing. At the hearing, the Council of State deals extensively with the legal issue at hand. It also explains this legal issue in detail in its ruling.<sup>208</sup>

In some cases, the Council of State appeals to UNHCR or the VWN's Strategic Litigation Committee (*Commissie Strategisch Procederen*) for ideas or assistance. The Council of State usually follows this approach in cases concerning safe countries of origin. But it also sometimes adopts this cross-case approach in asylum cases dealing with the general security situation in countries of origin or the situation of certain vulnerable groups. The Council of State explains:

'In recent years, the most up-to-date information from documents issued by influential sources such as UNHCR, the Ministry of Foreign Affairs, EASO

or the VWN has been taken into account in the pilot judgments in such cases. This may also include information dating from after the court judgment against which the appeal has been lodged. Based on this information, the Council of State issues an opinion in a pilot judgment on the general security situation in a country, on the legal asylum protection provided under the Refugee Convention, Union law and the Convention, and on whether the Minister for Migration is justified in expecting a foreign national to return to his or her country of origin. In many cases, the Council of State's judgment in such cases has resulted in the Minister having to adjust his asylum policy for certain groups of foreign nationals. The Council of State will review its decision if developments in the country of origin give reason for this. This particularly involves countries from which many foreign nationals originate or groups of foreign nationals who are in a vulnerable position in many countries, such as LGBTI persons, converts and apostates or political opponents.'<sup>209</sup>

In much of the case law we reviewed, the Council of State has, as is also evident from its explanation, taken into account in its decision, in view of the general significance of the judgment and 'the level of topicality', one or more documents submitted after the court had issued its judgment.<sup>210</sup> Furthermore, the sources consulted by the Council of State had been included in an appendix to some of the judgments. The number of documents involved ranged from a few to 71 items.<sup>211</sup> In more than one case, it appeared that not all the COI sources had been explicitly discussed or cited in the ruling.<sup>212</sup>

In a number of the reviewed rulings in which the Council of State has made use of COI, there is no indication of how reliable it considers the source of this information to be, but neither has the reliability of these sources been disputed by the parties. In these cases, the carrier of the information is quoted or the information is presented in a summarised form without devoting any consideration to the reliability or relevance of the source. Subsequently, based on this information, a conclusion is drawn that is also relevant for other foreign nationals who have submitted an asylum application for the same reason.<sup>213</sup>

Established case law of the Council of State states that, in response to the question of whether a foreign national can obtain protection in the country of origin, the Minister for Migration must investigate whether the authorities in the country of origin generally provide protection. According to the Council of State, the Minister should take into account the general situation about the country in this investigation, in particular based on the Official Country Reports and reports from international organisations.<sup>214</sup> Once this has been demonstrated, it is up to the asylum seekers to demonstrate that asking for protection in their case is dangerous or entirely futile.

In a February 2019 case concerning the position of the supporters of the Gülen movement in Turkey after the coup attempt, no Official Country Report dating from

after this event was available.<sup>215</sup> Referring to different reports, the Minister stated that the foreign national was not at any real risk of inhuman treatment upon return.<sup>216</sup> The foreign national has also used COI to substantiate his asylum application.<sup>217</sup> According to the Minister, it follows from the consulted sources that the situation for Gülenists in Turkey is difficult to predict and that there are many cases of suspected Gülenists being arrested, but also that the aforementioned unpredictability offers too little ground to grant asylum to every Gülenist.<sup>218</sup> The Council of State discusses in a few sentences the contents of two documents cited by the Minister and two cited by the foreign national, and concludes that it is clear from the information submitted by the parties that the situation in Turkey is complex and diffuse.<sup>219</sup> In its opinion, the Minister has not succeeded in dispelling fears of the foreign national being arrested, since he has not been able to provide a clear picture of the situation in Turkey.

Subsequently, the Council of State assesses whether Gülenists in Turkey face a real risk of being subjected to inhuman treatment during arrest and detention. The Council of State quotes from an underlying section of a report submitted by the foreign national and cites a report referred to by the foreign national, a report referred to by the Minister, and three underlying sources of a report submitted by the Minister. From the information submitted by the foreign national, the Council of State concludes that there is a complex and diffuse situation and that the Minister has not been able to provide any clarity about this. The Council of State continues:

'4.4.2. (...) Therefore, the Minister for Migration's stance in the notice of appeal, that Gülenists are not subjected to treatment in violation of Article 3 of the Convention during arrest and detention, is not yet based on an adequate assessment sufficiently supported by reliable and objective sources (compare the ECHR judgment of 23 March 2016, F.G. v. Sweden, ECLI:CE:ECHR:2016:0323JUD00436111, § 117).'

Franssen notes that in the underlying ruling, as well as in other court judgments, the judges concluded that the Minister had not fulfilled his investigative obligation because no current Official Country Report was available. However, Franssen does not find it surprising that the Council of State has not said anything about this, since the Minister is not obliged to issue a new Official Country Report or ensure that one is issued. Other current sources, provided that there is no reason to doubt them, may also form the basis for the position taken by the Minister. This doubt, as referred to by the Council of State, could be resolved, says Franssen, through a new Official Country Report (Franssen, 2019).

#### *Approach to COI relating to safe countries of origin*

Under Union law, countries are allowed to draw up a list of safe countries of origin.<sup>220</sup> The Minister for Migration is responsible for assessing whether a country of origin is safe and this should be based on a range of information sources. The particular sources referred to are: other Member States, EASO, UNHCR, the Council of Europe and other relevant organisations.<sup>221</sup> The burden of proof for

placing a country on the list of safe countries of origin lies on the Minister, and if she has adequately complied with this, it is presumed that the country is generally safe. The foreign national must then demonstrate that this does not apply in his or her specific circumstances.<sup>222</sup>

In its ruling of 1 February 2017 on the designation of Morocco as a safe country of origin, the Council of State includes a general discussion of the sources of COI that the Minister for Migration must take into account when assessing whether a country is a safe country of origin. The way in which the Minister assesses whether a country is safe is presented as follows:

'5.1. The Minister for Migration has explained (...) that, if he is considering whether or not to designate a country as a safe country of origin, he will enlist the help of the Country and Language Research and Expertise Team (hereinafter: the TOELT) of the Immigration and Naturalisation Service. The TOELT searches for reliable sources of information that provide a comprehensive overview of the situation in a country and for this it makes frequent use of the European Country of Origin Information Network (ECOIN), a country of origin information system from Austria. He further explained that, where available, the general Official Country Reports of the Minister of Foreign Affairs as well as documents and reports from the European Asylum Support Office (hereinafter: EASO), the United Nations High Commissioner for Refugees (hereinafter: UNHCR ) and the Council of Europe are consulted. In addition, he explained that information from the US Department of State, progress reports from the European Commission on potential future member states, Human Rights Watch and Amnesty International are frequently used. According to the Minister, the Freedom House and the Fragile States Index of The Fund for Peace also provide valuable insight into the situation in a country of origin of asylum seekers that he is considering designating as a safe country. The Minister has further stated that he cannot designate a country as a safe country of origin merely based on relevant information from EASO, UNHCR and the Council of Europe, but only if sufficient relevant information is also available from the other relevant international organisations such as the US Department of State, Human Rights Watch and Amnesty International, as referred to in Article 3.105ba(2) of the Vb 2000.'<sup>223</sup>

The Minister indicates that he uses not only the reliable sources that show that a country can be designated as safe, but also those that indicate the opposite. With regard to the role of the Ministry of Foreign Affairs in this entire process, it is noted:

'5.2 (...) The result of his findings are, in any case, submitted to the Ministry of Foreign Affairs. The Minister has explained that this only concerns factual information about the security situation in a specific country. The evaluation of this in light of the applicable legal regulations and therefore

the designation of a country as safe or not is up to the Ministry, according to the Minister.<sup>224</sup>

The Council of State believes that the investigation of the situation in a country that has been placed on the list of safe countries of origin must be clear and transparent. Pursuant to the Awb<sup>225</sup>, the Minister for Migration must 'clarify which sources of information he has based the designation on and how he has selected and weighed these sources against each other', according to the Council of State. 'To do this, the Minister must name every source of information that has been used, no matter how minimal the information extracted from it. Based on this, the foreign national can challenge this designation and the judge can actually effectively verify it.<sup>226</sup>'

The Council of State explains that, although the list of sources mentioned in Article 3.105ba(2) of the Vb is not exhaustive, the Minister for Migration:

'(...) must always take into consideration, if available, independent, reliable and objective sources such as information from United Nations institutions and authoritative non-governmental organisations (hereinafter: NGOs, see the judgment of the European Court of Human Rights of 11 January 2007, *Salah Sheekh v. The Netherlands*, paragraph 136, ECLI:CE:ECHR:2007:0111JUD000194804), or verify other information based on information from these sources. The Minister can therefore also use national sources, such as the general Official Country Reports from the Minister of Foreign Affairs or information from the VWN, because these are usually based on research by foreign governments or intergovernmental organisations or NGOs.'

