



UNIVERSITY OF GOTHENBURG  
DEPARTMENT OF SOCIAL WORK

# Constructing deportability status

- A document study of the Migration Court's use of country of origin information and credibility assessments in decisions regarding Afghan asylum seekers in Sweden

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# Abstract

**Title:** Constructing deportability status - A document study of the Migration Court's use of country of origin information and credibility assessments in decisions regarding Afghan asylum seekers in Sweden

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**Keywords:** Asylum Assessments, Country of Origin Information, Credibility, Deportability, Afghans, Sweden

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The aim of this study was to explore how the Swedish Migration Courts construct deportability through country of origin information and credibility assessments, in their decisions regarding asylum seekers from Afghanistan. The aim of the study together with previous research led me towards the research questions that were as follows: (1) How do the Migration Courts use country of origin information in their decisions about asylum seekers from Afghanistan? (2) How do the Migration Courts use credibility assessments in asylum cases relating Afghan asylum seekers?

I have used a qualitative approach to answer the research questions of the study. I have analysed 50 decisions from the Migration Courts, all rejections. These were analysed using a qualitative content analysis together with thematic analysis. The theoretical grounds that I've used is social constructionism and theorised concepts such as narrative inequality and epistemic injustice. The collected data has been coded, categorized, thematized and analysed based on the mentioned theories and previous research.

The findings of this study show that rejections because of deficits in credibility are common in many cases. The credibility seems to be assessed as more important than the narrative itself. The findings also show how subjective perceptions and expectations affect the assessments. Information is questioned when there is lack of evidence but also in cases where there is a lack of country of origin information (COI) to confirm specific information. Furthermore, COI is interpreted extremely narrowly. The result show indicate that the appellant is held accountable for shortcomings and actions of third parties, things that the appellant may not have had the power to influence. The result indicates that the appellant is expected to be eloquent and able to express thoughts and feelings, rather than to tell what actually happened. Circumstances that affect and might make it difficult to present a coherent, chronological and detailed narrative (e.g. mental illness, trauma, as well as interpretative deficiencies) are not given enough considerations.

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*Finally, to my family and friends, for the greatest support and encouragement, always!*

***Thank you!***

*/Carro*

*“Humans created the borders  
Therefore we can also tear them down”  
(Unknown)*

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## List of Abbreviations

|        |   |
|--------|---|
| ACCORD | Austrian Centre for Country of Origin and Asylum Research and Documentation |
| COI    | Country of Origin Information   |
| EASO   | European Asylum Support Office  |
| ICCPR  | International Covenant on Civil and Political Rights                        |
| IFA    | Internal Flight Alternative   |
| IFSW   | International Federation of Social Workers                                  |
| IOM    | International Organization for Migration                                    |
| NASW   | National Association of Social Workers                                      |
| NGO    | Non-Governmental Organisation   |
| UN     | United Nations  |
| UNAMA  | United Nations Assistance Mission in Afghanistan                            |
| UNDP   | United Nations Development Programme  |
| UNHCR  | United Nations High Commissioner for Refugees                               |
| UNOCHA | United Nations Office for the Coordination of Humanitarian Affairs          |

# Glossary

## Asylum/International Protection

“The grant of a formal legal status – including refugee, subsidiary protection, and humanitarian status – due to the risk of serious human rights violations in a person’s country of origin” (Amnesty, 2017)

## Asylum Seeker

“A person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments. In case of a negative decision, the person must leave the country and may be expelled, as may any non-national in an irregular or unlawful situation, unless permission to stay is provided on humanitarian or other related grounds” (IOM, 2011).

## Country of Origin

“...means the country or countries of nationality or, for stateless persons, of former habitual residence” (EUR-Lex, 2004).

## Forced Migration

“A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects)” (IOM, 2011).

## Forced Return

“This is a return to a person’s country of origin, following an order to leave. Forced returns vary in the way they take place, but usually involve being detained and then escorted on the flight by security officers from the national police or immigration authority of the sending country” (Amnesty, 2017).

## Internal Flight Alternative (IFA)

The concept of IFA – also referred to as “internal protection alternative” or “internal relocation alternative” – represents a factual determination that an asylum seeker could access meaningful protection in his/her country of origin by relocating to another part of the same country, instead of relying on international protection (UNHCR, 2012).

## Irregular migration

“From the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations” (IOM, 2011)

## Migrant

“...any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is” (IOM, 2011)

## Migration

Migration can be described as a movement of people, within a state or across international borders. It includes movements of people, irrespective of its length, composition and causes and it includes migrants such as refugees, displaced persons, economic migrants, family reunification and other movements for other purposes (IOM, 2011).

## Returnee (in this case, afghan returnees)

An Afghan national who has returned to Afghanistan, either forcibly or through a so-called Assisted Voluntary Return (AVR) process (Amnesty, 2017)

# 1. Introduction

People have been migrating since the earliest times and for migrants today, borders are relevant and will be part of shaping their lives and conditions. One of the reasons why there are specific laws about migration is because of borders. They are part of shaping the world and has a direct consequence for people and their lives. Borders can also shape how people understand the world and how we think and feel about ourselves and others. Many people feel a bigger responsibility for people inside the same borders as one self, compared to the rest of the world. Lastly, the borders affect the regulation of migration. People who migrate to Sweden to seek asylum will get assessed and then get a decision if they can stay inside of Sweden's borders or not.

The situation for asylum seekers coming to Sweden has changed since 2015. Today, we can see a tendency in Sweden where fewer asylum seekers from Afghanistan are granted protection. In 2015 the numbers of Afghans who were granted protection was 74% (proportion of total number of granted decisions with Dublin and others excluded) and during 2018 it was 33% (Migrationsverket, 2019c). This makes Sweden one of the strictest countries in Europe today, regarding approvals for Afghan asylum seekers. Bernd Parusel, a researcher on migration at the European Migration Network (EMN), claims that different countries use and value different sources in their assessments and therefore the numbers of granted protection differ (SVT, 2018).

The security situation in Afghanistan and deportations of Afghans is a contemporary and debated topic where many organisations claim a worsened security situation in Afghanistan the last few years (Farr, 2018a; Rädda Barnen, 2018; Svenska Röda Korset, 2018; UNHCR, 2018a; Amnesty, 2019). UNHCR classified Afghanistan as an “*active conflict*” country in 2017 and in 2018 Afghanistan was considered the most dangerous country, before Syria (Humanitarian Needs, 2018; DN, 2018). UNHCR use formulations such as “negative trends” and “highest levels of civilian casualties” where returnees would face “serious risk to life, safety, liberty or health” (UNHCR, 2018a).

When a person applies for asylum in Sweden, the person's grounds for asylum will be examined. In addition to this, an assessment of credibility and a comparison with the country of origin information (COI) available will be done (RCI 09/2013). This means, that credibility and country of origin information are two important factors, in addition to the asylum grounds, when it comes to decisions about approval or rejection of the asylum application and thereby decision about deportability status (Feijen and Frennmark, 2011; Wikström and Thorburn Stern, 2016). However, the Swedish Migration Board are free to assess and use any country of origin information they want, and they don't have to follow the UNHCR's information. In a judicial position, the Migration Board claims that the security situation in Afghanistan continues to be serious but it's not that bad that each and every one is at risk of being subjected to human rights violations and therefore in need of protection. Therefore, the asylum seeker has to show individual asylum grounds and not general things related to the security situation overall (SR 03/2019).

In addition to country of origin information, the assessments of credibility are of major importance in assessments of asylum cases (Wikström and Thorburn Stern, 2016). Credibility



assessments are also debated and criticized in different ways (Feijen and Frennmark, 2011; UNHCR, 2013; Wikström and Thorburn Stern, 2016). To do the assessment of credibility, the case worker has to investigate if the applicant has given a coherent narrative, without contradictory information as well as information that does not go against well-known facts (Feijen and Frennmark, 2011). Evidence can strengthen the narrative, but in many cases the applicant's testimony is the only evidence (Wikström and Thorburn Stern, 2016). Rejections because of deficits in credibility are common and in many cases the credibility is assessed as more important than the narrative itself. Research shows that subjectivity, prejudices and generalisations occur in decisions, without the applicant being given an opportunity to respond on it (Feijen and Frennmark, 2011; Diesen, 2012; Wikström and Thorburn Stern, 2016). Furthermore, there are different factors that might affect the possibility to give a coherent and detailed narrative, such as trauma and mental issues, torture or persecution, as well as feelings of guilt and shame (Feijen and Frennmark, 2011).

## **1.1 Problem area**

The use of country of origin information and credibility assessments in asylum cases are debated and criticised. I have also showed how the numbers of Afghans being granted protection in Sweden has decreased the last couple of years. Therefore, I found it interesting to analyse decisions from the Migration Court to examine how they construct deportability status among Afghan asylum seekers in Sweden. I will do this by analysing how the Migration Court use country information regarding Afghanistan as well as credibility in cases concerning Afghan asylum seekers. Furthermore, there are few studies on the chosen topic for this study. In the studies I have found, it has been more focus on people already being assessed as deportable and the rights one has, or lacks, as deportable and not so much on the process of being assessed as deportable in relation to one's asylum case. Throughout my study, I will use the concept of deportability status in relation to credibility and country of origin information. The concept of *deportability* is in this study used as at core of the asylum assessments. This means that what is at stake when the migration authorities assess the credibility of the asylum narrative and when they apply the country of origin information in relation to the case, they are by extension trying the applicant's deportability. To look at the asylum procedure through a deportability lens can be viewed as a biased way of looking at the process. However, research shows that presumptive suspicion is a profound part of the process (Feijen and Frennmark, 2011; Diesen, 2012; UNHCR, 2013; Wikström and Thorburn Stern, 2016).

## **1.2 Aim and research questions**

The aim of this study is to analyse how the Swedish Migration Courts construct deportability through country of origin information and credibility assessments, in their decisions regarding asylum seekers from Afghanistan.

In order to achieve this aim, the following research questions were formulated:

- How do the Migration Courts use country of origin information in their decisions about asylum seekers from Afghanistan?
- How do the Migration Courts use credibility assessments in asylum cases relating Afghan asylum seekers?

### **1.3 Relevance for social work and human rights**

According to The National Association of Social Workers, the social work profession's primary mission is to enhance human well-being and help *all* people to meet their basic human needs (NASW, 2019). Particular attention should be paid to the needs and empowerment of vulnerable and oppressed people and people in poverty (ibid.). It is common that social work is linked to the national welfare state but the globalisation processes and international migration challenge this (Righard and Montesino, 2015). Furthermore, international migration can challenge the current discourses and practices in the society (ibid.). The Migration Board and many organisations agree that the situation in Afghanistan is bad (Farr, 2018a; Rädde Barnen, 2018; Svenska Röda Korset, 2018; UNHCR 2018a; Migrationsverket, 2019b). The poverty rate is high, unemployment is increasing and the developments in the country happen slowly. According to UNHCR (2018a), there are also a lot of violations against human rights in Afghanistan. On the other hand, fewer Afghans are granted asylum in Sweden today compared with just a few years ago (Migrationsverket, 2019c). These restrained assessment of approvals leads to an increased group of people assessed as deportable and it creates a subordinate group of people that lose many of their basic human rights. Many people who becomes assessed as deportable still stays in Sweden and becomes part of a growing society with people who are undocumented. A reoccurring question for me, is how the politics together with the authority's assessments of people's need of protection affect the outcome of the asylum cases. It would be interesting to see further research in this field.

### **1.4 Delimitations**

The aim of this study is not to give a comprehensive picture about deportability, but to analyse two chosen aspects of it: the use of country of origin information and credibility assessments. Many other factors also matter in what becomes a decision of approval or rejection. Work load of the case officer, the competence level of the interpreters and assessments of proof are some other factors that might affect the outcome of the asylum case. In order to narrow my topic of research, and due to limit of time and space, I have chosen to focus my study on the asylum procedure for Afghans in Sweden. It might be a different situation for people facing the same situation but with another country of origin.

### **1.5 Structure of the study**

This paper is divided into eight chapters. This chapter introduced the context for this study, the problem formulations, aim, research questions, and relevance of this study for social work and human rights. The second chapter provides background knowledge about migration and an historical overview of Afghanistan. It also discusses international law and human rights, grounds for protection as well as the Swedish context and asylum procedure. In the second chapter, I also discuss the concept of deportability and define my way of using it in this study. The purpose of the chapter is for the reader to develop a better understanding of migrants from Afghanistan and the process around them that leads to decisions about deportability. The third chapter is a presentation of relevant judicial positions and indicative guidelines and decisions. This chapter aims to give a better understanding and background knowledge of the asylum procedure when it comes to guidelines for the assessments in the asylum procedure. The fourth chapter discusses previous literature about country of origin information and credibility assessments. The fifth chapter contains of a discussion about the theoretical framework and the theorised concepts of the study. This is followed by the sixth chapter of the paper where I

discuss the research design and methods. The sixth chapter also includes the ethical considerations and limitations of the study. Thereafter, the seventh chapter includes the analysis of the findings in connection to the theoretical framework and previous literature. Finally, the eight chapter includes a concluding discussion and recommendations for further research.

## 2. Background

This chapter aims to give one picture of Afghanistan and the many complex aspects of deporting people there. It also explains in short terms about the Swedish asylum process and different grounds for asylum, internationally and nationally in Sweden and it discusses the use of the concepts of country of origin information and credibility. According to UNHCR (2018b), there are about 68.5 million forcibly displaced people worldwide, whereof 40 million are internally displaced people, 25.4 million refugees and 3.1 million asylum seekers. About 2.5 million of the registered refugees in the world are from Afghanistan (UNHCR, 2018b). The year 2015 saw big movements of people coming to Europe. Between 2015-2017, over 420 000 Afghans applied for asylum in Europe. Most of them did so in Germany, while Sweden received the second most (Farr, 2018b). In Sweden, 41 564 Afghans applied for asylum in 2015 (Migrationsverket 2019c).

### 2.1 Afghanistan – a historical overview

The history of Afghanistan is characterised by its geographical location, and it has been a country of passage for warriors and has been squeezed between powerful neighbouring countries. The first Afghan empire was created in 1747 (Sundelin, 2005). During the 19th century, there were two Anglo-Afghan wars. In 1907, Russia and the United Kingdom competed for Persia, Tibet and Afghanistan. Then the third Anglo-Afghan war took place in 1919. During the 1970's, the Kingdom was deposed through the communistic coup d'état and in 1979 The Soviet Union's ten years of occupation of the country started (ibid.). Since 1979, Afghanistan has been affected of direct war or internal armed conflict.

In 1989, the Soviet Union leaves Afghanistan, and this is followed by five years of chaos and civil war amongst different groups with mujahidin's in charge (Sundelin, 2005). Between 1994-96, the Taliban grow stronger and gained power but then the Taliban regime fell in 2001. The United States invade Afghanistan because of the terror attack the 9/11 in New York. In 2001, a provisional government with international support is installed in Kabul and the International Security Assistance Force (ISAF) are placed in the country to protect the government and to support the construction of the country (ibid.).