In another ruling concerning the designation of Mongolia as a safe country of origin, the Minister had not based this designation on information from EASO, other Member States, UNHCR or the Council of Europe because he argued that such information was missing. The Council of State ruled that the Minister had rightly included the report of Amnesty International in his assessment because this is a relevant international organisation as referred to in Article 3.105ba(2) of the Vb. In addition, according to the Council of State, the Minister had rightly included information from the following organisations in his assessment:

- US Department of State
- The Fund for Peace (Fragile States Index)
- Freedom House
- Bertelsmann Foundation
- Kaleidoscope Human Rights Foundation
- Amnesty International Report

With respect to these organisations, the Council of State considered that 'they are sufficiently reliable and that sufficient, relevant and recent information is available

from these sources'.<sup>227</sup> The reason why the Council of State finds that these sources are sufficiently reliable is not explained in the ruling.

#### *Expert opinion*

The Council of State has classified the Official Country Reports drawn up by the Ministry of Foreign Affairs as expert opinions addressed to the Minister for Migration. If the Official Country Reports provide information in an impartial, objective and clear manner and indicate the sources from which this information is derived, the Minister may, in the opinion of the Council of State, assume that the information provided in the expert opinion is correct. This applies to both general and individual Official Country Reports. If there are concrete grounds for doubting the accuracy or completeness of the Official Country Report, the Minister may only base his asylum decision on the Official Country Report if further investigations have been carried out 'on this matter and after confirmation of the relevant information'.<sup>228</sup> The above-mentioned concrete grounds for doubt refer to whether the evidence from the sources (invoked by the asylum seeker) gives rise to any doubts concerning the accuracy or completeness, as well as the topicality, of the Official Country Report.<sup>229</sup>

### **3.2 ECHR**

The ECHR has also expressed an opinion on how it uses COI. It should be noted that the Netherlands is not bound by the interpretation of the ECHR on the use and assessment of COI and sources. The Netherlands is only bound by the final judgment stating whether or not there is a situation in which individual asylum seekers or particularly vulnerable groups may no longer be expelled.

When assessing whether there is a real risk of inhuman treatment upon return, the ECHR's approach is to consider all the materials submitted or, if necessary, materials collected on its own initiative.<sup>230</sup> The latter mainly occurs when 'reasoned grounds' are presented that raise doubts concerning the accuracy of the information relied on by the Member State.

The ECHR believes that the assessment by the authorities of a contracting state of the existence of a real risk of inhuman treatment in the country of origin of an asylum seeker should be adequate and sufficiently substantiated by national information as well as information from other reliable and objective sources. As an example of reliable and objective sources, the Court cites: Governments, UN agencies and "reputable non-governmental organisations".<sup>231</sup>

When the ECHR assesses the real risk of inhuman treatment in the country of origin, it examines the foreseeable consequences of the return of the asylum seeker. This involves looking at the general situation in the country of origin and the individual circumstances of the asylum seeker. With respect to the investigation of the general situation in a country of origin, the ECHR says:

'(...) the Court has often attached importance to the information contained in recent reports from independent international human rights protection associations such as Amnesty International, or governmental sources, including the US Department of State (...).'<sup>232</sup>

In the *NA. v. UK* case, the ECHR sets out its approach to the assessment of objective information. In this particular case, a large amount of COI was presented.<sup>233</sup> The ECHR lists the criteria relevant to the assessment of COI:

- Source: in particular, its independence, reliability and objectivity

With regard to reports in particular:

- Author: authority, reputation and presence and 'reporting capacities' in the country concerned
- 'Seriousness' of the investigation by means of which the report was compiled
- Consistency of the conclusions made
- Confirmation by other sources<sup>234</sup>

With respect to the author's capacity to report from the country in question, the ECHR notes that governments and UN agencies can provide particularly relevant information for this. Governments can do this because of their diplomatic missions and authority to collect information. The UN agencies can provide information because of their direct access to the authorities of the country of origin and their ability to conduct on-site inspections and assessments that may not be possible in the same way for governments and NGOs.<sup>235</sup>

In the *Chahal v. United Kingdom* case, the ECHR demonstrates the importance of confirmation from other sources. According to the ECHR, reports dealing with the human rights situation and the grounds put forward in that case, to support the claim of a real risk of inhuman treatment, should be given greater importance than reports containing an overall assessment.<sup>236</sup>

Based on her study of the judgments of the ECHR, Vogelaar concludes that it relies on policy guidelines as if these were COI. So, for example, the ECHR makes use of guidelines issued by UNHCR or the UK Home Office, while these documents contain not only COI but also the author's view of the protection needs of the asylum seeker (Vogelaar, 2016, pp. 311-312).

## Appendix 3: Results of the case file review

The second sub-question is:

*In the absence of an Official Country Report, what is currently regarded as a useful and unusable source for assessing the situation, in terms of safety or otherwise, in the countries of origin? How is this handled through policy/implementation/case law?*

In order to answer this question, we have carried out a case file review at the IND. We selected 11 countries of origin for this study, for which no or no recent Official Country Report was available and for which asylum decisions were taken in 2018. This selection is based on public data published in Asylum Trends<sup>237</sup> and on Eurostat.<sup>238</sup> In our review, we only included first-time asylum applications and not the Dublin decisions. We studied approximately the same number of positive and negative decisions. We decided to do this because we wanted to gain an understanding of the use of COI for both positive and negative decisions. Less is known about the IND's working method for granted applications because the IND does not state reasons for positive decisions, so there is no case law available for these. We reviewed 54 case files in total. We also took into consideration the documents from the lawyer and the court present in the case file. Therefore, we have included the working methods of the IND, lawyers and courts in the investigation.

The case file review was primarily intended to provide more insight into the way in which the absence of an Official Country Report is dealt with in the implementation of asylum procedures. The review does not involve a representative sample. This description only relates to the 54 case files we examined.