In 2014, general elections as well as a presidential election were hold in the country. Many of the ISAF-troops also left Afghanistan while the Taliban increased their activity and there was an increase of civilian casualties. Since 2015, the ISIS has increased their presence in Afghanistan. In the UN's tenth annual report documenting the plight of civilians in the Afghan conflict, UNAMA documented 10,993 verified civilian casualties in Afghanistan in 2018 (3,804 deaths and 7,189 injured). More civilians were killed in the Afghan conflict in 2018 than at any time since UNAMA started to record (UNAMA, 2019). In addition to the security situation due to war and conflicts for many decades, there are also natural disasters occurring in Afghanistan, such as a heavy drought in 2018 that affected the population seriously and made people displaced. There are also huge economic and development challenges in the country due to four decades of conflicts and there is an increasing number of people living in poverty (Humanitarian response, 2018; UNHCR, 2018).

## 2.2 International law and human rights

Nation states are supposed to protect human rights, but in many cases the state is the violator of the human rights and national sovereignty can limit the implementation of international human rights. However, in the ICCPR, it is stated that:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (ICCPR, Article 2).

In accordance with the citation above, no state that have ratified the 1951 Refugee Convention shall expel or return a refugee, in any manner whatsoever, to the person’s country of origin where the persons’ freedom would be threatened on account of the above-mentioned reasons (non-refoulement).

In 2003, the UNHCR issued ‘Guidelines on international protection: Internal Flight or Relocation Alternative’ within the Context of the 1951 Convention relating to the Status of Refugees (UNHCR, 2003). IFA works as a limit on the refugee status when the authorities assess that the applicant can get protection in the country of origin. UNHCR claims that IFA should not be an independent test in the determination of refugee status, but as part of the process:

“International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, it does not consider asylum to be the last resort. The concept of internal flight or relocation alternative should therefore not be invoked in a manner that would undermine important human rights tenets underlying the international protection regime, namely the right to leave one’s country, the right to seek asylum and protection against refoulement” (UNHCR, 2003).

Furthermore, the concept of IFA must refer to a specific area of the country of origin where the applicant can return without risk of a well-founded fear of persecution and where the individual could be reasonably expected to establish and live a normal life (UNCHR, 2003). To do the assessment of IFA, there should be two analysis done: a relevance analysis and a reasonableness analysis (ibid.). The relevance analysis should examine if the area of relocation is practically, safely, and legally accessible to the individual (if not, IFA should not be relevant), who is the agent of persecution and will the individual be safe from persecution in the new area (if the agent is the state, IFA is commonly not available). The reasonableness analysis should assess if the individual can lead a relatively normal life without facing undue hardship (if not, IFA should not be expected) (UNHCR, 2003). Finally, the chance to get protection in the country of origin is a question of assessment and different actors argue differently (SR 03/2019; Rädde Barnen, 2018; Svenska Röda Korset, 2018; UNHCR, 2018a; Amnesty 2019).

Since 1999, The EU States have been working on establishing a Common European Asylum System (CEAS) so that the procedures should be fair and effective in the EU and to impervious to abuse (European Commission, 2019). Directives about the asylum procedure, the reception conditions, Dublin regulation and EURODAC have been set to ensure that asylum seekers are treated equally in an open and fair system (European Commission, 2019).

## **2.3 The Swedish context and different kind of protection status**

Sweden shall approve residence permits to the ones who are refugees in accordance to the UN convention but also to persons eligible for subsidiary protection in accordance to EU's common rules. In the end of 2015, the Swedish Government issued a bill about restricting the possibilities to be granted residence permit in Sweden. They wanted the Swedish asylum laws to temporary adjust to the minimum levels according to the EU standards and International conventions (Regeringen, 2016b). In November 2015, the Swedish Government also decided about temporary border controls. The Government proposed a change from permanent to temporary residence permits, limited rights to family reunification and more repressive demands on own maintenance. Furthermore, the right to assistance for an asylum seeker whose case have been rejected and who does not voluntarily return to the country of origin, changed. From 2016, one loose the money support and accommodation with the final rejection (Migrationsverket, 2019a). The new proposals were supposed to be applied for three years and the changes took place in 2016. The law should not be applied for decisions about residence permits for children and families who applied for asylum before the 24<sup>th</sup> of November 2015. The "Law on temporary limitations to the possibility of being granted a residence permit in Sweden (2016:752)" was finally entered into force on the 20<sup>th</sup> of July 2016 and shall be applied before the Swedish Alien's Act (Regeringen, 2016b).

In 2016, Sweden and Afghanistan also created an agreement about returnees from Sweden to Afghanistan (Regeringen, 2016a). This made it easier for Sweden to deport Afghans who had not been granted protection in Sweden. Before, it was harder since the afghan authorities did not want their compatriots back (Svenska Afghanistankommittén, 2017). Furthermore, the Swedish Government have asked for an increase of numbers of deportations of persons without legal permits to stay in the country (Lundberg and Spång, 2017). Finally in 2019, the Swedish Government decided to extend the temporary law about limitations to the possibility of being granted a residence permit (2016:752) to the 19<sup>th</sup> of July 2021, with an alteration that people granted asylum as a person in need of subsidiary protection would have the same possibilities to family reunification as refugees (Regeringen, 2019).

### **2.3.1 Refugee**

The Refugee status is an international protection status relating to the Convention Relating to the Status of Refugees, 1951. Sweden as well as Afghanistan has signed the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Sweden did this in 1954 and 1967, while Afghanistan signed in 2005 (UNHCR, 2015). In the Swedish Alien's Act, a refugee is defined as an alien who:

“...is outside the country of the alien's nationality, because he or she feels a wellfounded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and - is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country” (Alien's Act, Chapter 4, section 1).

It does not matter if it is the authorities in the country of origin that expose the person to persecution or if it is that they cannot or do not want to protect the person against persecution by others. After 20<sup>th</sup> of July 2016, refugee status in Sweden normally gives a temporary

residence permit for three years (except for some people who came before the 24<sup>th</sup> of November 2015, who can get a permanent residence permit).

### **2.3.2 Person in need of subsidiary protection**

A person in need of subsidiary protection is regulated in the EU Directive, 2011, and is defined in the Swedish Alien's Act as an alien who in cases other than those referred to as refugee, is outside one's country of origin, because:

- “1. there are substantial grounds for assuming that the alien, upon return to the country of origin, would run a risk of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, or as a civilian would run a serious and personal risk of being harmed by reason of indiscriminate violence resulting from an external or internal armed conflict, and
2. the alien is unable or, because of a risk referred to in point 1, unwilling to avail himself or herself of the protection of the country of origin” (Alien's Act, Chapter 4, section 2).

According to a judicial position about the assessment of international protection etc. for citizens from Afghanistan (SR 03/2019), the Migration Board claims that unaccompanied minors from Afghanistan who does not become assessed as refugees, will most often be granted subsidiary protection. If one becomes assessed as a person in need of subsidiary protection, one will usually be granted a temporary residence permit for 13 months (except for some people who came before the 24<sup>th</sup> of November 2015, who can get a permanent residence permit).

### **2.3.3 Person otherwise in need of protection**

There used to be a third type of protection status in Sweden, for a person otherwise in need of protection. This protection status could be granted for someone who needed protection because of

- “...external or internal armed conflict or because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses, or is unable to return to the country of origin because of an environmental disaster” (Alien's Act Chapter 4 §2a).

This type of protection status is not used, as a general rule, after the new law on temporary limitations to the possibility of being granted a residence permit in Sweden (2016:752 §3). This protection status can only be granted to children and families with children who applied for asylum before the 24<sup>th</sup> of November 2015, if the child is still under 18 years old when the decision is taken.

### **2.3.4 Protection in other cases**

There are some special provisions in the Swedish Alien's Act where one can be granted a residence permit without having grounds for protection because of persecution. According to the Alien's Act, residence permits can be given on grounds of exceptionally distressing circumstances:

“If a residence permit cannot be awarded on other grounds, a permit may be granted to an alien if on an overall assessment of the alien’s situation there are found to be such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden. In making this assessment, particular attention shall be paid to the alien’s state of health, his or her adaptation to Sweden and his or her situation in the country of origin”.

In line with the temporary law about limitations to the possibility of being granted a residence permit, a residence permit because of exceptionally distressing circumstances or particularly distressing circumstances will only be granted if it would contravene against Sweden’s obligations under Conventions, to refuse or deport the person (Law 2016:752 §11). In these cases, one will be granted a temporary residence permit for 13 months. For children to be granted a residence permit under this section, the circumstances do not need have the same seriousness and weight as required for adults (Alien’s Act, Chapter 5 §6). Residence permit in case of impediments to enforcement can be granted in cases where new circumstances come to light that mean that there is an impediment to enforcement because there is reason to assume that the intended country of return will not be willing to accept the alien or there are medical or other special grounds why the order should not be enforced (Law 2005:716 Chapter 12 §18 and Law 2016:752 §15).

## **2.4 The Swedish asylum procedure**

In 2018, 21 502 people applied for asylum in Sweden (Migrationsverket, 2019c). All asylum applications should be examined individually. At the registration of the asylum application, the asylum seeker will answer questions about name, citizenship and family and hand in available identity documents. The Migration Board will take photographs and fingerprints to see if one has applied for asylum in any other country in Europe, or if one has permission/prohibition to reside in any countries in Europe. An interpreter will help the asylum seeker to tell who you are, why you left your country of origin and how you arrived in Sweden. A case officer will then go through one’s papers, narrative, result of the fingerprints and decide about the further investigation. If the case officer assess that you need a public counsel, you will be assigned one, free of charge for the applicant (Migrationsverket, 2018).

At the asylum investigation, the asylum seeker will be debriefed and asked to tell who they are, where they come from, why they apply for asylum and what they think will happen to them if they return to their country of origin. The applicant is responsible to tell all the grounds for asylum and are obliged to hand in evidence, while the authority has the primer enquiry responsibility for the investigation. There is free sifting of evidence in asylum cases, which consist of free production of evidence for the applicant and free evaluation of evidence for the Migration Board (RCI 09/2013). This means that the applicant can use any sources to prove the case while the Migration Board are free to assess the value of the presented evidence (ibid.). Further on, the applicant has the burden of proof, to make one’s ground for protection plausible while the applicant shares the enquiry responsibility with the Migration Board. However, the concept of benefit of the doubt shall be applied in the assessments (RCI 09/2013).

The decision will be taken on account of the applicant’s narrative, grounds for protection and the documents one has handed in as evidence. The credibility will be assessed, and the narrative and evidence will be compared with available country of origin information. This will be further explained in the next chapter. In case of a positive decision, the person will have the right to



live and work in Sweden, permanently or temporarily. In case of a negative decision, one can accept the decision and return to the country of origin or appeal to the Migration Court and then to the Migration Court of Appeal. The Migration Court of Appeal is the last instance and decisions there becomes precedents for the Migration Board and the Migration Court in similar cases. One need a leave to appeal to take the case to the Migration Court of Appeal and this is sparsely done and then the decision from the MC becomes the final decision. The decision about rejection is usually legally binding for four years and one can also get a re-entry ban.

## **2.5 Deportability**

The concept of deportability can be described as the risk of deportation, in other words, the risk to be removed from one state back to one's country of origin, usually by force (de Genova, 2010; Lundberg and Spång, 2017).

According to Hollifield and Wong (2015), many political scientists would agree that control, influence, power, or authority are involved at the most basic level of politics. There are of course other definitions to add to get a more comprehensive picture of politics, but those are some of the ground pillars. When talking about migration, we can see how controlling territory, issues of participation, citizenship and justice are in focus, involving questions about who gets what, when and how, and issues of sovereignty, identity and legitimacy (Hollifield and Wong, 2015). Further on, Hollifield and Wong (2015) discusses questions about policies to control migration, who is making the decisions and in whose interest is it. In migration politics emphasize is primary on “..power, influence and authority, but with strong ethical and normative overtones, concerning justice, membership, and citizenship” (Hollifield and Wong, 2015:236). Hence, political policies to restrict migration is a commonly used way of controlling the states territory and to decrease the influx of people (Hollifield and Wong, 2015). Deportation is one mechanism of migration control (ibid.).

De Genova and Peutz (2010) examine how deportability increase as an increasingly global mechanism of state control. They discuss the concepts of sovereignty, space and the freedom of movement in relation to, what they call, the deportation regime. De Genova and Peutz (2010) stresses the relation between deportability, citizenship and the state where they mean that the state uses its state power in relation to deportation to send out specific signals, to nations and citizens, in line with the nations policies. Furthermore, De Genova and Peutz (2010) claim that deportability works as an exclusion of “undesirable” foreigners.

According to Lentin and Moreo (2015), certain legislative initiatives and policies can construct asylum seekers as deportable subjects. Lentin and Moreo (2015:895) argue that deportability is the result of three conflicting rationalities: “(1) states’ obligations under international liberal and human rights regimes; (2) capitalism’s need to keep borders porous to facilitate the movement of labour; and (3) the need to reaffirm state sovereignty and normative configurations of citizenship in the face of increasing migration”.

Hence, we can see how deportability status is a construction with the aim to keep people outside of a state and to use political power to reduce the numbers of migrants in a country. Since the status of deportability is a construction, it also means that it is changeable and not static. For instance, new things can happen that can affect the possibility to return to one's country of origin. Borders are just constructions of humans, but it leads to severe situations for people.

### **3. Guidelines for assessments**

This chapter gives a selection of the most relevant and referred to decisions from the Migration Court of Appeal, as well as relevant judicial positions. The aim with the chapter is to present information about the guidelines for the assessments. The judicial positions are the Migration Boards general recommendations about how to implement the laws and regulations within the Migration Board (Migrationsverket, n.d). The purpose of the judicial positions is to work as a support for people at the Migration Board to achieve a unified administration process and application of the law (ibid.). The Migration Board publishes new judicial positions about a specific country when they have followed the situation in a country during some time and when they assess that there is a need of a new judicial position. Decisions from the Migration Court can be appealed to the Migration Court of Appeal, but they only handle cases which will have a special meaning for how the law will be practiced. The decisions from the Migration Court of Appeal will then be used as guidelines for the other instances (Thorburn Stern, 2016).

#### **3.1 Country of origin information**

The Migration Board use country of origin information to confirm or reject information in the applicant's narrative (Migrationsverket, 2018) but also to assess if the applicant has the possibility to get protection in the country of origin or if there is a relevant internal flight alternative (Feijen and Frennmark, 2011). To do this, the Migration Board use the data base Lifos, which is a centre for country information and country analysis within migration. According to Lifos webpage, they are the Migration Boards legal-and country information system. They collect, analyse and maintain expertise knowledge about countries where the applicants in Sweden come from. Their mission is to be an expert Board that works impartial and proactively to contribute to effective migration processes and legal certainty, through reliable, relevant and convenient country information and analysis about the world (Lifos, n.d.).

During the asylum investigation, the Migration Board should assess if the applicant is a refugee according to the convention and the Alien's Act. When doing this, they should consider if the person belongs to a particular vulnerable group in Afghanistan and if protection is possible in Afghanistan. The Migration Board should use country of origin information to get a picture of the general legal certainty and its efficiency but also to assess how applicants on the basis of their sex, sexual orientation, belonging to a minority etc, has an actual possibility to get protection in the country of origin (Feijen and Frennmark, 2011). The Migration Board must focus on both legislation in the specific country as well as the adjudication process, but also consider possible lack of information regarding deficits in protection from the state (ibid.). There are a lot of deficits in the legal protection in Afghanistan why it is not possible to refer someone to protection from the state authorities or other actors.

##### **3.1.1 SR 03/2019**

This judicial position is about the assessment of international protection etc. for citizens from Afghanistan. In short, the assessments in asylum decisions should be focused on if the applicant has given a reliable and credible narrative that goes in line with known facts and available, current and relevant country of origin information and if the grounds for protection has been made probable (SR 03/2019). In the judicial position about the assessment of international

protection etc. for citizens from Afghanistan (SR 03/2019), the Migration Board assess the security situation in Afghanistan as worsened from 2017 to 2018. The Migration Board refers to a 'Lifos report: The security situation in Afghanistan' (2018-12-04), where they claim different levels of armed conflict in different provinces in the country. In Helmand and Nangarhar provinces, the Migration Board assess the current situation as severe where each and every one is at risk to be exposed to human rights violations and the criteria to be granted subsidiary protection according to the Swedish Alien's Act, are therefore fulfilled (SR 03/2019). In the other provinces in Afghanistan, except from Panjshir and Bamyán, the security situation is assessed as armed conflict as in article 15, 2004/83/EG (ibid.). However, there should still be an individual assessment about the applicant's vulnerability and grounds for protection. Furthermore, in the judicial position (SR 03/2019), the Migration Board claims that internal flight alternative for able-bodied and healthy men and couples without children, even in lack of social network, could be relevant and reasonable to Kabul, Herat and Mazar-e-Sharif. If there is a social network for other groups, internal flight alternative might be considered (SR 03/2019). The Migration Board also has to consider that it can be dangerous to travel through Afghanistan (SR 03/2019). However, the UN is against IFA to Kabul, since Kabul is the province in Afghanistan with the highest numbers of civilian casualties (UNHCR 2018a).

### **3.1.2 MIG 2018:6**

This decision discusses circumstances that have been assessed in practice to require international protection for a child but have not been considered protective grounds for a person who is 18 years of age. The decision is about a young afghan man who grew up in Iran and who have never been to Afghanistan. The applicant emphasize that he is young, Hazara, that he has never been to Afghanistan and lacks a social network there, but he is also emphasizing a threat picture against him due to his father's earlier work against the Taliban. The Migration Court decided about a temporary residence permit for the applicant, while the Migration Court of Appeal changed the decision to a rejection. This decision discusses if there should be a difference in assessments regarding a seventeenth-year old boy and an eighteen year old adult. The decision refers to another decision (MIG 2017:6) where it states that children in Afghanistan are at risk for child labour, forced marriage, prostitution, sexual exploitation and recruiting to fighting groups. The question in MIG 2018:6 then, is if those risks are transferable to a young adult as well. The Migration Court of Appeal claims that that's not the case and that available COI used in the case claims that the risks are not applicable for adults. Further on, the decision discusses COI that emphasizes a social network and local knowledge as important protective measures. They are discussing different factors that makes the applicant vulnerable and they emphasize that this must be part of the assessment of risks if the applicant returns. The Migration Court of Appeal mentions different personal and general risks for the applicant, but by the way of conclusion they assess that the risks for the applicant are not enough to be granted protection.

### **3.1.3 MIG 2009:4**

This decision is about internal flight alternative for an applicant from Afghanistan. For IFA to be used, there are two criteria that are of crucial importance; it must be a relevant alternative which means that the individual must have access to efficiently protection in the other area and it must be reasonably for the individual to benefit of the alternative (MIG 2009:4). In the case of Afghanistan, the authorities are assessed to be unable to provide efficiently protection against threats from non-governmental actors (ibid.). From information available in the case about the

threat picture the applicant is exposed to, and with consideration to available COI about lack of possibilities to get protection from the authorities, the Migration Court of Appeal assess that there is not a relevant IFA in Kabul for the applicant.

## **3.2 Credibility**

### **3.2.1 RCI 09/2013**

In this judicial position about method for examining reliability and credibility (RCI 09/2013), the Migration Board states the basis for assessments of reliability and credibility in Swedish asylum cases. The judicial position states that the examining authority is obligated to assess the reliability and credibility in most asylum cases. The asylum seeker has the burden to invoke and the initial burden of proof, while the asylum seeker together with the authority has the enquiry responsibility. Proof in an asylum cases are usually the applicant's narrative, but can also include different documents, testimony and country of origin information. Respect should be paid to personal circumstances that can affect the details in the narrative, and therefore also affect the credibility assessments. Such personal circumstances can be war, violence, threats, gender, education, cultural stigma, mental disabilities and age (RCI 09/2013).

According to the judicial position (RCI 09/2013), the Migration authority should:

- Identify relevant facts
- Consider all evidence, also the ones having low evidence value
- Analyse the evidence around every relevant evidence theme
- If someone, or some information, is not reliable, assess if these affect the core of the narrative.
- Give the applicant an opportunity to explain the shortages
- Assess the explanations
- Do a comprehensive assessment of all evidence
- Clearly motivate shortages in reliability and credibility

Furthermore, the judicial position states that many asylum cases lack material evidence, it is often hard to verify information about persecution, there needs to be a forward-looking assessment, information and documents in the cases are from many different disciplines (such as doctors, psychologist, priests etc). Finally, wrong decisions might have severe consequences and the credibility assessments therefore have to have a high legally assurance (RCI 09/2013).

The analysis of credibility should be concentrated on questions like (RCI 09/2013):

- Is the narrative coherent or fragmented?
- Has the applicant given a concrete and detailed narrative or is it vague and lacks details?
- Does the narrative contain contradictory information, or has it mostly been intact during the investigation?
- Does any widely known fact and current country of origin information support the narrative or does some parts of the narrative goes against such information?

The decision about asylum should be rational and objective. Since the decisions are based on events in other countries, it is important with reliable country of origin information in the assessments and not to presume that authorities and other actors act the same way in situations all over the world (RCI 09/2013). Furthermore, the Migration Board are supposed to do an objective assessment about the reliability in the information given by the applicant. This includes an assessment of the applicant's narrative together with a valuation of other evidence. The Migration Board should also assess if the applicant has given the information in a credible way (RCI 09/2013).

### **3.2.2 MIG 2007:12**

In this decision there is a general description of the assessment process in cases of appeal of asylum decisions and it discusses the criteria for credibility assessments. The decision emphasizes that the applicant's narrative should be accepted if it appears as trustworthy and plausible (MIG 2007:12). Furthermore, the decision mentions the concept of benefit of the doubt, which should be used when the applicant has done a fair try to prove one's narrative and where one's trustworthiness is not questioned (MIG 2007:12). When assessing credibility, focus should be on if the narrative is coherent, without contradictory information as well as information that does not go against well-known facts, such as country of origin information. The decision also emphasizes a narrative where its main points remains unchanged during the whole asylum procedure (MIG 2007:12).

## **4. Literature review**

This chapter will provide a review of previous literature that have focused on the concepts of country of origin information and credibility assessments. The literature review aims to position earlier findings in research and to create a broad understanding of the concepts. The chosen literature is relevant in the way that they are supposed to be helpful to understand how the Migration Courts construct deportability in relation to these two concepts. As I have discussed in the background chapter that country of origin information and credibility are two important factors during the assessments in the asylum procedure. Further on, the found literature is a mix between international research and Swedish research that discusses the asylum procedure with a focus on COI and/or credibility assessments. The earlier research will be presented in two parts; the first regarding country of origin information and the second about credibility assessments. Furthermore, the earlier research will be presented under themes where COI is divided into three different themes such as selected country of origin information used as facts, the Migration Boards freedom of choice – similar cases different outcome and finally internal flight alternative. The credibility part is divided into five themes, such as lack of guidelines, credibility criteria, multidimensional assessment problems, subjectivity and to prove something with your narrative. The themes of the credibility assessments focus both on the assessment procedure but also on the asylum seekers perspective. The chapter concludes with a summary of the current body of research.

### **4.1 Country of origin information**

Marco Formisano, who is currently Protection Officer in the Comprehensive Solutions Unit of UNHCR, has published this article ‘Country of Origin Information: old problems, modern solutions’ where he discusses the use of country of origin information. Formisano claims that country of origin information is a key element when it comes to determining the legitimacy of a claim for refugee status (Formisano, 2011). When it comes to country of origin information, Formisano emphasize different difficulties, e.g. that the case officer must look at available internal flight alternatives and ascertain the relevance and reasonableness of it.

The Use, Misuse and Non-use of Country of Origin Information in the Swedish Asylum Process is a project report by project leader Helge Flärd (2007). The project was initiated by the Swedish Refugee Advice Centre and it was funded by the European Refugee Fund. The report discusses the main features of the Swedish asylum process, the Swedish COI system, and COI users’ approach to it. Flärd (2007) discusses that the information in the applicant’s narrative is compared with country of origin information regarding the appropriate country and how this is a challenging task where the case officer must assess different factors and come up with a conclusion. Flärd (2007:8) also emphasizes that the decision-makers need ”...advanced knowledge of the country of origin in order to asses the eligibility for asylum”.

#### **4.1.1 Use of country of origin information**

There are different specialized agencies and NGO’s such as UNHCR and ACCORD, that provide legal, policy, procedural and evidentiary materials to support decision making (Formisano, 2011). These platforms are supposed to provide selected and reliable COI, together with daily updates about COI and refugee related policy, legislation and jurisprudence and research. In Sweden, the database Lifos is commonly used by the Migrations Board and the COI therefrom are used as “facts” (Flärd, 2007). The authorities’ way of using the country of

origin information are generally given precedence over the applicant's narratives (Wikström, 2014).

According to Flärd (2007), country of origin information must be a crucial ingredient in the investigations, and he emphasize the importance of different sources of information and to consider competing views of the situation in order to minimise the risk of inadequate decision and the potential consequences of a negative decision. Furthermore, it can be easy to find a lot of country of origin information, but it is important not only with quantity but foremost its quality. The information must be evaluated to see its degree of reliability. In recent times, the sources of information have increased and therefor this can be a time-consuming process. Another issue according to Formisano regarding country of origin information are language barriers. When looking for local information, different languages may pose expensive costs for translating and the country of origin information needed might be harder to find (Formisano, 2011).

#### **4.1.2 The Migration Courts freedom of choice**

As Wikström gives examples of in her article *Gender, Culture and Epistemic Injustice*, the Swedish Migration Board and Courts can choose what COI they use and not use. Therefore, similar cases might get different outcome depending on what COI have been used and how it has been assessed (Wikström 2014). In this sense, the authorities and the case officers have a big discretion to assess and affect what legal status the applicant will get, or not get, and this also shows how arbitrary the assessments of COI are.

Further on, the interpretation of the COI is sometimes also crucial when it comes to assess the possibility of protection in the applicant's country of origin (Wikström, 2014). In Wikström (2014:216) we can see from an example how the Migration Board discusses how they and the Migration Court makes different assessments of the situation in a country, despite using the same COI. In this example, the Board argue that it is not clear that the situation lack protection and therefore, they conclude that there might be some protection, while the Court argues that the information is not sufficient to decide that the protection is good enough (ibid.).

#### **4.1.3 Internal Flight Alternative (IFA)**

Country of origin information is used to assess if the applicant has a possibility to get protection in the country of origin or if there is a relevant internal flight alternative (Feijen and Frennmark, 2011). When it comes to IFA, the Migration Board has the whole enquiry responsibility and the burden of evidence. Also, the applicant should be given an opportunity to respond on used country of origin information before the decision, if the authority assess that there will be an IFA (Feijen and Frennmark, 2011). However, this is not always done according to Feijen and Frennmark (2011). Relevant and current COI is a prerequisite for a well-done investigation and assessment in every individual asylum case (ibid.).

### **4.2 Credibility assessments**

Everyone should be equal before the law, but in asylum cases this is hard since a big part of the asylum assessments are dependent on credibility assessments and not only legal issues (Wikström and Thorburn Stern, 2016). Wikström and Thorburn Stern (2016) has studied

Migration law with focus on protection grounds and credibility in assessments in the asylum process. Wikström and Thorburn Stern (2016) discusses both international and national law, from a judicial perspective as well as a sociological perspective. Wikström and Thorburn Stern (2016) has done a research overview in the field, where they claim that a lot of previous research is critical about the approach regarding credibility assessments. The critics are foremost about the lack of guidelines, the effect of prejudices and preconceptions as well as insecurities, difficulties and presumptive sources of errors (ibid.). The refugee protection in international law does not include an explicit criterion about credibility but in practice it plays a central role.

In the result of Feijen and Frennmark's (2011) report, where they have studied the quality in the Swedish asylum procedure and the Migration Board's investigation and decision about international protection, they show how rejections with reference to credibility deficits appeared in almost 40% of 200 investigated cases. This trend is also found in the report *Beyond Proof* (UNHCR, 2013). It is hard to prove many things in asylum cases and evidence does not work as in other legal procedures, therefore credibility assessments become a big part of the asylum assessments (Noll, 2005; UNHCR, 2013; Wikström and Thorburn Stern, 2016). EASO also mentions the difference between asylum procedures and other legal procedures, and they add the possible grave consequences of the decision in asylum cases (EASO, 2015).

#### **4.2.1 Lack of assessment guidelines and inadequately focus on uncertainty in the asylum procedure**

There is a report investigating the credibility assessments in the EU asylum systems named *Beyond Proof*, a project initiated of the UNHCR and financially supported by the European Refugee Fund of the European Commission (2013). In the report, the credibility assessments are analysed in connection to how they should be done regarding to legal frameworks, guidelines, national praxis and with support in research. The authors of the report claim a trend in the EU where negative decisions refer to primarily deficits in the credibility assessments without paying enough attention to criteria in the EU protection directive. Another important factor that might have an impact on the decision is the work load of the decision maker. According to Spijkerboer, time pressure will make effective judicial control less likely (Spijkerboer, 2005).