**Figure 2. Overview of sample characteristics: case file review based on nationality and gender and decisions relating to the applicants**

Nationality	Number	Gender	Number
Algerian	5	Male	40
Azerbaijani	5	Female	14
Central African	2	Total	54
Cuban	7		
Egyptian	5		
Jordanian	6		
Myanmarese	6		
Saudi Arabian	2		
Turkish	7		
Ugandan	4		
Venezuelan	5		
Total	54		

Decision	Number
Positive	28
Negative	25
Inadmissible	1
Total	54

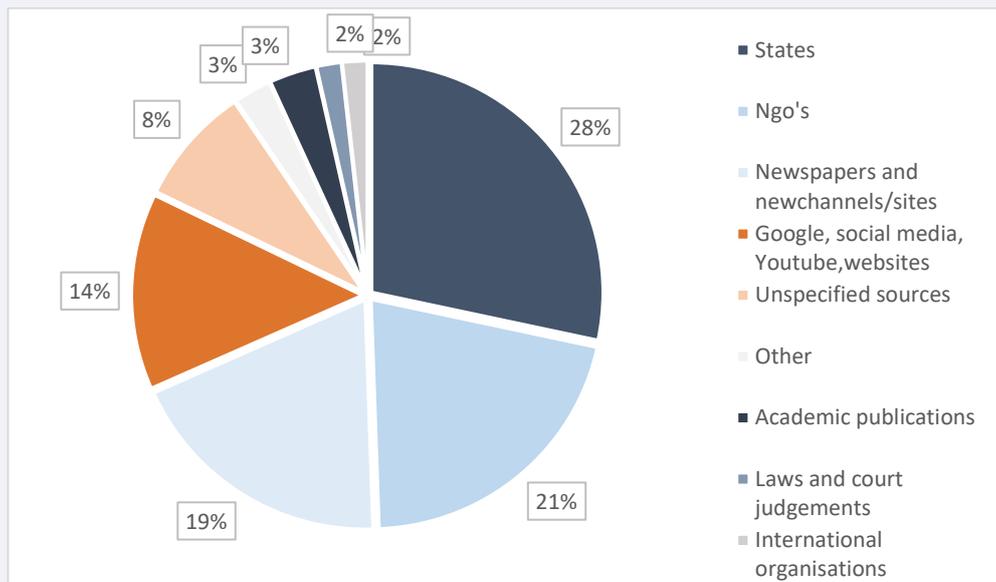
## 1. IND

### *Use of COI sources*

In the 54 case files reviewed, the IND included a source reference 455 times (both in internal and external case file documents). The use of COI varies widely: no COI appears to have been used in five of the cases, and there are also some cases where more than 20 different sources have been used. Most of the interviews were conducted without explicit use of COI. However, COI was used in the majority of cases for intended decisions, final decisions and statements of defence. This may be internal (for example, in the original instrument or a question-and-answer form of the TOELT, see Chapter 1) or an explicit mention in an intended decision, final decision or statement of defence.

The type of organisation from which the sources originate is shown in the figure below.

**Figure 3. Various sources used by the IND in 49 case files**



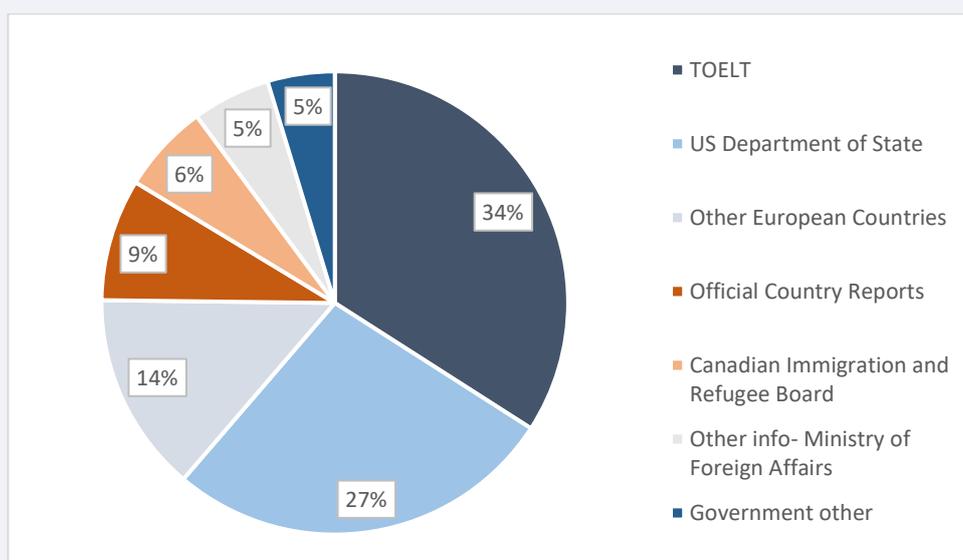
In 28% of the source references, the IND referred to sources from governments. Of the source references cited by the IND, 21% related to NGOs and 19% to newspapers and news sites. Moreover, we observed that 14% of the sources fell under 'Google, social media, YouTube, websites', a category that only includes websites not belonging to organisations in one of the other categories. We would like to point out once more that the source references in internal documents have also been taken into account in our review. Explicit references to this category usually do not occur in the intended and final decisions, although we have also found some examples of this (such as references to images found via Google Search or map data from Google Maps). In 8% of the cases, the sources were not or not sufficiently described (for example, with phrases such as 'based on generally accessible and objective sources', without any further references). Academic

publications were consulted in 3% of the cases. Laws, court judgments and international organisations each accounted for 2% of the references. 3% of the referrals falls into the category 'other'.

#### Government sources

In Figure 3, we summarise the government sources used by the IND, as evident from the case file review.

**Figure 4. Government sources used by the IND in 49 case files**



We see that the TOELT occupies an important place in the references to government sources (34%). The TOELT is only referred to in internal documents such as the original instrument or in the so-called 'TOELT Question and Answers'. The TOELT documents are intended only for internal IND use. These documents include source citations that officers can refer to in public documents. After the TOELT, the main source was the US Department of State (27%), followed by other European countries (14%). Old Official Country Reports were referred to a total of 11 times (9%). The Canadian Immigration and Refugee Board was referred to in 6% of the cases. Also in 6% of the cases, referrals were made to other information of the Dutch Ministry of Foreign Affairs and in 5% of the cases there were referrals to other government sources. We found no reference to use of sources from EASO by the IND in the case file review.

The 'Other European countries' category consisted of:

- UK Home Office (11x)
- *Landinfo* (Norway) (3x)
- *Migrationsverket* (Sweden) (2x)
- Finnish Immigration Service (1x)
- OFPRA (France) (1x)

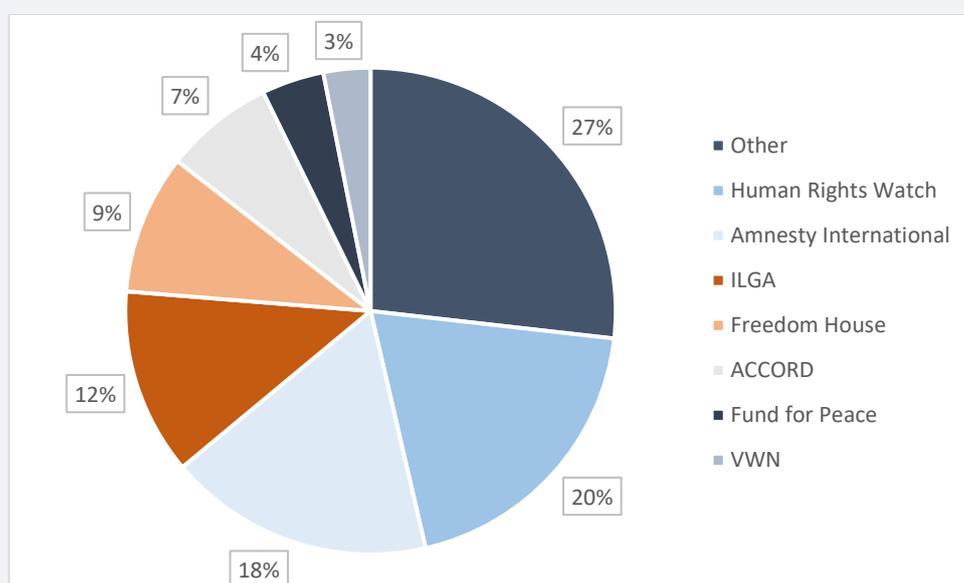
The 'Government - other' category consisted of:

- CIA (2x)
- IND Implementation Advice Division (*Afdeling Uitvoeringsadvies*) (1x)
- gov.uk/foreign-travel-advice/ (1x)
- Dutch Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*) (1x)
- US General Authority for Statistics (1x)

*Origin of sources: NGOs*

In 21% of the cases, the IND used sources from NGOs.

**Figure 5. Sources from NGOs used by IND in 49 case files**



We see that Human Rights Watch (20%) and Amnesty International (18%) occupy an important place here. The International Lesbian, Gay, Bisexual, Trans And Intersex Association (ILGA) was consulted 11 times (12%). However, the 'Other' category was the largest (27%). This consisted of:

- Arab Renaissance for Democracy and Development (ARDD) (1)
- Armed Conflict Location and Event Data Project (ACLED) (1)
- CEAR (Spanish Commission for Refugees) (1)
- COC (2)
- Committee to Protect Journalists (CPJ) (1)
- dayagainsthomophobia (1)
- Danish Refugee Council (2)
- NGO, Central Africa (1)<sup>239</sup>
- Equaldex (1)
- Global Centre for the Responsibility to Protect (1)
- Human Rights Campaign Foundation/Human Rights First (1)

- ilgrandecolibri (1)
- International Crisis Group (ICG) (1)
- International Federation for Human Rights (1)
- International Humanist and Ethical Union (2)
- NGO, Jordan (2)
- LGBTI asylum support (1)
- Organisation for Refuge, Asylum & Migration (ORAM) (1)
- Reporters Without Borders (1)
- Red Cross (1)
- NGO, Uganda (1)
- World Movement for Democracy 2018 (1).

Other referrals to NGO's by the IND were made to Freedom House (9%), ACCORD (7%), Fund for Peace (4%) and VWN (3%).

*Origin of sources: newspapers and news sites*

The IND referred to newspapers and news channels/sites a total of 86 times. There is a large variation: we have identified 50 different sources. Reference is made to Dutch newspapers and news channels (e.g. *Trouw*, *NRC*, *Volkskrant*, *Zembla*, *KRO*), foreign news sources (e.g. BBC, Al-Jazeera, the Guardian, the Washington Post, Fox News, Huffington Post, *Deutsche Welle*) as well as to newspapers and news channels from the countries themselves.

*Google, social media, YouTube, websites*

We found 63 references that we have listed under the group 'Google, social media, YouTube, websites'. Any websites that could be traced to one of the other categories distinguished by us have not been included in this group. Reference has been made to the Wikipedia or a Wiki 16 times (usually, though not always, in internal documents). We found a number of references to Google Maps, Google Search or Google Images. Furthermore, we came across some Facebook pages as well as references to web pages of companies or private initiatives.<sup>240</sup>

*Origin of sources: international organisations*

The IND referred to international organisations a total of eight times. These included the following organisations:

- United Nations High Commissioner for Refugees (UNHCR) (2)
- United Nations Office on Drugs and Crime (UNODC) (2)
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (1)
- UNAIDS (1)
- United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (1)
- African Union (AU) (1)

## **Use of policy guidelines**

In the Netherlands, there is a country-specific part of the Aliens Act Implementation Guidelines (Part C7 of the Vc), which outlines the country-specific asylum policy. In general, a country-specific asylum policy is included in the Vc only for the countries of origin for which an Official Country Report has been issued. This means that, in general, no country-specific policy has been published for countries of origin for which there is no Official Country Report. Out of the 11 countries of origin involved in the case file review, at the time of the review (November 2019) country-specific policies had only been published for the following countries:

- Azerbaijan (only for people of Armenian descent or people married to an Armenian who have left the country between 1988 and 1992)
- Turkey (only for conscientious objectors and deserters)
- Uganda (only for LGBTI persons)

This raised the question of whether, in cases where there are no country-specific policies in the Vc, case workers would make use of other policy guidelines or court judgments that can be classified as 'country-specific' (hereinafter referred to as 'country-specific guidelines') for the legal interpretation of COI. The case file review revealed that the SUA regularly provides guidelines on the legal interpretation of the COI in internal documents referred to as a 'newsletter', 'FAQ'<sup>241</sup> or 'working document'. In addition, court judgments were sometimes used for the legal interpretation of COI. Country-specific guidelines are only used in the interviews in a small minority of the case files examined. As far as the intended decisions, final decisions and statements of defence are concerned, just under half of the case files have made use of country-specific guidelines.

## **Assessment of sources**

In the case file review, we examined the way in which sources are assessed in internal documents such as the original instrument as well as in external documents such as the intended and final decisions.

### *Missing sources*

In five of the case files, it appeared that the IND had not consulted COI. In some of these cases, the asylum seeker was able to sufficiently substantiate the asylum account with documents directly relating to himself or herself and a permit was granted on the basis of this. We also saw in a few cases that the IND considered the asylum seeker's statements to be implausible or insufficiently compelling, as a result of which the situation in the country of origin was no longer taken into account in the decision.

In some case files, the IND decided that insufficient sources of COI were available (in particular, in the case of Myanmar and the Central African Republic). This occasionally led to an asylum seeker either being referred to the extended asylum procedure or being given the benefit of the doubt and granted a permit. In one

case, the IND requested the issue of an Official Country Report for a specific individual country of origin because of the lack of information, stating that this Official Country Report could later be used for similar cases. In one case where there were doubts about the origin of the asylum seeker, the IND carried out a language analysis. In one case, an IND officer took the view in an internal document that, in the absence of an Official Country Report, it cannot be assessed whether there was a situation as referred to in Article 15c of the EU Qualification Directive.<sup>242</sup> There were a few cases where the IND concluded, because there was no information (for example, if a specific target group was not mentioned in a report on the general human rights situation in a certain country), that this meant that there were no problems.

### *Reliability*

In a majority of the case files, the IND used various sources by combining and juxtaposing them. In the vast majority of cases, the officer assumed the reliability of the source, regardless of its origin. In some cases, it is stated, without further explanation in an original instrument, intended or final decision that this concerns an 'authoritative' or 'objective' source, a 'source of considerable weight' or 'usually reliable source': i.e. the UK Home Office, US Department of State, Amnesty International, UNHCR and Factiva (a subscription-based service for news reports). In a few cases, a report from the UK Home Office or the US Department of State has been explicitly used as a 'replacement' for the Official Country Report: for example, the officer concluded that a decision could be made despite the absence of an Official Country Report because the UK Home Office had recently published a report or, as a standard consideration in a decision about the general situation in the country of origin, the officer referred to the US Department of State rather than the Official Country Report that is normally included in such as standard consideration.

However, in a small minority of the case files examined, sufficient attention had been paid to the reliability of sources. In one case, a case worker checked the origin of a source by inquiring about this with the TOELT. In another case, the TOELT officer reported internally about a Wikipedia page that it is not entirely reliable and that the underlying sources of the page should be used rather than the page itself. After consulting the page, it appeared however that the Wikipedia page did include a warning regarding 'multiple issues': no sources are used and the neutrality of the page is under discussion. In one case, a case worker referred to an internal IND investigation in which a number of local NGOs were identified as unreliable: normally, these NGOs would help in interpreting the asylum account. A few times, attention was paid to the reliability of the sources because the lawyer or another IND officer questioned it. In such cases, the discussions were about:

- use by the IND of websites of governments or, according to the authorised person, pro-government organisations;
- use of Google Maps by the IND to cast doubts on the credibility of the asylum account;

- use by the lawyer of a website of a local interest group that contradicts all other sources;
- use of sources from the US Department of State;
- use of a pollster's website;
- use of a secondary source that bases itself on only one primary source.

### *Topicality*

When referring to COI reports from other organisations (such as those of the US Department of State or Amnesty International), the IND usually referred to the most recent report. The IND also uses many recent news sources. Internal documents also show that the officers generally pay attention to the topicality of sources. The IND referred to an Official Country Report from 2012, 2013 or 2014 (see Figure 4) a total of 11 times, where it sometimes added the remark that the situation has not changed since then. In a number of case files, the lawyer had contested the use of the old Official Country Reports or other information that the lawyer claimed was dated. In two cases, the judge was of the opinion that the IND had used outdated COI.