Doornbos (2005:104) emphasizes that the interviews with asylum seekers should be conducted in a "...profound, patient and objective manner". He also emphasizes the vulnerable situation that many asylum seekers find themselves in, such as in an alien environment. He also mentions difficulties such as submitting one's case to authorities in a foreign country as well as the language barriers and the use of an interpreter (ibid.). Doornbos (2005) refers to the Handbook on Procedures and Criteria for determining Refugee Status by UNHCR, paragraph 190, where it is stated that the asylum application should be examined by "...qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs" (ibid.). Herein, it is also stated that the asylum seeker might feel reluctance towards authorities, due to earlier experiences in their country of origin and this might affect the asylum seeker's possibility to tell a narrative without inconsistencies and contradictions (ibid.).



### **4.2.2 Credibility criteria**

Wikström and Thorburn Stern (2016) points out three main criteria in the assessment of credibility. The first one is about inner credibility criteria, with other words the credibility in the asylum narrative. A coherent and detailed narrative is often seen as a sign of credibility in the assessments, although researchers does not see smaller contradictions and less details as a definite obstacle but instead as a natural thing when repeating a narrative (Wikström and Thorburn Stern, 2016). Furthermore, there are also different factors that affect the possibility of telling a coherent and detailed narrative, such as the effect of the interpreter and possible trauma that might affect the memory, but also the interviewer and the questions that are asked. Depending on what questions that are asked, and how they are asked, different answers might come up during the asylum procedure (Wikström and Thorburn Stern, 2016).

The second criteria in the credibility assessment is the external credibility criteria where the narrative is compared to external sources such as country of origin information. The external sources are normally given a high value because they are seen as more objective (Wikström and Thorburn Stern, 2016). The third and final criteria is the holistic one, where the asylum seekers behaviour and the asylum narratives plausibility are assessed (Wikström and Thorburn Stern, 2016). These assessments are hardly questioned because they are characterised by stereotype assumptions and subjectivity (ibid.).

Rousseau et al. (2002) have collated a research summary in three fields; law, psychology and culture, connected to the asylum procedure, with the aim to analyse how different factors affect the decision-making process in asylum cases and to suggest improvements. Rousseau et al. (2002) points out how even smaller contradictions in the asylum narrative creates relatively big mistrust among the decision makers. Rousseau et al. (2002) also claims that lack of knowledge among the decision makers about trauma and its effect on human's ability to remember, also leads to mistrust against the asylum seeker and affects the assessment of credibility. The mistrust furthermore results in ignorance of explanations about contradictions and prevents objective assessment (ibid.).

### **4.2.3 Multidimensional assessment problems**

To be assessed as credible, the applicant should give a coherent narrative, without contradictory information as well as information that does not go against well-known facts (Feijen and Frennmark, 2011). However, the possibility to give a coherent narrative can be affected of different factors, such as an individual's ability to remember and express oneself, as well as a result of being exposed to torture, trauma or mental issues. Inability to remember details and memory lapses are also common among people exposed to persecution. Other important factors can be connected to feelings of guilt and shame. This might also affect the possibility to tell and are common especially in LGBT-cases. Furthermore, contradictions can be a result of cultural differences, mistakes in the interpretation or misunderstanding (Feijen and Frennmark, 2011 and Rousseau et al., 2002). Lack of details in the applicant's narrative usually leads to comments about the narrative as "vague", "brief" or "superficial" and are then usually defined as not credible, without putting focus on reasons of why the narrative might be "vague". Furthermore, Spijkerboer (2005) claims that normative standards are used when deciding which statements that need to be proven and when this is done and also to decide what statements and behaviours that gets assessed as credible. Furthermore, Spijkerboer (2005) claims that gendered

notions among interview official, decision makers, and legal representatives of asylum seekers, shapes the evidence assessments.

Furthermore, the applicant should be given a chance to respond to and explain information that are being perceived as contradictory or vague without being questioned. If the applicant does not get the chance to explain contradictory information or other credibility deficits, the decision maker should not use this against the applicant in the decision (Feijen and Frennmark, 2011). The opportunity to comment on this information is also stated in the Alien's Act (chapter 13 §3). However, the UNHCR has noted in several cases that deficits in credibility are mentioned in the decisions but has not been mentioned during the process, even though the applicant should have been given an opportunity to respond on it. There are also many decisions where the decision makers state that the applicant's narrative is vague and diffuse, while it has not been mentioned before the decision (Feijen and Frennmark, 2011).

#### **4.2.4 Subjectivity in credibility assessments**

A reoccurring conclusion in the research, is that there are no total objective or secure way of assessing credibility and the subjectivity in the assessments are problematic (Wikström and Thorburn Stern, 2016; Feijen and Frennmark, 2011). According to Diesen, who have written about evaluation of evidence in asylum cases in Sweden, the assessing authorities lacks theoretical instruments and there is a great scope of subjectivity and even prejudices (Diesen, 2012). This is something that also Feijen and Frennmark (2011) refers to in their study about quality in the Swedish asylum procedure, where they have been analysing the Migration Board's appliance of the protection directives and to give recommendations for better quality in the assessments (Feijen and Frennmark, 2011).

The decision makers take decisions based on how they expect people to behave according to prevailing norms and if the asylum seeker does not behave the way that they are expected to, there is a risk to be assessed as less credible (Wikström and Thorburn Stern, 2016). According to the Feijen and Frennmark (2011:78-79), the Migration Board also construct some decisions on basis of assumptions, as in one example where the Migration Board assume that relevant health care will be available for a person in prison in Iran, without investigating it and thereby also claim deficits in credibility of the applicant.

#### **4.2.5 The narrative – to prove something with your story**

In many asylum cases it might be hard to prove things that, for instance have happened in one's country of origin, it might have happened a long time ago and there might not have been any witnesses. Furthermore, if one is persecuted by the state you usually don't have a document testifying this. The asylum seekers testimony is in many cases the only source of evidence (Wikström and Thorburn Stern, 2016). Diesen (2012) stresses that in cases where it lacks evidence about a specific event, general facts about similar events might be used to discount the applicant's narrative and thereby one's credibility.

The credibility assessments are not foremost a question about “truth”, but a question about something’s plausibility (Wikström and Thorburn Stern, 2016). The applicant and the applicant’s narrative are being assessed and one can strengthen the narrative with evidence. However, a lot of evidence are assessed as having low quality and are thereby assessed as not supportive to the narrative (Feijen and Frennmark, 2011) even though all evidence that could support the case should be assessed as relevant (UNHCR, 2013). Diesen claims that all evidence should be assessed on its own and together as a whole (Diesen, 2012) while others prefer only a holistic approach of the assessment of evidence (UNHCR, 2013).

### **4.3 Summary of country of origin information and credibility**

Overall, the research shows on different deficits in the asylum procedure, where subjective assessments, prejudices, preconceptions and stereotypes are common in the assessment of asylum cases. Further on, lack of guidelines and knowledge, as well as insecurities, difficulties and presumptive sources of errors are problems mentioned during the asylum procedure. Research shows that the Migration Board in several cases has deficits in their enquiry responsibility, both when it comes to country of origin information and credibility assessments (Feijen and Frennmark, 2011).

We can also see how small deficits in a narrative or lack of details can lead to a major mistrust among the decision makers while it instead can have natural reasons such as memory loss as an impact from a trauma. Therefore, researchers agree that small deficits in the narrative should not be an excuse to not be granted asylum. Furthermore, the research shows that an expectation on the asylum seeker is to be detailed, which means that one need to be open to talk to authorities about your life and to share your deepest secrets at the first meeting with someone. Also, it means that the expectation on the asylum seeker is to be expressive and it is a deficit if you are not. Research also shows that other factors that might affect the result is the interpreter, and the work load of the decision makers.

## **5. Theoretical framework and concepts**

This chapter presents the theoretical framework that will be used to interpret and analyse the material in this study. This theoretical framework consists of social constructionism theory and the concepts of narrative inequality and epistemic injustice. The reason I have chosen social constructionism as a theory is because I think that the credibility assessments create thoughts that becomes “reality”. I see it as a process where different factors impinge on each other which leads to new constructions. With help from the chosen concepts, I will analyse how decision makers and their perceptions about, both asylum seekers but also the asylum seekers narratives and its form and content, might influence the assessments of the asylum seekers credibility and therethrough also the outcome of the asylum case.

### **5.1 Social constructionism**

Social constructionism is a wide theoretical orientation that lacks one single description of what it is. However, social constructionism urges us to take a critical stance towards our taken for granted understandings of the world (Burr, 2015). Social constructionism does not believe in one objective reality, but instead that each and every one describes and constructs their own reality based on their relation to the world around us. Furthermore, social constructionism thinks that categories that people use to apprehend the world, not necessarily refer to real divisions (Burr, 2015). For instance, the categories individuals use to apprehend the world is just a way of understanding the world, it does not mean that one should assume that it actually is the truth or the only way of seeing it, because there is not any understanding that is more accurate than any other since “knowledge” is affected of its actual context. Furthermore, the categories and concepts we use to apprehend the world, are historically and culturally specific. In other words, how one apprehends the world are depending on where and when one lives. Categories and concepts changes, from time to time and place to place (Burr, 2015). According to social constructionism, the world is not just black and white, but instead there are a lot of grey areas as well (Burr, 2015).

Our various versions of “knowledge” about the world is constructions made in the interaction between people and there is no direct perception of reality (Burr, 2015). What we see as objective knowledge is instead constructions made between people and within their interactions with each other. The perspectives we use to look at the world, produces how we interprets knowledge (Burr, 2015). What we regard as truth today, is just a product of social processes and interactions between people, that leads to a current accepted way of understanding the world (Burr, 2015). Furthermore, social constructionism also sees people as a product of social processes and language as a social action (Burr, 2015).

According to Burr, the constructions affect people’s discretion why there is also an aspect of power in it (Burr, 2015). Hence, social constructionism can be used when the researcher is interested in issues of power as social critique (Burr, 2015). The use and effects of languages and other symbolic systems are central in social constructionism (Burr, 2015). Furthermore, social constructionism can be a way to examine how language contribute to legitimate and perpetuate unequal power relations (Bur, 2015). This is something that I have already explained in the previous chapter, where the decision makers in asylum cases has power and the prerogative to decide about assessments regarding the asylum seeker and its narrative. Some

researchers emphasize how certain ways of talking when it comes to the “professional” in the case, gives their point of view greater weight than the other, for instance the asylum seeker (Burr, 2015). In the asylum procedure, in addition to this, we also have the effect of using an interpreter where words might have to change and where the risk for misunderstandings are common.

## **5.2 Narrative inequality**

The concept of narrative inequality aims to show how the asylum procedure includes a bureaucratic system that restrict how the asylum narrative might be designed since the narrative must suit into the logic of the asylum system to make sense (Wikström, 2016). Wikström (2016) emphasize how the asylum procedure and the including assessment process requires specific demands when it comes to the narratives form and content. The narrative inequality lies in the restriction for the asylum seeker to design own narrative in a way that would be logical to him/her, since one has to focus the design of the narrative to be logic for the system, which might not be as logic for oneself.

According to Blommaert (2001:414), “the asylum procedure involves a complex set of discursive practices and language ideologies that are, in practice, being used as criteria for “truth”, “trustworthiness”, “coherence” and “consistency”. Blommaert (2001) claims that such discursive practices require access to communicative practices, such as linguistically, narratively and stylistically, access that many asylum seekers lack. Furthermore, Blommaert (2001) describes the narrative inequalities in the asylum procedure in ways of how the asylum seekers are measured against norms and expectations instead of having focus on contextualized crucial factors. Inconsistencies are used to emphasize a story as not trustworthy and therefore as a cause for refusal. Here we can see how expectations sets up limits, for instance, incomplete knowledge about something that is assumed to be known amongst “everyone” or not remembering details can lead to refusal (ibid.). Blommaert also argues that the bureaucracy (re)structuring the spoken narrative into institutionally sanctioned texts which includes power inequality in the transformation and how the bureaucratic system expects and requires particular “material” in an injustice way. For instance, there seems to be predetermined demands on details and expressions in the asylum narrative (Wikström, 2016).

## **5.3 Epistemic injustice**

Fricker (2007) explores the idea that there is a distinctively epistemic kind of injustice. Fricker discusses two forms of epistemic injustice, which are testimonial injustice and hermeneutical injustice.

“Testimonial injustice occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker's word; hermeneutical injustice occurs at a prior stage, when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences” (Fricker, 2007:1).

With other words, epistemic injustice refers to the status the content in a narrative gets. In my study, epistemic injustice refers to the status that the asylum narrative gets in an institutional

context and in relation to other sources of knowledge within the assessment procedure in asylum cases. Epistemic injustice in my study, can also refer to a predetermined picture among the decision makers that Afghanistan is not dangerous for each and everyone which will affect the rest of the assessment without regard to the applicant's description about the security situation.

## **5.4 Summary of theory**

The asylum system can be seen as a social construction that includes power processes that puts up limitations for some people. You can only stay in Sweden if you fulfil the systems criteria. As described before, the asylum system contains certain demands on the narrative and its form and content, which also makes the decision makers in a power position towards the asylum seekers. The decision makers have a big discretion and they have the prerogative to decide about the assessment of credibility since there is a lack of clear and comprehensive guidelines for the assessments. The concept of power is not used as an own concept but instead as an underlying part of the used theory and concepts. Power and power relations are a clear part of social constructionism and the concept of power will be visible during the analysis process since it is an important part of the asylum assessments.

## **6. Research Design and Method**

The purpose of this chapter is to describe methods and design of the study. The chapter presents the chosen methodology and the procedure of the study. The chapter is divided into five subchapters and each part has its purpose of giving a more in-depth description of the methodical part of the study. Firstly, the chosen methodology is discussed. This is followed by a section about how the background material was compiled. Thereafter, the data collection process is presented followed by an overview of the data analysis process. Here, the coding and thematizing process is presented. Thereafter, the ethical considerations for this study will be discussed along with an examination of the reliability and validity of the study. Next is a description of personal motives for the chosen topic of the study and a presentation of my prior knowledge about the topic. Finally, limitations of the study will be discussed.

### **6.1 Design of the study**

This study is of qualitative nature where I put my focus on words and not on quantification. Qualitative methods of enquiry are ideal for gathering linguistic and textual data (Bur, 2015). The study is built on qualitative research methods in the form of qualitative content analysis where I want to analyse how the Swedish Migration Courts construct deportability when it comes to Afghans applying for asylum in Sweden. A lot of qualitative research tends to perceive social life in terms of processes and describes how the processes and patterns develops over time, in a specific context (Bryman, 2016). Furthermore, qualitative research wants to develop a greater understanding and perception of human behaviour or phenomena (Snape and Spencer, 2003).

The data in my study has guided me and the process forward. This is called an inductive approach (Bryman, 2016). The opposite, to have an expected idea about the result which is tested, is called deductive (Bryman, 2016). However, I have worked both in an inductive and deductive way, since I have had some thoughts about theoretical aspects from start but my data has also affected the way the process has been made. This is called an abductive approach (Bryman, 2016). There is a relationship between my findings and the theoretical framework, where they interact with each other and throughout the process, new material makes me reflect on the process and to decide about how to do things forward. I have had an opened mind where I have reflected on the possibility to change earlier parts as a result of the analysis of the collected data.