### *Accuracy, transparency and traceability*

The practice of citing source references in intended decisions, final decisions and statements of defence varies. In a number of cases, when assessing each relevant element, the officer indicated the COI used in a footnote, with a link to the location. In a number of cases, the officer cited the source in the document itself, sometimes without stating the page number. Sometimes, the used sources are mentioned in a general sense and it is not indicated per element which sources of COI are involved. The IND referred to sources that were not described in more detail (see Figure 2) a total of 38 times (8% of all source references), usually in terms such as 'it appears from public information' or 'it appears from authoritative and objective sources'. In addition, there are also cases where the intended or final decision does not refer to COI at all, while the original instrument shows that COI was involved in the assessment.

In one case, a lawyer noted that the IND had mistranslated a word from a report by the UK Home Office. It was also pointed out once that the IND had quoted a passage from a COI report that apparently contradicted the foreign national's asylum account, while the same report also contained several passages that supported the asylum seeker's account.

Internally, in a small minority of the case files examined, the IND paid explicit attention to the accuracy of sources, such as in the legal representation in the preparation of an appeal case. In some cases, the lawyer indicated that a reference was missing, that there was an incorrect reference or that a page number was missing. In a number of cases, the court also offered an opinion on the accuracy of the use of sources by the IND. In one case, the appeal was declared well founded, partly because the IND referred to a website that was not accessible (even for the court).

### *Relevance*

In many of the reviewed case files, the IND took into account COI that is directly related to the personal circumstances of the asylum seeker. This also explains the great diversity of sources found in the case file review. In case of COI concerning the general human rights situation in the country of origin or the vulnerability of a certain group, it is often pointed out that the individual in question must demonstrate that he or she is eligible for a permit on the basis of personal circumstances (also in standard considerations).

The relevance of the information was sometimes explicitly assessed by the IND based on documents submitted by a lawyer. In some cases, the IND ruled that the documents submitted by the lawyer were not relevant to the case. In some cases, the lawyer disputed the relevance of the COI used by the IND in a specific case or the lawyer argued that relevant sources had been wrongly ignored in the assessment of the application. The judge ruled in some (mainly Turkish) cases that the IND's conclusion was not supported by the COI referred to. However, this points more to the fact that the judge found the conclusion to be incorrect and not so much that the COI was not relevant.

## **2. Individual in question**

In the case files we examined, 16 of the 54 asylum seekers themselves submitted information to the IND relating to the content of the asylum account of the situation in the country of origin, for example, during the detailed interview.<sup>243</sup> Of these 16 persons, 8 provided information relating to themselves, 6 provided only COI that was not related to themselves, and 2 provided both general COI and personal information.<sup>244</sup>

The information provided by asylum seekers themselves ranged from newspaper articles from local and international press, YouTube, Facebook pages and USB sticks with photo or film material to an ECHR ruling and reports from Human Rights Watch.

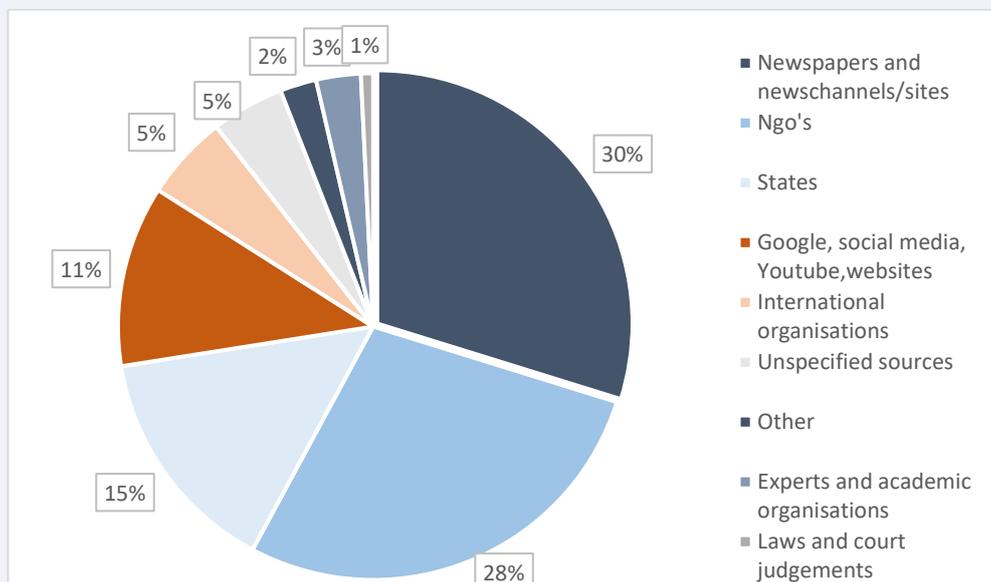
## **3. Lawyers**

### **Use of COI**

In the 54 case files examined, lawyers used source references a total of 384 times. As with the IND, there is also a wide divergence in the use of source referencing by lawyers: in 23 of the 54 cases, the lawyer did not use any COI at all (this included 16 cases where the asylum applications were immediately granted by the IND, see further under 'Analysis of COI') and in some cases more than 20 sources were provided. COI was referred to in a minority of the cases that involved corrections and additions to the first and/or detailed interview. However, the majority of the opinions and/or appeals in the case files examined do contain

references to COI. The type of organisation from which the sources originate is shown in the figure below.

**Figure 6. Total use of sources by lawyers in 31 case files**



In 30% of the source references by lawyers, reference was made to sources from newspapers and news channels. Of the source references cited by lawyers, 28% related to NGOs and 15% to the governments. Furthermore, we saw that Google, social media, YouTube, and websites not associated with organisations falling in one of the other categories together accounted for 12% of the sources used by lawyers. Five percent of the sources included references to international organisations. In 5% of the cases, the sources used by lawyers were not or not sufficiently described (for example, with phrases such as 'based on generally accessible and objective sources' and without any further references). Experts and academic publications were consulted in 3% of cases. Laws and court judgments accounted for 1% of references.

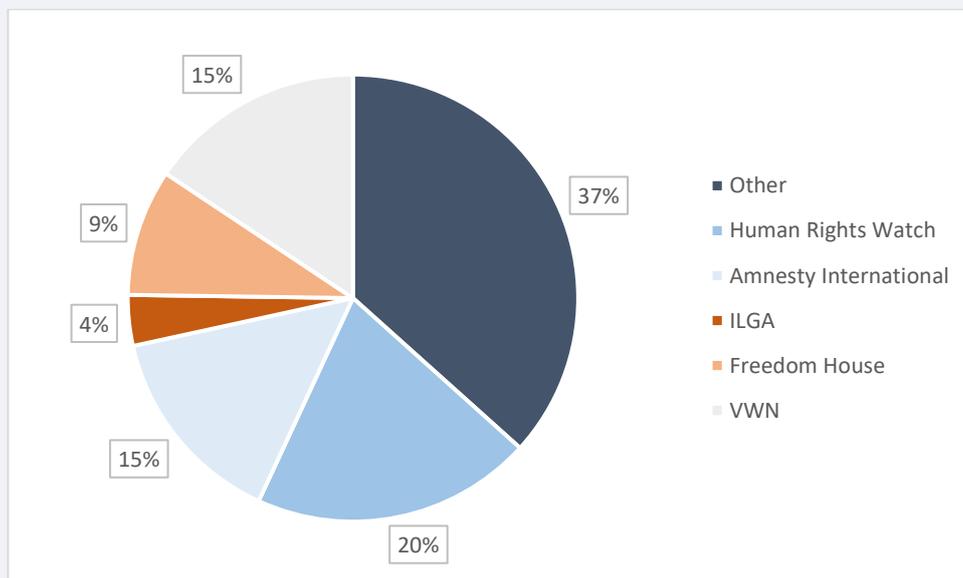
#### *Newspapers and news channels/sites*

Lawyers referred to newspapers and news channels/sites a total of 116 times. There is a large variation: we have identified 57 different sources. Reference is made to Dutch newspapers and news channels (e.g. *Trouw*, *NRC*, *Volkscrant*, *NOS*), foreign news sources (e.g. BBC, Al-Jazeera, CNN, the Guardian, New York Times, Voice of America, *Deutsche Welle*) as well as newspapers and news channels from the countries of origin.

#### *NGOs*

In 28% of the cases, the lawyers made use of sources from NGOs.

**Figure 7. Sources from NGOs used by lawyers in 31 case files**



We see that sources from the VWN were consulted in 17 cases (16%). The VWN fulfils a similar role for lawyers as the TOELT does for the IND case workers: they draw up documents at the request of lawyers in which COI is provided with reference to other public documents (see Chapter 1). Unlike the TOELT documents, the VWN's documents are public. In addition to the VWN, the NGOs Human Rights Watch (20%), Amnesty International (15%) and Freedom House (9%) also played an important role. ILGA was referred to in 4% of the cases. However, the 'Other' category was the largest (37%). This consisted of:

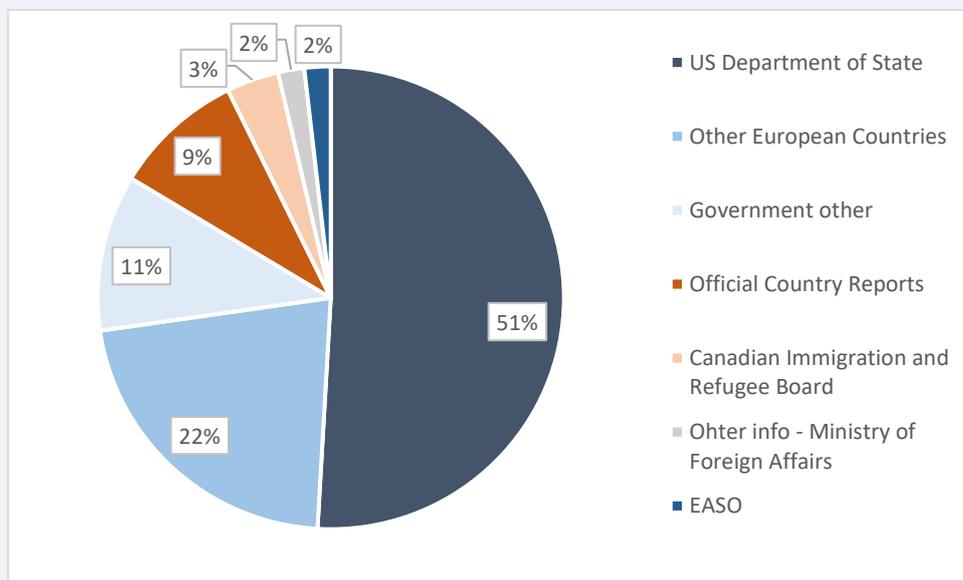
- ACCORD (1)
- Danish Refugee Council (2)
- InSight Crime (2)
- International Commission of Jurists (1)
- Institute for War and peace (2)
- COC (1)
- Bertelsmann Foundation (2)
- NGO, Egypt (1)<sup>245</sup>
- ActionAid USA (1)
- NGO, Myanmar (1)
- Asylum Research Centre (ARC) (2)
- NGOs, Venezuela (4)
- Child Soldiers International (1)
- Cooperating NGOs (2)
- NGOs, Uganda (2)

- Irish Refugee Documentation Centre (1)
- International Federation for Human Rights (1)
- Organisation for Refuge, Asylum & Migration (ORAM) (1)
- Reporters Without Borders (1)
- NGOs, Turkey (7)
- War Resisters' International (2)
- Council on Hemispheric Affairs (2)
- LGBT Asylum Support (1)

### *Governments*

In 15% of the cases, the lawyers referred to government sources.

**Figure 8. Government sources used by lawyers in 31 case files**



The US Department of State was mentioned 28 times and therefore occupies a prominent role (51%). Reports from other EU Member States were used 12 times (22%). These included:

- UK Home Office (6)
- UK Foreign and Commonwealth Office (1)
- Finnish Immigration Service (3)
- Danish Refugee Council/Danish Immigration Service (2)
- *Landinfo* (Norway) (1)

The 'Government - other' (11%) category consisted of:

- IND (1)
- Letter to the Dutch House of Representatives
- Website of the government of Egypt (1)
- Ministry of Internal Affairs, Turkey (1)
- DFAT (Australian Department of Foreign Affairs and Trade) (1)
- USAID (1)

9% of the referrals to government sources by lawyers were made to official country reports of the Dutch Ministry of Foreign Affairs, 3% to the Canadian Immigration and Refugee Board, 2% to other information of the Dutch Ministry of Foreign Affairs and 2% to EASO.

*Google, social media, YouTube, websites*

The lawyers referred a total of 45 times to sources that we have classified under the category 'Google, social media, YouTube, websites' and that could not be traced to any of the other categories we have distinguished here. Wikipedia or a Wiki were referenced three times. Furthermore, there were references to videos on YouTube, links to radio broadcasts, Facebook pages, local sites and sites containing maps.

*international organisations*

The lawyers referred to international organisations a total of 21 times. These included:

- OHCHR/UN Human Rights Council (9)
- UNHCR (4)
- UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (1)
- UN Security Council (1)
- Inter-American Commission of Human Rights (2)
- Council of Europe (3)
- European Parliament (1)

### **Use of guidelines**

As described in the section on the IND, there is often no country-specific asylum policy in the Vc for countries of origin for which an Official Country Report is missing. This raises the question of whether other country-specific guidelines or court judgments are used in such cases.

In the case files examined, the lawyers made less use of country-specific guidelines than the IND. The IND's internal guidelines are not available to the lawyers. In some cases, lawyers have referred to guidelines or policy opinions of the VWN, UNHCR or the UK Home Office. In addition, lawyers have in some cases referred to the publicly available safe country of origin policy for Algeria and to court judgments.

### **Assessment of sources**

*Lack of sources*

It is not always necessary for the lawyer to provide COI. Among the 23 cases in which the lawyer did not use COI, 16 involved applications that were granted, all of which were decided on without first issuing a notice of intention to grant the

application. This means that in these cases, the lawyer only made corrections and additions to the interviews and did not add any response and/or appeal (see Figure 1 for the procedure).<sup>246</sup> In 7 of the 23 cases in which the lawyer did not provide any COI, the asylum application was rejected. In about half of these cases, the lawyer referred to documents that related directly to the person himself or herself. In one case, a statement was made about the situation in the country of origin without referring to an underlying source, and in another case, no response was submitted.

In a few of the cases, lawyers took the position that there are insufficient sources and attached various consequences to this. For example, it is stated that in the absence of an Official Country Report, the IND cannot simply reject the submitted documents because they cannot be examined for authenticity, but that in such cases, it should request an individual Official Country Report. Some lawyers also argued that, due to a lack of information (e.g. about a specific target group in a COI report), the IND should not conclude that there are, consequently, no problems. It is also stated that, in the absence of sufficient sources and knowing that the situation in the country of origin is very unfavourable, a general Official Country Report must be requested. If this is not done, it must be assumed that there is a situation as intended in Article 15c of the EU Qualification Directive (in fact, in the same case, the IND states in an internal document that, in the absence of sufficient information, it cannot be assessed whether there is a 15c situation, see the section above on the IND). One authorised representative argues that, in the absence of a general Official Country Report, there is no benchmark against which newspaper articles can be verified. Some lawyers also pointed out that the IND rejected the application without referring to any sources of COI and stated that this is in violation of the EU Asylum Procedures Directive and/or established case law.

#### *Reliability*

Just like the IND, in the reviewed case files the lawyers used a large number of sources by combining and juxtaposing them and, also like the IND, they almost always assumed that the source is reliable. In a few cases, lawyers questioned the reliability of sources used by the IND. For this, see the section under the sub-heading 'Reliability' in connection with the IND.