Social research methods are connected to views of how social reality should be studied (Bryman, 2016). According to Bryman, the methods are tools but also linked through viewpoints of the nature of social reality and how they should be examined (Bryman, 2016). Therefore, it is important to define the epistemological and ontological approaches used to frame this study. Epistemology can be understood as "...a stance on what should pass as acceptable knowledge" (Bryman, 2016: 690). The epistemological stand of the study is present all through the research process and therefore it is important to reflect on this. For this study, the chosen epistemological orientation is a commonly used approach in qualitative studies, which is interpretivism. Interpretivism stresses the subject in social science and the "...understanding of the social world through an examination of the interpretation of that world by its participants" (Bryman, 2016:375). The researcher interprets the data but also the concepts, theories, and earlier literature (Bryman, 2016).

The ontological approach on the other hand, is concerned with visions about the social reality, or with other words “the nature of social entities” (Bryman, 2016:28). A central point is if these social entities can and should be considered as objective in their relation to social actors or if they instead should be considered as social constructions (ibid.). For the purpose of this study the ontological position of constructionism has been chosen, where I see the social reality as continuous changing and where social products are constructed in interaction between people and it varies between time and space (Bryman, 2016). Social phenomena and their meanings are continually being accomplished by social actors which implies that they are not only shaped but also constantly reshaped by social interaction (Bryman, 2016:29). There are no objectively defined truths (Burr, 2015). This ontological approach is considered fitting for this research due to the aim of studying how the Migration Court *construct* the status of deportability through their decisions in asylum cases. Constructionism, together with interpretivism, are two of the most common used stands in qualitative research, according to Bryman (2016).

## **6.2 Finding relevant literature**

In order to create an adequate knowledge base for this study several different publications, reports, and other types of studies have been used for the introduction, background, and literature review. I have found most of my relevant literature through sources referred to in other research, first and foremost in the research overview by Thorburn Stern and Wikström (2016). This research overview helped me a lot with relevant information for my study but also to find other relevant literature in the field. I have also used the Gothenburg University Library database called “Super search” to find my literature. According to Bryman (2016), the search for literature should be guided by the research questions. Therefore, the following search strings are examples of words I used to search for literature for this study:

- Asylum AND credibility AND assessment
- Country of origin information AND Afghanistan
- Deportability

I then skimmed through the results to try find the most relevant literature for my study. The next step included reading through the remaining literature to narrow down and decide which literature to keep and use in my study. The remaining literature then became the knowledge base for the first, second and forth chapter of this study.

## **6.3 Collection of data**

This section will present textual data studies used as a data collection method. This is followed by a description of the sampling procedure. To retrieve the data of this study, I collected official documents in form of decisions from the Migration Court. This is documents not produced at request of the researcher. “Documents should be viewed as a distinct level of ‘reality’ in their own right” (Bryman, 2016:560). It is important to keep in mind the context in which the documents were produced and by who and for whom they were produced (Bryman, 2016).

### **6.3.1 Textual data study**

This is a qualitative textual data study where my data consist of official documents, in this case negative decisions from the Migration Courts. An advantage with studying documents instead



of people, is that the data does not get affected as humans (David and Sutton, 2016:159). Textual data is also easier to find a larger amount of and can give access to material that otherwise wouldn't be accessible, could be about old occasions or inaccessible insights (David and Sutton, 2016:159). For instance, in my study I have examined the Migration Courts assessment processes from 2012 until today, without being present during the actual assessment, but instead through analysing the decisions. A disadvantage with this, is the lack of the context and the comprehensive courts of events since I only have the summary from the procedure. "Documents are texts formulated with specific aims and not as something that just reflect the reality" (Bryman, 2016). Therefore, the documents should be assessed as one way to describe the reality and not as an objective truth. Important to emphasize is that I have only analysed the Migration Courts descriptions of the assessment in the asylum procedure and I can't say anything about the perspectives of the asylum seeker. However, that is not either the focus for the study.

### **6.3.2 Sampling process**

The empirical material in my study consist of 50 decisions from the Migration Courts, all rejections. The decisions are official documents that I have found through online databases, and by visiting the Migration Court in Gothenburg. I have also posted a question about receiving case numbers in two different groups at social media. The decisions I have used in my study are from between 2012 – 2019. This is to get a wider picture and to be able to analyse if I can see any changes after regulations in the law, e.g. 2015/2016. Selection of cases has been made randomly, but only where the applicant is from Afghanistan and where credibility and country of origin information are discussed. I have not analysed any decisions from the Migration Board, even if some have been attached to the decision from the Migration Court. Otherwise, the decisions from the Migration Board are not official documents, why lack of access to these decisions is why they are not included in the study.

I had a hard time finding relevant rejections through online databases in the beginning, most were approvals and not rejections. At the database by Karnov group, I could find some decisions from the Migration Court. In the end, I have used 14 rejections from Karnov. Furthermore, I went to the Migration Court in Gothenburg, where I collected another 20 decisions regarding rejections. After a question at a social media I received 16 more case numbers of rejections that I then ordered online from the different Migration Courts.

I deselected several decisions regarding family reunification, citizenship, a person who left Sweden and then applied for asylum in another European country, cases relating to the Dublin regulation, and decisions where credibility and country of origin information were not discussed.

## **6.4 Method of analyses**

The following subsections will present the different steps done in processing and analysing my data. Firstly, I will discuss the qualitative content analysis. This is followed by a presentation of my data analysis method, which is thematic analysis. Finally, the data analysis procedure is presented.

### 6.4.1 Qualitative content analysis

The analysis method is supposed to help the researcher to find answers on the study’s research questions. To do this in my study, I have used a qualitative content analysis where I have analysed and coded decisions to find themes that I have used to interpret the documents. According to Bryman (2016), qualitative content analysis tries to search for themes in the chosen material and is a good method to use when the researcher wants to identify reoccurring arguments in a big amount of data (Bryman, 2016). Qualitative content analysis is also one of the most prevalent methods in document studies (Bryman, 2016).

To do my content analysis I started to read through my collected data. This was followed by an interpretation and coding of the data and finally I created themes from the material I’ve got. This process will be further explained in 6.4.2. Through a qualitative content analysis, I have had the possibility to analyse the Migration Courts assessments, without being part of the actual assessment procedure. However, that also means that I lack a complete picture of the event since my material is a summary and details such as body language is excluded. It is important to keep in mind that the documents should not be considered as an objective description of events but instead as one way of describing the situation. Furthermore, the decisions I have analysed is a result of descriptions about the asylum procedure from the Migration Board and the Migration Courts, and not by the asylum seeker. However, that is not an obstacle in this case, since the purpose with this study is to analyse how the Swedish Migration Courts construct deportability through country of origin information and credibility assessments, in their decisions regarding asylum seekers from Afghanistan.

### 6.4.2 Thematic analysis of data

I have done a thematic analysis of decisions from the Migration Courts. According to Clarke and Braun (2016) the aim of thematic analysis is to identify and interpret important features in the collected data. It is a way to find patterns in the material. The first step is to get to know one’s material, then one can start the coding process and develop codes and categories (Bryman, 2016). When I had collected my material, I read through it all. After going through it I read it again and started to take notes and to interpret the data and code the material. The coding process is done to make the material more manageable (Bryman, 2016). Throughout the process I highlighted parts that I found important, such as parts discussing credibility or country of origin information. From the codes, I identified categories that I transformed to themes and sub-themes. So, the themes are a category identified from the data and relevant for the research focus and the research questions (Bryman, 2016). It can be recurrent ideas, subjects or repetitions. The themes and sub-themes I found in my data were:

**Table 1.** Themes and sub themes

| <b>MAIN THEME</b> | <b>Country of origin information</b>  | <b>Credibility</b>  |
|-------------------|---|---|
| <b>SUB-THEME</b>  | <ul style="list-style-type: none"> <li>- COI information used as facts</li> <li>- Subjective assumptions</li> <li>- Ignorance of COI</li> </ul> | <ul style="list-style-type: none"> <li>- (Lack of) details and reflection</li> <li>- Contradictory information</li> </ul> |

|  |   |  |
|--|---|--|
|  | <ul style="list-style-type: none"> <li>- Freedom of choice/similar cases different outcome</li> </ul> | <ul style="list-style-type: none"> <li>- Subjective assessments and assumptions</li> <li>- Stereotyping expectations</li> <li>- New information is dismissed</li> <li>- Information assessed as not good enough</li> <li>- Ignorance of reasonable explanations</li> </ul> |
|--|---|--|

The codes and/or themes are important since they show linkages between themes or linkages to earlier literature and/or the theoretical framework for the study, as well as linkages to the research questions and the aim of the study.

## 6.5 Validity and reliability

In discussions about generalisation, the concept of validity and reliability are in focus. The concepts are widely accepted in quantitative studies, while they are contentious among many qualitative researchers. However, the concept of validity refers to how well the study reflects the phenomenon being studied, to what extent the findings is well-founded and accurate. The concept of reliability instead, is about the ‘replicability’ of the study’s findings, with other words, would one get the same result again if the study was repeated (Ormston, Ritchie, Lewis and Morell, 2014). However, social constructionist research does not believe in objective facts or truth claims. There is no final description of the world but different realities (Burr, 2015).

Hence, in qualitative research, validity can be considered as the extent to which the studied phenomenon can be described in rich and authentic details. The findings should be assessed as well-founded and grounded in the data. To be able to do this, the analyse should be both systematic and comprehensive (Ormston, et al., 2014). To fulfil the criterion on validity, the findings must be described well, and interpretations should be well-supported by the data. According to Bryman (2016), the validity increases in cases where the researcher has not created the data in a specific aim.

By researchers from the constructivist school, reliability is questioned since the general idea about a single reality is not anything they believe in and therefor replication is an artificial goal to pursue (Ormston, et al., 2014). The impact of the context is also stressed among some qualitative researchers. However, the use of reliability in qualitative studies can be assessed as relevant if used in a slightly different way. Reliability and replication can be considered as achieved through showing as much as possible of the procedures that have led the researcher through the study and to the findings. Furthermore, reliability can be considered as the need to be reassured about the findings being relevant and solid (Ormston, et al., 2014).

In summary, validity and reliability can be used as a framework to analyse if the study has been designed and conducted in a way that produces rich and inclusive data. The analyse should also be transparent and done in a credible way (Ormston, et al., 2014).

However, social constructionism that is a framework for this study, regard objectivity as an impossibility and claims that there are several descriptions about the reality (Burr, 2015). Each and every one encounter the world from different perspectives, and no one can view the world from no position at all (Burr, 2015). Instead, it is important for the researcher to be aware of one owns involvement in the research process and reflect on it. Reflexivity is a central concept in social constructionism and can be understood as a tool to see how a description of an event is just a description and should not be taken as the only possible truth (Burr, 2015). The researcher is part of producing the findings and this should be reflected on (Burr, 2015). The questions I ask to my research, and the themes I find in my material, are a result of my assumptions about the world. The reflexivity also includes awareness of one's personal and political values and perspectives that might impact one's research (Burr, 2015).

## **6.6 Ethical considerations**

Ethics are a significant part of social research, and ethical dilemmas should be reflected upon at all stages during the process (Bryman, 2016). Bryman (2016) has listed four main areas when it comes to ethical dilemmas to pay extra attention to: harm to the participants, lack of informed consent, invasion of privacy and if deception is involved. When doing research on humans in the field of humanity and social science, it is important to consider the participants situation so that they will not be harmed in any way. The research can only be conducted when respect for human dignity, human rights and basic freedoms are considered ("CODEX - rules and guidelines for research", n.d.).

In my study, there are no direct participants since I am focusing on decisions. Still, the decisions involve humans and I have tried to carry out the research in a responsible way to avoid the risk of harming participants. One way of doing this in my study, is through an anonymisation of all my material, even if it is official documents, in the form of decisions from the Migration Court. I have chosen to do this due to ethical principles and minimise the risk of harm for the people involved in the decisions. Furthermore, a way of doing this is to make sure to take care of the material in a responsible way, with other words to maintain the confidentiality of the material. Informed consent is about the participants to have information about how the study is conducted and the aim of the study as well as the possibility to withdraw from the study at any time (Bryman, 2016). Since my study focus on official documents that anyone can ask for and receive, the demand on informed consent gets a slightly different meaning. I think it is still important to reflect on the informed consent, even if I have not asked all the asylum seekers that are included in my study. However, in my study the focus is not on the individual asylum seeker, but instead on their asylum cases and how the Migration Court reason about COI and credibility.

Invasion of privacy highlights the researcher's obligation to protect the participants integrity. I have done this through the anonymisation process that I mentioned above as well as through taking care of the material in a responsible way. To minimise the risk of identification among the asylum seekers, I have chosen to not write down any names, dates or ages. Instead of names

I use the letter A, which is the same as the Migration Courts do in their anonymisations. The rejections are named with an R and then a number: the lower the number, the earlier the year. For instance, R1 refers to a decision back in 2012. Finally, deception refers to if the researcher represents the work as something else than what it is (Bryman, 2016). In relation to this, reflection should be made regarding *transparency*. Transparency is about the researcher being open about the research, the intentions and the procedure, in relation to ethical sensitive situations. In my study, I have used official documents, so there are no participants in that sense. I have tried to explain the different steps I have taken and why I have done what I have done. In the part above, I have explained how I came up with my themes and sub-themes, and this is one part of transparency.

## **6.7 The researcher and pre-understanding of the research topic**

My personal motivation for the chosen topic of my thesis derives from a strong interest that I have for migration and asylum rights. I have been working with asylum seekers and newly arrived people in Sweden, both as an employee and as a volunteer, for about seven years. I knew already through the program that I wanted to write my thesis about the subject and therefore the decision was easy. The interest towards Afghanistan specifically arose from my work experience with a lot of afghans but also as a result of the law changes in Sweden 2016 and how I can see that many afghans has been suffered greatly from that. My interest in digging deeper into deportations to Afghanistan has grew stronger since 2016 and the changes in the asylum system in Sweden. I have several friends who have been deported to Afghanistan since then, but also friends who have stayed to fight the system or who have fled again, but this time from Sweden. The frustration and feelings of powerlessness motivated me to dig deeper into questions like: How come fewer afghans got the residence permit in Sweden now, compared to then, when most NGO's claims that Afghanistan is more dangerous now than ever? How much of it is just a political game and signal politics to make less people come here? How big is the discretion for people working at the Migration Board when it comes to assessments? How arbitrary are the assessments in relation to the consequences for the asylum seekers in case of rejection and deportation? These were questions that I started to think about, and that later led to the concrete idea of the research topic of my thesis.

Prior knowledge about the studied area has its pros and cons. It can be helpful in the research process to have some background knowledge, to know where to find accurate information or who to contact for relevant recommendations. However, prior knowledge can also influence the researcher's views and cause biases about the result. Nyström and Dahlberg (2001) have inquired the impact of pre-understanding upon data collection, data analysis and conclusions in research. They argue that it is essential for the researcher to deal with one's pre-understandings in order to increase the openness of the study (ibid.). For me, prior knowledge and interest in the subject helped me to understand the complex situation for afghans in Sweden receiving rejections on their asylum applications but it was also a help to find relevant information for the study. However, I am aware of the possible negative impacts of my prior knowledge and passion about the subject in terms of looking at the asylum procedure through a deportability lens can be viewed as a biased way of looking at the process and thereby lead my thoughts too much and to create perceptions. This is something I have been aware of all through the process and something that I have kept in my mind when writing and analysing the data. However, earlier literature (Feijen and Frennmark, 2011; Diesen, 2012; UNHCR, 2013; Wikström and

Thorburn Stern, 2016) in the field shows on similar deficits that I have found in my data, which can be assessed as a factor of reliability.

## **6.8 Limitations of the study**

I have chosen to only look at two factors of deportability; country of origin information and credibility. There are also other factors, that I haven't included in my study. Furthermore, I have just looked at a very few court cases compared to available decisions in total. This is due to time limit and limitations of the study. To get a more comprehensive picture the study would have needed to be of a bigger scope and include many more cases.

## **7. Findings and analysis**

This chapter presents the findings in my study where I have been analysing 50 decisions from the Migration Court. All the cases are about rejections of Afghan asylum seekers who had appealed their case to the Migration Court. In the first subchapter, I start to analyse the findings related to my first research question, which is discussions regarding country of origin information in the decisions. In the second subchapter, I will analyse the findings related to my second research question, which is discussions regarding credibility in the decisions. The presentation of the findings will comprise of both a demonstration of the findings and analytical reflections based on previous research and the theoretical framework chosen for this study. The decisions in my study are referred to as R(ejection) and a number, where 1 is the oldest decision from 2012. Instead of names from the decisions I use the letter A, which is the same as the Migration Courts do in their anonymisations.

### **7.1 Country of origin information**

According to a judicial position, it is important with reliable country of origin information in the assessments and not to presume that authorities and other actors act the same way in situations all over the world (RCI 09/2013), but in many of the cases I have analysed there are no references to any COI or other sources that could support the statements and instead it seems like some COI are ignored and other COI are used as facts against the appellant.

#### **7.1.1 Selected country of origin information used as facts**

Flärd (2007) states that the Migration Board uses COI as “facts” in their decisions. Flärd (2007) also emphasizes the importance of different sources of information and to consider competing views of the situation in order to minimise the risk of an inadequate decision and the potential consequences of a negative decision. As we can see in the quote below, the Migration Court reject the appellants narrative with support only from their chosen COI.

“The COI shows that the Taliban do not recruit people with coercion. This is because the Taliban have many people who join voluntarily. Also, the Taliban have no recruiting difficulties regarding suicide bombers. Furthermore, it shows that recruitment of these happens in a different way. Thus, some of A's information conflicts with the COI” (R8).

However, it is important to keep in mind that the Taliban is a big group, consisting of many different people that may act differently. Just because the Migration Courts COI does not support the appellants narrative, it does not mean that it could not be true. Feijen and Frennmark (2011) claims that the Migration Board should also consider possible lack of COI in cases, but it seems like they don't always do that. According to social constructionism, the world is not just black and white (Burr, 2015). From a social constructionist view, we can see the COI as one way of describing the situation, but there might be others as well. To use the COI as facts means missing out of other possible views. Therefore, the COI should not be used as objective knowledge, but instead the COI should be understood as social constructions made by people. Below we can see another example of how the Migration Court reject the appellant's story simply because they can't find support for the given information in their COI.

“A has stated that he on return is at risk of being subjected to flogging. In this part, the Court finds that there is no support in available COI that a person who has been abused in this specified way, would be punished with flogging by religious leaders. Therefore, the Court considers that the appellant has not been able to convincingly explain why he would be subjected to flogging on a return, and that there is no reason to assume that A would actually risk flogging on a return” (R35).

To state that nothing will happen just because there is no support in available COI, is a narrow way of looking at knowledge, and in opposition to understand knowledge as a social construction. This can also be connected to the concept of epistemic injustice, where the content in an appellant’s narrative gets a status in relation to other sources of knowledge (Fricker, 2007). Also, Wikström (2014) claims that the authorities in many cases gives COI precedence over the applicant’s narrative, as we can see in the quotes below.

”Furthermore, the information that Muslim teenagers are involved by Christian missionaries to openly distribute Christian literature in the Ghazni province of Afghanistan is incompatible with relevant COI in the case [...] In the light of the COI, the Migration Court further considers that there is reason to question how he could continue his activities openly for as long as three months” (R49) [...] ”A’s story of how he worked for Americans who missioned in Christian faith in the province of Ghazni to distribute Christian Bibles is not reasonable. His story is in contradiction to available COI and cannot be considered reliable” (R49).

Furthermore, personal perspectives that we use to look at the world, will affect how people at the Migration Court interpret the information in the COI and which COI that will be used in the case. UNHCR has stated that the quality of the country of origin information, the assessment and use of country of origin information and the lack of country of origin information are factors that might affect the outcome of the assessment in the asylum case (UNHCR, 2013). There is also an aspect of power in this, where the Migration Court’s point of view gets greater weight than the appellant. In the example below, we can see how the Migration Court discusses different COI and comes up with different conclusions in the same case, because of different COI.

“Notwithstanding this, the Court notes that the referred COI provides support for atheists to settle in urban environments without being subjected to sanctions. It shows, among other things, that a person is not necessarily considered as a non-believer because he or she avoids practicing Islam in the public domain. According to a representative of a human rights organization, it is possible to choose not to visit the mosque and not fast during the Ramadan in urban environments” (R36).

However, in the same case, two of the lay judges were of dissent. Their dissenting opinion was that they assessed that the appellant had made it plausible that he is an atheist and that COI shows that the situation of non-believers is so severe that he should be considered in need of international protection (R36).



### **7.1.2 Subjective assumptions and ignorance of COI that supports the narrative**

The credibility assessments are not foremost a question about “truth”, but a question about something’s plausibility (Wikström and Thorburn Stern, 2016). COI is a crucial instrument for assessing the risk associated with a negative decision and an incorrectly made rejection can have severe consequences for the asylum seeker. COI could therefore be used to strengthen the appellant’s story, but in the example below, the Migration Court reject relevant COI to be too general, even if it might be relevant in the individual’s case. This seems to be a general assumption.

“The Court consider that the stated threat scenario is largely based on the general situation for women in Afghanistan and not based on A’s own situation (R11).

From the quote above, it seems like the Migration Court are looking for reasons to reject a narrative instead of looking for reasons to approve. When COI supports the appellants information, it should not be used against her instead. In the example below we will see how the Migration Court rejects relevant COI in the case, and instead question the appellant’s story.

“COI in the case shows that widow marriage occurs in Afghanistan. However, the question in the case is whether A has made her story reliable (R14).

In R14 the Migration Court states that because of contradictory information given by the appellant, she has not made it plausible that her husband has disappeared and that she will be exposed to widow marriage. Therefore, the Migration Court assess the lacks in the narrative as more important than the COI supporting her case. However, the appellant claims that there must have been misunderstandings between her and the interpreter and that’s why there has been contradictory information. The Migration Court claims that this is a retrospective why they don’t take it in to account. This is something that earlier research has mentioned as an issue, how mistakes or misunderstandings in the interpretation gets to little emphasize and how the quality of the interpretation and/or the competence level of the interpreters affects the narrative (Rousseau et al., 2002; Feijen and Frennmark, 2011, UNHCR, 2013 and Wikström and Thorburn Stern, 2016). In the next example, COI supports the applicant’s narrative, but the Migration Court claims that there could also be other reasons for the conflict.

“When it comes to what A has stated concerning him being abused by Kuchi, the Court states that there is indeed support in available COI about conflicts between Hazaras and Kuchi. However, it has not been proven that the abuse that A claims that he has been subjected to have been carried out because of his ethnicity as Hazar” (R35).

Instead of using the available COI to support the case, the Migration Court questions the appellant. If the Migration Court can’t decide if the conflict has to do with the appellants ethnicity, shouldn’t they then investigate the case more? Earlier research shows that the Migration Board in several cases has deficits in their enquiry responsibility when it comes to country of origin information which could be the case also here (Feijen and Frennmark, 2011).

In another case, the appellant, who is a child, has told that his dad is dead, and he does not know where the rest of his family are. The Migration Court confirms that the child has given the same narrative throughout the asylum process, but they state that he has had problems to clarify invoked situations. According to the Migration Court the child has given vague information about his father's death and therefore they assess that the child has not made it plausible that he does not have his family to rely on, on a return. The Migration Court states: "He is expected to be able to continue living with his family in Afghanistan" (R15). The Migration Court does not consider the risks that may occur for the appellant if he does not have his family to rely on and the statement from the Migration Court therefore seems to be a subjective assumption more than based on facts.

The next example is about an appellant who claims that his father has killed one of their neighbour's sons (R19). After this, his father disappeared, why the appellant, as the oldest son, has been threatened by the neighbours and he is afraid that he will be exposed to avenge from them. The decision states that: "According to COI, land disputes can proceed to avenge, especially if someone has been killed as a result of the land dispute. The avenge can proceed during a long period of times, even for several generations" (R19). As a reply on this, the Migration Court claims that the appellant has given vague information about the dispute. Furthermore, the Migration Board claims that since the neighbours has taken over the land and killed the appellants brother, the dispute should be considered as finished. They take no notice about the COI that states that the dispute can go on for decades.

In the last example about COI, the Migration Court states that COI in the case supports the information that a person who has converted from Islam to Christianity is at risk of persecution in Afghanistan. However, the Court assess him as not genuinely Christian and therefore at no risk at a return to Afghanistan. The appellant claims that he and a friend handed out Bibles to the people and that they said it was a holy book. The Migration states that: "A has neither been able to describe the considerations he and his friend must have made before deciding to start distributing Christian books to the people in their immediate area" (R49). Furthermore, the Court states that his narrative is unreasonable since they claim that "...the danger of openly handing out Bibles and missioning the Christian message in Afghanistan should be obvious" (R49). The question is whether the Courts statements are supported in the COI or if it is subjective assumptions? A has also stated that he was young when he was handing out the Bibles, which could be a reason for him to not consider the risks. It seems like the Migration Court has a predetermined picture of processes that the appellant must have considered and been through to become assessed as a person in need of protection. This is something that also earlier research (Blommaert 2001; Wikström, 2016) has stated, and I will come back more to this later, in the next subchapter about credibility.

## **7.2 Credibility**

According to the judicial position RCI 09/2013, the Migration authorities should identify relevant facts, consider and analyse all evidence, also the ones having low evidence value, if someone, or some information, is not reliable, assess if these affect the core of the narrative. Furthermore, the applicant should be given an opportunity to explain shortages and these explanations should then be assessed. Finally, a comprehensive assessment of all evidence should be done and shortages in reliability and credibility should be clearly motivated. Respect

should be paid to personal circumstances that can affect the details in the narrative, and therefore also affect the credibility assessments. Such personal circumstances can be war, violence, threats, gender, education, cultural stigma, mental disabilities and age (RCI 09/2013). Wrong decisions might have severe consequences and the credibility assessments therefore must have a high legally assurance (RCI 09/2013).

### **7.2.1 Lack of details and reflection creates distrust**

In most of the analysed decisions in this study, the Migration Court claims that the appellant's narrative is vague and lack details. With other words, there is a predominant part of the decisions in my study that refers to deficits in credibility. A common way of describing the narrative are with words such as vague, brief and unclear as well as describing the narrative to lack details and personal reflection. When the narrative is assessed as lacking details or being too vague, it usually also becomes defined as not credible, in many cases without investigating why the narrative might be "vague".

"The Court considers that the appellant's story is too vague and unclear in crucial parts to appear probable and self-perceived" (R10).

The asylum seeker together with the authority has the enquiry responsibility (RCI 09/2013). Although, earlier research shows that the Migration Board in several cases has deficits in their enquiry responsibility (Feijen and Frennmark, 2011). Therefore, it makes me wonder, what have been done by the case officer, to make the narrative become more detailed? What questions have been asked, or not asked? Has the appellant been given a possibility to speak freely or just answer questions? Has the appellant been given the opportunity to respond on what the Migration Board and/or Migration Court have said? Did the appellant get the information before the decision that the narrative is too vague, so the appellant has been given a chance to develop it? The next quote makes me wonder the same things.

"His oral statement about how his father and brother have been killed by Taliban is vague and lack details in central parts and he cannot explain why they were killed. Therefore, the information cannot be used for the assessment of his protection" (R29).

Wikström and Thornburn Stern (2016) claims that the interviewer and the questions that are asked affects the ways the asylum seeker will tell the narrative. Depending on what questions that are asked, and how they are asked, different answers might come up during the asylum procedure. Also, the judicial position RCI 09/2013 states that the asylum seeker should be given an opportunity to respond on shortages in the narrative. For the Migration Court to say that lack of details in the narrative is enough to reject it, without further notice, seems to be a bit arbitrary.

"A have been vague in parts regarding his feelings. Some of the information about what happened in his country of origin might be true, but that does not mean that he is bisexual" (R13).

Research shows that an expectation on the asylum seeker is to be detailed, which means that one need to be open to talk to authorities about your life and to share your deepest secrets at the first meeting with someone. In the example above, we can see how an appellant has stated that he is bisexual, but the Migration Court dismiss his statement and claims that he might have been sexually active with boys, but since he cannot explain his feeling regarding being bisexual, they are not convinced that he is. There seems to exist expectations on the asylum seeker to be expressive and it is a deficit if you are not. UNHCR (2013) has stated that lack of trust between the applicant and the interviewer might affect the narrative. According to Feijen and Frennmark (2011), feelings of guilt and shame might also affect the possibility to talk about some things, especially regarding one's sexual orientation.

“A’s narrative has mainly been coherent and without contradictions. His narrative does not either conflict with available country of origin information. However, his information regarding his father's actions has not been detailed and cannot be considered to pose a threat to A today on his return to Afghanistan” (R16).

In this example, we can see how the appellant is distrusted because of lack of details, even though his story has been coherent and without contradictions. Sometimes I got the feeling that the authorities are looking for reasons to reject the appellants narrative, instead of making an objective assessment. In another example, the Migration Board has stated that the appellant has given a narrative that lacks details and that contains contradictory information. However, the Migration Court states that the narrative includes some contradictory information, but it cannot be defined as contradictory in general. Furthermore, the Migration Court states that there is some lack of details in the narrative, however it is not enough to reject the whole narrative (R28). In the end, the Migration Court still assess that the appellant has not made it plausible that there is an individual and concrete risk for him to return to Kabul. The Migration Court conclude that there is a lack of details of who might want to hurt the appellant and it is unclear what power they might have to do something. Sometimes it seems unclear to me if the focus of the authorities is to gather information about the asylum claims or to test the credibility.