#### *Topicality*

Just like the IND, the lawyers generally paid attention to the topicality of sources. In one or two cases, the lawyer argued that the report to which he or she referred is from a later date than that of a landmark ruling issued by the Council of State or that of the information taken into account by the IND when assessing the application. In one particular case, the IND stated that newer information should not automatically override older information, and certainly not if the new information comes from a single source.

#### *Accuracy, transparency, traceability and relevance*

Just like the IND, in many of the reviewed case files the lawyers took into account COI that is directly related to the personal circumstances of the asylum seeker. As a result, we also see a great diversity of sources among lawyers. In one case, the lawyer argued that a specialist source overrides a general source, but the judge did not uphold this argument. Just like the IND, the lawyers sometimes used phrases such as 'it is a matter of general knowledge' without adding any source references. We also saw that lawyers appended documents about the situation in the country of origin to their response or appeal, without mentioning the relationship between the information in question and the situation of their client. Occasionally, information was added that is unrelated to the asylum seeker's case (for example, about the situation of a minority group to which the person concerned does not belong). In one particular case, information was submitted that seemed to contradict rather than support the asylum account. We saw a few cases in which the judge pointed out to the lawyer that adding documents without linking them to the case is not sufficient, even if certain passages in these documents are underlined without further explanation. In a number of the reviewed cases, the lawyers successfully argued before the court that the IND had failed to take the relevant sources into consideration in the assessment of the asylum application.

#### 4. Case law

In 7 of the 22 cases in which a court judgment was issued, the court made use of COI. Without exception, this concerned COI submitted by the parties.

In 2 of the 22 cases in which a court judgment was issued, the court made use of the Council of State's policies and rulings. In both cases, this concerned the safe country of origin policy with respect to Algeria.

In two cases in which both the IND and the lawyer had submitted a large number of sources, the court discussed the assessment of the sources in detail.

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<sup>159</sup> <https://www.unhcr.org/refugee-status-determination.html>

<sup>160</sup> Interview UNHCR Geneva 13 January 2020.

<sup>161</sup> <https://www.unhcr.org/refugee-status-determination.html>; Interview UNHCR 13 January 2020.

<sup>162</sup> For example, see: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan 30/08/2018.

<https://www.refworld.org/docid/5b8900109.html>

<sup>163</sup> For example, see: UNHCR, Iraq: Country of Origin Information on Access and Residency Requirements in Iraq: Ability of Persons Origination from Formerly ISIS-Held or Conflict-Affected Areas to Legally Access and Remain in Proposed Areas of Relocation (Update I), 6 November 2019, [www.refworld.org/docid/5dc04ef74.html](http://www.refworld.org/docid/5dc04ef74.html) and UNHCR, COI Note on the Treatment of Women with Children Born out of Wedlock in Syria, 30 September 2019, [www.refworld.org/docid/5db174a44.html](http://www.refworld.org/docid/5db174a44.html)

<sup>164</sup> <https://www.unhcr.org/refugee-status-determination.html>

<sup>165</sup> Interviews UNHCR 13 January 2020, ACCORD 21 January 2020, ARC Foundation 14 January 2020.

<sup>166</sup> <https://www.refworld.org/publisher,UNHCR,COUNTRYPOS,,,0.html>

<sup>167</sup> Interview UNHCR 13 January 2020.

<sup>168</sup> <https://www.ohchr.org>

<sup>169</sup> State.gov/reports-bureau of Democracy, Human Rights, and Labor.

<sup>170</sup> State.gov/reports-bureau of Democracy, Human Rights, and Labor.

<sup>171</sup> Case file review, Interviews UNHCR 13 January 2020, Division 26 September 2019, IND (TOELT) 18 September 2019, UK Home Office 14 January 2020, VWN 14 January 2020.

<sup>172</sup> Interviews VWN 24 October 2019, UNHCR 13 January 2020.

<sup>173</sup> Case file review.

<sup>174</sup> Interviews IND (TOELT) 11 September 2019, Division 26 September 2019, UNHCR 13 January 2020.

<sup>175</sup> See <https://www.amnesty.org/en/countries/>

<sup>176</sup> For this, see: <https://www.hrw.org/publications>

<sup>177</sup> We are not mentioning the content of the news report here to prevent it from being traced back to a person.

<sup>178</sup> See: <https://freedomhouse.org/about-us>

<sup>179</sup> See: <https://freedomhouse.org/report/freedom-world>

<sup>180</sup> Recital 39 of the Preamble to the EU Asylum Procedures Directive.

<sup>181</sup> Articles 4(1) and (3) of the EU Asylum Procedures Directive. Article 6(4), opening words and (e) of the Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

<sup>182</sup> Article 10(3)(b) of the EU Asylum Procedures Directive. The requirement specified under EU law that the Member State should ensure that the IND has accurate and up-to-date information from relevant sources when assessing an asylum application is laid down in the Aliens Regulation (*Voorschrift Vreemdelingen*). Article 3.37d(2) of the Aliens Regulation.

<sup>183</sup> Article 45(2)(a) of the EU Asylum Procedures Directive.

<sup>184</sup> Article 37(3) of the EU Asylum Procedures Directive.

<sup>185</sup> Preamble 46 of the EU Asylum Procedures Directive.

<sup>186</sup> Article 5(c) of Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of foreign nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (EU Qualification Directive). This is stated in Article 31(6), opening words and (c) of the Vw.

<sup>187</sup> Article 33(2)(c) of the Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (Asylum Procedures Regulation).

<sup>188</sup> Section 3:2 of the Awb.

<sup>189</sup> Section 3:46 of the Awb.

<sup>190</sup> Section 3:9 of the Awb.

<sup>191</sup> Article 30b(1)(e) of the Vw. See Article 32(2) and Article 31(8)(e) of the EU Asylum Procedures Directive.

<sup>192</sup> Article 42(2) of the Vw.

<sup>193</sup> Article 3.109a(3) and (4) of the Vb. The requirement is included in Article 12(1), opening words and (d) and Article 23(1) of the EU Asylum Procedures Directive. However, according to the latter article, the judge must have access to the information.

<sup>194</sup> *Lexplicatie*, Sources and citations relating to: Aliens Decree 2000 (*Voorschrift Vreemdelingen*), Article 3.109a.

<sup>195</sup> Article 3.37d(2) of the Aliens Regulation (*Voorschrift Vreemdelingen*).

<sup>196</sup> The Aliens Act Implementation Guidelines C7/1 states: 'The country-specific asylum policy contains policy rules regarding the country of origin of the foreign national who has submitted an application for a temporary asylum residence permit. A general Official Country Report from the Ministry of Foreign Affairs about the situation in a country is taken into account in the asylum policy with regard to that country.'

<sup>197</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/07/11/tk-landgebonden-asielbeleid-afghanistan>

<sup>198</sup> C1/4.4.2.

<sup>199</sup> C1/4.3.

<sup>200</sup> C2/3.2.

<sup>201</sup> C2/3.4.

<sup>202</sup> C2/3.4.

<sup>203</sup> Work Instruction 2014-10, p. 9.

<sup>204</sup> ABRvS 7 December 2018, ECLI:NL:RVS:2018:4016, paragraphs 2.3.

<sup>205</sup> ABRvS 10 March 2016, ECLI:NL:RVS:2016:745 with commentary from Zwaan, paragraph 6.1.

<sup>206</sup> ABRvS 3 April 2019, ECLI:NL:RVS:2019:1060, paragraphs 11 and 11.1.

<sup>207</sup> ABRvS 3 April 2019, ECLI:NL:RVS:2019:1060, paragraphs 14.

<sup>208</sup> ABRvS 3 April 2019, ECLI:NL:RVS:2019:1060, paragraphs 15 and 15.1.

<sup>209</sup> ABRvS 3 April 2019, ECLI:NL:RVS:2019:1060, paragraphs 16 and 16.2.