### **7.2.2 Contradictory information as a source of error**

A coherent and detailed narrative is often seen as a sign of credibility in the assessments. Although, researchers do not see smaller contradictions and less details as a definite obstacle but instead as a natural thing when repeating a narrative (Wikström and Thorburn Stern, 2016). However, in several of the decisions even smaller contradictions are given a great importance.

"In light of the conflicting information that has emerged, A has not made it probable that there is a personal threat to him from the Taliban" (R8).

In the above-mentioned case, the conflicting information is about the asylum seeker's family relations, information about how a friend was killed by the Taliban, and events during his flight to Sweden. I understand that this contradictory information may affect the overall assessment of credibility, but it should not be considered as central to his stated threats from the Taliban.

The information about stated threats should have a greater focus than the contradictions about family relations and the flight to Sweden. This is something that also the authors of the report *Beyond Proof* have seen. They claimed a trend in the EU where negative decisions refer to primarily deficits in the credibility assessments without paying enough attention to criteria in the EU protection directive (*Beyond Proof* 2013). Small deficits in the narrative should not be an excuse to not be granted asylum. Rejections based on wrong assumptions might have severe consequences for the applicant and the credibility assessments therefore have to have a high legally assurance.

“During the asylum investigation at the Migration Board, the appellant stated that after the attack in Afghanistan he woke up in hospital and he also described what treatment he received and that he stayed there for four days. At the Court, the appellant has stated that he did not stay in hospital at all, but instead lay unconscious at the home of a cousin and that a private doctor came there and treated him there. In this part, the narrative contains conflicting information” (R12).

It is unclear if the appellant in the given case has been given the opportunity to respond to what the MD considers to be conflicting information. It could otherwise be an example of the importance of correct translation. Since the question is where the appellant was when he got his treatment, it is important to question if the translator has translated words or also interpreted what the appellant has said. What if the interpreter assumed that the appellant was at hospital to receive the treatment, while the appellant might just have said that he met a doctor to receive treatment? The difference language wise might not be too big, but for the outcome of the case the difference is of great importance. We do not know more about it in this specific case, since it does not say in the decision whether the appellant had the chance to respond on the stated contradictory information.

“The Migration Court considers that the information provided by A about the land dispute in his home town is vague and in some respects contradictory. He has stated various reasons why the conflict has arisen. A has stated both that the land dispute is based on the neighbours being Pashtuns and his own family Hazaras, but also that the dispute arose because the neighbours are Taliban” (R19).

In the quote above, the contradictory information is stated to be if the neighbours are Pashtuns or Taliban. But does these two really need to be contradictory? Also, earlier research points out how even smaller contradictions in the asylum narrative creates relatively big mistrust among the decision makers and how the mistrust furthermore results in ignorance of explanations about contradictions and prevents objective assessment (Rousseau et al., 2002)

### **7.2.3 Information assessed as not good enough**

Doornbus (2005) claims that the immigration officers have presumptive ideas about the asylum seekers. It can be as serious as presumptive ideas that the asylum seekers do not meet the criteria for well-founded fear of persecution. Such attitudes will of course influence their way of conducting interviews, for instance which questions that will be asked and how the answers

will be assessed. My findings show that second hand information is commonly assessed as not good enough information, even if there is not possible to get the information in another way.

“The information about the conversation is vague. In terms of content, it is a matter of second-hand information. The commander had previously stated death threats and what the friend stated may well have referred to these threats. It is also unclear if the men who visited A's home were really sent by the commander. The men did not explain their case and one can only speculate on their intention. The conclusion that the commander has now decided to make the threats real is thus largely based on loose assumptions” (R6)

The Migration Court confirms that the appellant earlier had received death threats, still it seems like they are looking for reasons to reject the case. Just because the men in the case did not explain their intention, it does not automatically mean that it was not for a bad reason. Obviously, the appellant is afraid and have tried to explain why but the information is dismissed because it is second hand information or assessed as loose assumptions. There are several cases where the Migration Court dismiss information in the narrative because it is based on second hand information.

“Furthermore, his information about threats from relatives is mainly based on second hand information from the mother. The details of how his father died are also based on second- hand information. Regarding the incident where A's mother and siblings were attacked in Iran, it has only emerged that it was strangers who attacked the family. It is A's own assumptions that these people have connections to A's relatives. Based on this, the Migration Court considers that, what A has stated regarding threats from his relatives is not enough for him to be considered in need of protection” (R43).

It is nothing in the case above that actually goes against what the appellant has said earlier. Hence, the Migration Court dismiss the information only because it is second-hand information. This is something that I have seen in several cases. In one case, the Migration Court state that that the information that he has been threatened by Taliban because of his father's death is not substantiated by concrete facts but is based on his own assumptions (R20). Below we can see another example of how the Migration Court dismiss information by saying that it is based on assumptions or speculations.

“The Migration Court makes the following assessment. A can only speculate that there is a threat to him in Afghanistan. He has not been there since he was very young” (R47).

All these examples make me think of the concept of epistemic injustice that refers to the status the content in a narrative gets (Fricker, 2007). For me, the case officers have a predetermine picture of what they want to hear to be able to assess the narrative as credible, and if your narrative does not fit in that picture, your narrative might be assessed as not credible. This is also relatable to the concept of narrative inequality that states that the asylum procedure requires specific demands when it comes to the narratives form and content (Wikström, 2016). According to Blommaert (2001:414), there are complex set of discursive practices and language ideologies in the asylum procedure. Blommaert claims that these are being used as criteria when assessing the narratives and they becomes criteria for “truth”, “trustworthiness”, “coherence” and “consistency”.

“A knows very little about the events that happened in Afghanistan and about the groups that threatened his family. He was very young when the family left Afghanistan and his information is therefore largely based on second-hand information. The details of who would pose a threat to him are vague and unclear. A has not been able to explain how these groups would find out that he had travelled back into the country or why they would still have an interest in him. [...] This information lacks details and are based on speculations and second-hand information (R21).

In his defence, the appellant claims that it is not remarkably he cannot say with certainty exactly which group is after him, given that he was very young when he was exposed to persecution. He also claims that he suffers from post-traumatic stress syndrome and depressive episode. The Migration Court respond this with: "The certificate supports that A suffers from mental ill health" (R21), but it is still not considered in the decision.

#### **7.2.4 New information is dismissed**

The applicant should be given a chance to respond to and explain information that are being perceived as contradictory or vague without being questioned. If the applicant does not get the chance to explain contradictory information or other credibility deficits, the decision maker should not use this against the applicant in the decision (Feijen and Frennmark, 2011). The opportunity to comment on this information is also stated in the Alien's Act (chapter 13 §3). However, my findings show that this is not always done.

“At the Migration Court, A has stated a number of circumstances which he has not previously told. For instance, at the oral hearing he said that his sister had been abused by the police chief after the family reported the murder of the father. He also told that he before his arrival in Sweden, was told that the police chief had reported him for having collaboration with the Taliban and that his mother would have been abused. According to the Migration Court, these circumstances have such an important link to his asylum grounds that they should have been invoked earlier” (R7).

In the example above, we can see how new information after the first rejection is assessed as not credible since the Migration Court thinks it should have been mentioned before. The citation from the Migration Court shows how they expect the asylum seeker to know what to tell and not, based on what the Migration Court assesses as important information. This is also what the concept of narrative inequality discusses. The narrative inequality aims to show how the asylum procedure is part of a bureaucratic system that restrict the asylum seekers chance to design her/his own narrative, since the narrative must suit into the logic of the asylum system to make sense (Wikström, 2016). Furthermore, the narrative inequality states that the asylum procedure requires specific demands when it comes to the narratives form and content (Wikström, 2016). To present a credible narrative, the asylum seeker is thereby restricted from designing his/her own narrative in a way that would be logical to him/her. Instead s/he must focus the design of the narrative to be logic for the system. If failing to present the narrative in a way that suits the system, the outcome might be deficits in credibility.

“In addition, A has stated to the Court that he recently, through his aunt, got to know that his mother and brother has been deported to Afghanistan and that they have been killed there. This happened after A’s grandparents and uncles have picked them up from the aunt where they were staying for some time. According to what the aunt stated, A’s grandfather asked for A (R39) [...] “In this case, there is no written evidence to support A’s new information. It is true that an asylum seeker may have difficulties to provide evidence to support their need for protection. However, only a statement late in the asylum process cannot be enough to make the circumstance plausible, according to the Migration Court” (R39).

What I wonder then, is if something new have happened, in the country of origin of the appellant, how should the appellant be able to tell, or show, or prove this to the Migration Court? He could obviously not tell it before, because then it would not be new information. He has not experienced it himself, since he is in Sweden, so the information must be from someone else and the risk of it to be assessed as not credible because it is second hand information is then probable. Instead of dismissing the information, shouldn’t it be further investigated?

### **7.2.5 Subjective assessments and assumptions**

The judicial position about method for examining reliability and credibility (RCI 09/2013) states that the decision about asylum should be rational and objective. However, research shows that the Migration Court construct some decisions on basis of assumptions (Feijen and Frennmark, 2011: 78-79). Subjectivity, prejudices, preconceptions and generalisations are stated to occur in decisions, without the applicant being given an opportunity to respond on it (Feijen and Frennmark, 2011; Diesen, 2012; Wikström and Thorburn Stern, 2016).

"A's conclusion that his brother's disappearance may have been related to his brother’s job in the department is not unreasonable. However, there may also be other reasonable explanations for the disappearance of his brother” (R1).

In this case, the Migration Court does not assess the information as not credible, but they are still questioning the appellant’s statement. The statement from the Migration Court does not include any further explanations why it becomes a bit arbitrary and can be interpreted as a subjective assumption. In line with social constructionism, it is important to be aware of one’s own perspectives and how the perspectives we use to look at the world also produces how we interpret information (Burr, 2015). My way of understanding the world, is just one way and it does not mean that one should assume that my way is the truth way or the only way to see it. According to the social constructionism, there is no understanding that is more accurate than any other since “knowledge” is affected of different things such as time and actual context (Burr, 2015).

“Furthermore, the Migration Board assess that there are major credibility deficiencies in your narrative regarding the stated relationship in Iran and its consequences. You have stated that the girl you had an illicit relationship with, was not allowed to have contact with unknown men, that she lived with her family and that she was engaged to a cousin.



Despite this, you have stated that for six months she used to go out and talk to you just outside her home and that you used to go out to public places together. Given the punishment you state that you both risked because of such a relationship, the Swedish Migration Board questions this information” (R10).

In another case, the appellant claims that his parents have been threatened and that these threats include him as well. However, the Migration Court claims that this is just his speculations and according to the Migration Court there is no reason to expect him to be exposed for the threats as well (R39). I would instead say, that the Migration Court’s statement is based on westernized perspectives on the individual instead as the individual as part of a group, in this case the family. In Afghanistan the individuals are part of a unit, the family, and if one family member has problem, it usually includes the whole family.

There are also several decisions where the Migration Court question the grounds for protection because of time. For instance: ”A has neither in an acceptable way explained why the commander would wait over two years and then suddenly act” (R6). In my opinion, it is a strange expectation that the appellant could have answers on this. How should the appellant know why the person who threatened him waited before doing something? It does not make sense to expect that the appellant would have answers like that and therefore it should not be used as a deficit against the appellant in the case. If the threats are assessed as real, the matter of two-year times should not make a big impact on the outcome of the case. The threats can still be valid. The Migration Court’s conclusion in this case is “What has emerged in the case thus means that a considerable amount of time has passed without the threat being realised and without any other reasonable explanation for the commander's passivity than he does not intend to realise the threat” (R6). In my opinion, this citation is an example of how the Migration Court use subjective assumptions to distrust the appellant’s narrative without objective grounds. It is an assumption that the threats are not still valid when it instead can be various reasons why nothing concrete has happened during that time.

In the last example, the Migration Court questions that the Taliban would look for A at all and then ask him to cooperate with them if they considered his father, as stated in the threatening letters, to cooperate with the infidels and that they would therefore punish his family (R8). If the father was actually working with the infidels, cannot being forced to work for the Taliban count to be a way to punish the family then? What if that ultimately leads him to being forced to take on a suicide mission or punishing people close to him?

### **7.2.6 Stereotyping expectations**

In several of the decisions in my study, the Migration Court seems to have predetermined criteria based on stereotyped expectations. The appellants are supposed to be able to explain their feelings in a detailed way and they are expected to have reflected upon specific things like thoughts and risks about one’s sexual orientation or religious beliefs. In the example below, we can see how it is not enough with physical relations to prove one’s sexual orientation, but instead one also must be able to talk about feelings and reflections that are supposed to have been done.

“Regarding A’s sexual orientation, he has mainly talked about his physical relations with men and he has not been able to explain about his feelings and thoughts in relation to his sexual orientation in an enough detailed way. Since one’s sexual orientation must be

considered as a fundamental attribute of a person, his vague details affect the reliability of the story. When asked what thoughts he had regarding his sexual orientation, he was only able to tell how his interest in other men was aroused and the intimate moments they shared. He has not been able to declare about his reflections regarding his sexual orientation” [---] ”A have been vague in parts regarding his feelings. Some of the information about what happened in his country of origin might be true, but that does not mean that he is bisexual” (R13).

The decision makers seem to have presumptions and expectations regarding the applicant’s behaviour and attitudes, which affect the outcome of the case. The Court claims that it is not enough with details about physical relations, but the appellant is also expected to explain about reflections about feelings in a detailed way. Not all people are good on explaining their thoughts and feelings, and especially not about a subject that is prohibited in one’s country of origin. Wikström has earlier stated that there seems to be predetermined demands on details and expressions in the asylum narrative (Wikström, 2016). The next example is also about a person who claimed his sexual orientation as a ground for asylum.

“At the oral hearing and during the investigation at the Migration Board, A has among other things told the following. At the age of 11-12, he felt that he had no feelings for girls. But instead, he got higher heartbeat and became nervous when he saw an attractive boy. He has described that he wanted to get closer as he began to get to know a boy. On questions about how he felt when he started the love relationship with his classmate, he told that he felt like he did not have his feet on the ground, was happy and felt positive. Even considering that A was relatively young at the time of the alleged events, the Court states that his information about his feelings and experiences about the relationship have been relatively vague and lack details. Despite growing up in a religious family and in a society where it is not accepted to be gay, the Court consider that he has not been able to tell about his thoughts and questions about his sexual orientation as well as the risks it has posed in his homeland, in sufficiently detailed manner” [---] “A has told that he already in his country of origin realised that he was gay and that he had to hide his sexual orientation. On the other hand, he has told that the reason he left Afghanistan was because he was threatened by an uncle and not because of his sexual orientation” (R38).