<sup>210</sup> ABRvS 14-12-2018, ECLI:NL:RVS:2018:4026, ABRvS 14-12-2018, ECLI:NL:RVS:2018:4027 and ABRvS 14-12-2018, ECLI:NL:RVS:2018:4028 about Kachin and non-Rohingya Muslims in Myanmar. ABRvS 21-3-2018, ECLI:NL:RVS:2018:915 on the general security situation in Afghanistan and particularly in Ghazni. ABRvS 4-1-2018, ECLI:NL:RVS:2018:1, ABRvS 4-1-2018, ECLI:NL:RVS:2018:2, ABRvS 20-7-2016, ECLI:NL:RVS:2016:2123 and ABRvS 20-7-2016, ECLI:NL:RVS:2016:2124 on the general security situation in Libya and particularly in Benghazi and Tripoli. ABRvS 20-10-2017, ECLI:NL:RVS:2017:2781 on the designation of Tunisia as a safe country of origin. ABRvS 8-3-2017, ECLI:NL:RVS:2017:630 on the designation of Algeria as a safe country of origin. ABRvS 21-11-2016, ECLI:NL:RVS:2016:3083 on a relocation option in Baghdad. ABRvS 4-3-2016, ECLI:NL:RVS:2016:671 on foreign nationals from China who are part of a house church.

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- <sup>211</sup> ABRvS 20-7-2016, ECLI:NL:RVS:2016:2123.
- <sup>212</sup> 14-12-2018, ECLI:NL:RVS:2018:4026. In the ruling ECLI:NL:RVS:2018:915 of 21 March 2018, although not all of the consulted sources have been cited, the Division indicates that the other sources do not reveal a significantly different picture.
- <sup>213</sup> For example, see 14-12-2018, ECLI:NL:RVS:2018:4026 (Kachin, Myanmar), 14-12-2018, ECLI:NL:RVS:2018:4027 (Muslims, Myanmar), 4-7-2018, ECLI:NL:RVS:2018:2168 (LGBTI, Cuba), 4-3-2016, ECLI:NL:RVS:2016:671 (house church, China).
- <sup>214</sup> ABRvS 7 December 2018, ECLI:NL:RVS:2018:4016; ABRvS 4 April 2017, ECLI:NL:RVS:2017:957; ABRvS 28 March 2012, ECLI:NL:RVS:2012:BW5153.
- <sup>215</sup> ABRvS 13 February 2019, ECLI:NL:RVS:2019:377.
- <sup>216</sup> The ruling shows that the Minister for Migration has definitely referred to the Country Policy and Information Note: Gülenism, Turkey report of 19 February 2018 from the UK Home Office (paragraph 2), the Country Reports on Human Rights Practices for 2017: Turkey of 20 April 2018 from the United States Department of State and the ECHR's Press Country Profile Turkey (paragraph 3).
- <sup>217</sup> The ruling shows that the foreign national has definitely referred to the report entitled 'A new generation of terrorism: an analysis of FETÖ' of November 2017 from the Turkish National Police Academy, newspaper articles from the Daily Sabah newspaper, the report of 21 June 2017 of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the March 2018 report by the United Nations High Commissioner for Human Rights, the World Report: 2018: Events of 2017 published in 2017 by Human Rights Watch and the article entitled 'Turkey abuses and tortures prisoners' of 25 July 2016 by Amnesty International.
- <sup>218</sup> ABRvS 13 February 2019, ECLI:NL:RVS:2019:377, paragraphs 4.2.
- <sup>219</sup> The UK Home Office report, the report of the Ministry of Foreign Affairs, the report by the High Commissioner for Human Rights and an article by the Daily Sabah newspaper. See paragraphs 4.3.1 and 4.3.2.
- <sup>220</sup> Articles 36 and 37 of the EU Asylum Procedures Directive.
- <sup>221</sup> Article 3.105ba(2) and (3) of the Vb 2000 based on Article 37(3) of the Recast EU Asylum Procedures Directive.
- <sup>222</sup> Concl. A-G R.J.G.M. Widdershoven 20 July 2016, ECLI:NL:RVS:2016:2040, p. 2.
- <sup>223</sup> ABRvS 1 February 2017, ECLI:NL:RVS:2017:209, paragraphs 5.1.
- <sup>224</sup> ABRvS 1 February 2017, ECLI:NL:RVS:2017:209, paragraphs 5.2.
- <sup>225</sup> Section 3:2 of the Awb.
- <sup>226</sup> ABRvS 1 February 2017, ECLI:NL:RVS:2017:209, paragraphs 5.3.
- <sup>227</sup> ABRvS 13 September 2017, ECLI:NL:RVS:2017:2490, paragraphs 3.4.
- <sup>228</sup> See, for example, ABRvS 12 October 2001, ECLI:NL:RVS:2001:AD5964, paragraph 2.3.4.
- <sup>229</sup> ABRvS 28 June 2005, 200410638/1, paragraph 2.2.
- <sup>230</sup> ECHR 28 February 2008, ECLI:CE:ECHR:2008:0228JUD003720106 (Saadi v. Italy), paragraph 128. ECHR 11 January 2007, ECLI:CE:ECHR:2007:0111JUD000194804 (Salah Sheekh v. The Netherlands), paragraph 136 and ECHR 17 July 2008, ECLI:CE:ECHR:2008:0717JUD002590407 (NA. v. United Kingdom), paragraph 118.
- <sup>231</sup> Salah Sheekh v. The Netherlands, paragraph 136, NA. v. United Kingdom, paragraph 119, 23-3-2016, ECHR, App. No. 43611/11, F.G. v. Sweden, paragraph 117.
- <sup>232</sup> In Saadi v. Italy, paragraphs 130-131.
- <sup>233</sup> NA. v. United Kingdom, paragraph 118.
- <sup>234</sup> NA. v. United Kingdom, paragraphs 120-121, also see Saadi v. Italy, paragraph 143 and ECHR 28 June 2011, ECLI:CE:ECHR:2011:0628JUD000831907 (Sufi and Elmi), paragraph 231, ECHR 7 April 2015, J.K. v. France, paragraph 88.
- <sup>235</sup> NA. v. United Kingdom, paragraph 121.
- <sup>236</sup> NA. v. United Kingdom, paragraph 122 and Salah Sheekh v. The Netherlands, paragraph 141.
- <sup>237</sup> Asylum Trends December 2018. <https://ind.nl/over-ind/Cijfers-publicaties/Paginas/Asieltrends.aspx>
- <sup>238</sup> Eurostat, Table: First instance decisions on applications by citizenship, age and sex, Annual aggregated data (rounded) (migr\_asydcfsta), consulted on 3 June 2019.
- <sup>239</sup> We do not mention the names of the local NGOs, newspapers and websites, so that the information cannot be traced back to the persons involved.
- <sup>240</sup> We do not mention the names of these websites, so that the information cannot be traced back to the persons involved.
- <sup>241</sup> Frequently Asked Questions.
- <sup>242</sup> A situation in which there is a serious and individual threat to a civilian's life or person due to indiscriminate violence in situations of international or internal armed conflict. This is one of the grounds on which an asylum residence permit may be granted.
- <sup>243</sup> Here, we refer to information cited by the asylum seeker that has been distributed or published in any form. This count does not include documents that only relate to the identity, nationality and travel route of the individual in question (such as passports and ID documents) and documents that only relate to the asylum account of the individual in question (such as arrest warrants, judgments or the e-government file).
- <sup>244</sup> In some cases, radio interviews, newspaper articles and/or YouTube videos were submitted in which the person involved played a role or that had been produced by the

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individual in question, but which also included (sometimes with the help of the individual in question) an overview of the situation in the country of origin or the situation of a particular group. We have grouped these news reports here under 'Information relating to the individual in question'.

<sup>245</sup> We do not mention the names of the local NGOs, newspapers and websites, so that the information cannot be traced back to the persons involved.

<sup>246</sup> A response is only formulated if the IND issues a notice of intention to reject the asylum application. If the IND decides to grant the application immediately, it no longer issues an intended decision but instead immediately issues a positive decision (without statement of reasons).