The Court states that they have considered that the appellant was young and the fact that it is not allowed to be gay in Afghanistan. However, it is not explained how this is considered, why it is hard to respond on it. Furthermore, the Court question the appellant because he did not say that he came to Sweden because of his sexual orientation, but instead of threats from his uncle. However, just because he did not flee because of his sexual orientation, there is nothing that says that he would not fear his life because of it on return. Feijen and Frennmark (2011) has stated that, for instance, feelings of guilt and shame might affect the possibility to tell.

There are several decisions of the ones that I have analysed that deal with people who have converted to Christianity or who are atheists. Many of them are questioned to not be genuine in their beliefs, or lack of beliefs and I will give some examples of how the Migration Court assess the asylum seeker and the narrative from, what seems to be, a predetermine perspective where they expect the change to have been of major importance in their lives. Again, reflections about

thoughts and feelings, but also knowledge questions, seems to be the way of measuring if a narrative should be assessed as true.

“The Migration Court does not question that the appellant no longer wants to practice Islam. However, the Court does not assess that he has made it probable that he has left Islam because of a genuine belief” (R36).

In this case, the Court state that the appellant has given vague information that lack details about his transition to atheist. He has not been able to explain in a clear and detailed way, his process to the understanding that there is no god. The Court claims that the appellant has talked more about Islam and the deficits with Islam, which they mean does not need to correlate with the question if there is a god or not. On the question if the appellant thinks there is a god, he replied that he does not think so because of all the wars and other cruel behaviours all around the world. The Court assess this statement as way to general to be stated by an atheist (R36). As a conclusion, the Court states that: “...the appellant’s information about his atheism and his view of God are vague and too general, and it seems more to be about criticism of Islam” (R36). In my opinion, it is not unlikely, rather likely, that a transformation from a religion would start with questioning the things that appears bad and/or cruel, like in the case above. Atheism is a wide perspective with no clear way of how to be, except from a non-believing point of view when it comes to god. In the next example, we can see how the Migration Court assess an asylum seeker as a person who has not converting to Christianity because of a genuine and personally religious belief.

“He is assessed as too vague and with lack of reflection about his thoughts, feelings and choices. He has stated that he does not like the coercion he feels regarding Islam, for instance to fast, but also that Islam stands for oppression and that Islam discourage gender equality. At the oral hearing it was argued that in Afghanistan one does not talk a lot about emotional life and that the general thinking and lack of reflection about the conversion is a result of this, and this should not be hold against A” (R37).

Earlier research claims that the asylum seekers are measured against norms and expectations instead of having focus on contextualized crucial factors (Blommaert, 2001; Wikström and Thorburn Stern, 2016). This means that the decision makers take decisions based on how they expect people to behave according to prevailing norms and if the asylum seeker does not behave the way that they are expected to, there is a risk to be assessed as less credible. In other words, deficits are used to assess the narrative as not trustworthy and thereby a cause of rejection. This is an example of the narrative inequalities in the asylum procedure. It shows how expectations sets up limits, for instance, insufficiently reflections about one’s sexual orientation or religious belief can lead to an assessment about deficits in credibility. Blommaert (2001:414) claims that the asylum procedure involves “a complex set of discursive practices and language ideologies that are, in practice, being used as criteria for “truth”, “trustworthiness”, “coherence” and “consistency”.

“The Migration Court is of the opinion that the choice to leave Islam in favour of Christianity is a substantial and vital choice, especially considering the view of conversion in Afghanistan, where Islam is norm-governing and has a very strong position. A person who makes such a choice can therefore be expected to know what he or she has chosen and why the choice has been made. The Migration Court finds, as a

comprehensive assessment of A's narrative, that his conversion is not based on a genuine and personal religious belief" (R37).

A common statement from the Migration Court in the rejections about religion, is that it must have been a major thing in the appellant's life and something that must be of huge importance for that individual. A conversion or a statement to be atheist is seen as something that must be reflected on as a major change in one's life. If not, it is a reason to question the genuineness, as we can see in both the example above and below.

"The Migration Court states that A's information about why he has changed religion and about the significance of Christianity to him personally is very vague. The fact that it is that way is remarkable considering that a genuine conversion must be assumed to be an extremely important position for the individual and have a very important meaning in that person's life" [...] A has neither told about what reflections he has made about the risks of converting, but only said that in Sweden one can freely choose one's beliefs" (R44).

Blommaert argues that the bureaucracy (re)structuring the spoken narrative into institutionally sanctioned texts which includes power inequality in the transformation and how the bureaucratic system expects and requires particular "material" in an injustice way. The use and effects of languages and other symbolic systems are also central in social constructionism (Burr, 2015). Social constructionism can be a way to examine how language contribute to legitimate and perpetuate unequal power relations (Bur, 2015). The decision makers in asylum cases has power and the prerogative to decide about assessments regarding the asylum seeker and its narrative. To apprehend the world, we use categories and concepts that are historically and culturally specific (Burr, 2015). This means that the decision makers at the Migration Board and/or Court are coloured by their perspectives, which might be different from the perspectives of the asylum seeker. UNHCR (2013) has earlier stated that cultural distance between the applicant and the interviewer/decision making officer also affect the narrative.

"His information about why he chose to convert and what significance Christianity has for him personally is vague, generally held and lacks personal reflection (R50) [...] "Furthermore, A has not considered the risks that may exist for Afghan converts, which does not appear likely. It is also not certain, as he has claimed, that a person in Afghanistan is assumed to be a Christian by his surroundings just because he does not follow Muslim traditions. His explanation shows that he has not thought about how his Christian faith would be affected if he were forced to return to his home country. Therefore, it does not appear that his Christian faith is central in his life. After an overall assessment of the information A has provided, the Migration Board considers that he has not made it probable that he has converted by genuine conviction" (R50)

The appellant's respond to this was: "Even if one is convinced of one's belief, it can be difficult to put words on the emotions one has. It is more a matter of personal disposition". He has, in addition to his narrative, invoked certificates from the church where he is active. The appellant claims that great importance should be given to these certificates since those who work in the church meet him in everyday life and therefore should be better at assessing his faith than a case officer at the Migration Board. He claims that he has been living an open and active life as a Christian for three years' time (R50).

The Migration Courts reasoning shows on a western individualistic perspective instead of a perspective where the individual is seen as part of a bigger group, could for instance be family or society. It is also a subjective assumption that everyone must have thought about possible risks on an eventual return. People have fled from a country because of a reason and to expect everyone to think about all the risks that might occur on a return is not reasonable. Many people are expecting protection in another country and they are waiting for a life in peace, not focusing on possible risks on a return. Even if it is in the Migration Court's interest to investigate about possible risks at a return, it does not mean that this is something that the appellant actually has been thinking about before getting the question. It shows how the Migration Court has specific demands on the appellant and the appellant's story to get assessed as credible. To not have considered possible risks at a return, should not be used as a deficit for the appellant.

### **7.2.7 Ignorance of reasonable explanations**

According to the judicial position (RCI 09/2013), the applicant should be given an opportunity to explain shortages in the narrative and thereafter the explanations should be assessed. According to Feijen and Frennmark (2011), the applicant should be given a chance to respond to and explain information that are being perceived as contradictory or vague without being questioned (Feijen and Frennmark, 2011). In the next examples, we will see how reasonable explanations by the appellant are dismissed by the Migration Court.

“The Migration Court claims that the appellant has given vague information that lack details in central parts of his narrative. His information that his father worked at a police station is not reliable and he has not made it probable that he has any individual protection needs because of his father's work” (R48).

As a reply on this, the appellant state that he does not have much details about his father's employment, because too much information about it would have put him in a vulnerable situation. Furthermore, the father felt bad and did not want to talk about what had happened. Therefore, his parents did not tell him about it. Only when he contacted the father from Sweden and insisted on getting answers did the father tell more about what had happened. The appellant's explanation is not unreasonable.

Several research claims that an applicant's trauma, mental issues, torture, persecution and symptoms might affect the narrative (Rousseau et al. 2002; Feijen and Frennmark, 2011; UNHCR, 2013; Wikström and Thorburn Stern, 2016) It is also stated in a judicial position that respect should be paid to personal circumstances that can affect the details in the narrative, and therefore also affect the credibility assessments. Such personal circumstances can be war, violence, threats, gender, education, cultural stigma, mental disabilities and age (RCI 09/2013). However, there are several cases where there are no regards taken to such issues.

”A's story is further vague and lack details in the parts that relate to the threats she was exposed to. The story shows that she received phone calls and threat letters. However, she cannot describe in specific terms the circumstances or how they occurred” (R11).

There is no consideration taken to the documents submitted regarding the appellant's alleged mental illness. Although, the Migration Court states: "It is clear from the submitted medical

certificates and journal notes that A suffers from mental ill health as a result of traumatic events in his home country" (R11). In other cases, the Migration Court states that they have considered the appellant's mental illness, but it is not clear how this has been done.

"A has given the same narrative during the whole asylum procedure, but he has had difficulties to declare in a precise way for the invoked events. He has given very limited information about the course of events when his father is said to have been killed. This is done although the information is taken from a very dramatic event which in that case should have caused major consequences for A and his relatives. It should be noted that a traumatic event can make it difficult to recount what happened, and in this case, it is also a child's story. Although such considerations have been considered, the Migration Court finds that the information provided is too limited and vague to convincingly make it probable that the father was killed in the manner claimed (R15).

In respond to this, the appellant claims that he has been doing his best to give a coherent narrative about the events in Afghanistan, as he knows it. He states that the Migration Board has not considered that he is a child, in their assessment and that being a child affects the ability to remember and tell. In addition to this, he claims that he has been through very traumatic events and it is hard for him to talk about the memories of it and what has happened. This is also documented by a counsellor. The appellant has told that his dad is dead and that he does not know where his mom and siblings are anymore, after leaving Afghanistan (R15). However, in the end the Migration Court claims that the appellant has not been able to prove that he does not have his family in Afghanistan, so they assume he has.

## 8. Concluding discussion

This chapter will briefly summarise the findings and thereby answer the research questions. The aim of this study has been to analyse how the Swedish Migration Courts construct deportability through country of origin information and credibility assessments, in their decisions regarding asylum seekers from Afghanistan. In order to address this research aim, the following research questions have been guiding this study: (1) How do the Migration Courts use country of origin information in their decisions about asylum seekers from Afghanistan? (2) How do the Migration Courts use credibility assessments in asylum cases relating Afghan asylum seekers?

First, I consider a lot of decisions lacking in information and it is hard to say if that is so because of the appellants narrative or because of deficits in the Migration Board or Courts investigation. However, it is very important with well-motivated decisions for the legal security of the asylum seeker so that s/he knows what to focus on in an appeal, for instance if it is about misuse of COI or lack of details in the narrative. If we keep in mind, the generally short amount of time for the appellant to tell the narrative, I will say that there is a risk that not all important information will be presented at first. My findings have also showed, that new information is usually mistrusted, so there are big risks with lack of information at the first meeting. The fact that it can also be very hard for the applicant to be open and talk about everything at a first meeting with the authorities should also be given more consideration. Unfortunately, there are also sometimes big deficits in the interpretations and the use of interpreters of course can affect the outcome of the narrative.

My findings show that there are several deficits in how COI is used in asylum cases. Partly, some COI are used as facts and on the other hand some COI that could be supporting the applicant's narrative, is dismissed with motivations like "there could also be other reasonable reasons" than the ones mentioned in COI. Information in asylum cases is questioned in cases where there is a lack of COI to confirm specific information. It is problematic when lack of COI is counted as a weakness, just because there is no information about it in any COI. Furthermore, COI is interpreted extremely narrowly. For instance, that something happens infrequently should not be counted as never happening (e.g. R28). Earlier research has emphasized the importance of correct used COI and the severe consequences of rejections based on inadequate grounds. However, COI still seems to be used arbitrary in some of the cases.

The findings of this study also show that rejections because of deficits in credibility are common in many cases. The credibility seems to be assessed as more important than the narrative itself. The findings also show how subjective perceptions affect the assessments. The results also indicate that assessments are made, and conclusions drawn, based on prevailing conditions in Sweden rather than in the applicant's country of origin (assumptions, cultural differences, etc.) and based on general perception of what would be logical, instead of considering the actual conditions (e.g. R19). The result also shows that the applicant is held accountable for shortcomings and the actions of third parties, things that the applicant may not have had the power to influence. The result indicates that the applicant is expected to be eloquent and able to express feelings and thoughts, rather than to tell what actually happened (e.g. R7). Circumstances that affect and might make it difficult to present a coherent, chronological and detailed account (e.g. mental illness, trauma, as well as interpretative deficiencies) are not given

enough consideration. Due to these and similar deficiencies, the Courts assessments might be inadequate.

It seems to be very easy for the Migration Board and the Migration Court to reject someone's narrative and claim that they do not trust the appellant words. It seems like they do not need to have any proof for their sake, but instead their words and opinion is of greater importance than the appellant. It seems like they are free to assess the cases even without specific information supporting their statements. It is also hard for the appellant to respond on deficits, when it is not clear why the Migration Court has made their statement. The applicant should be given an opportunity to explain the shortages and the Migration Board should then assess the explanation and motivate shortages in reliability and credibility (RCI 09/2013), but this is not done in many cases. Also, an assessment should be done if someone, or some information, is not reliable, if it affects the core of the narrative (RCI 09/2013). Furthermore, the Migration Board and Courts should identify relevant facts and consider all evidence, also the ones having low evidence value and finally analyse the evidence around every relevant evidence theme (RCI 09/2013). Throughout my study, I have seen how this is not done. Almost no evidence is considered, except from the Migration Board's own evidence, such as the medical age assessments. The asylum seekers evidences are rejected with comments like "low evidential value" and on the other hand, information is questioned when there is lack of evidence. Also, earlier research has stated that assessments of evidence affect the quality in asylum cases (Feijen and Frennmark, 2011).

It is important to be able to guarantee the legal security of asylum seekers, but this study shows on deficits in the asylum procedure that might lead to severe consequences for the individuals. The credibility assessments should not foremost be a question about "truth", but a question about somethings plausibility but in the findings, it seems to be the opposite. It seems to me like the authorities base their decisions on loose arguments and too much focus is put on the credibility. This leads to subjective assessments, where the assessing body has a great discretion compared to the asylum seeker. When I look at the findings of this study, I consider it reasonable to have used the concept of deportability as at core of the asylum assessments. To me, the findings shows that the migration authorities are trying the applicant's deportability when they are looking for reasons to reject the asylum application instead of looking for reasons to approve.

Lastly, I have some reflections regarding the fact that fewer asylum seekers from Afghanistan is granted protection in Sweden now compared with just a few years ago. I have a burdensome feeling that the increased numbers of rejections are foremost a result of a political game and not foremost an assessment that Afghanistan is a safe and reasonable alternative to deport people to. I am afraid that it is more of a result of the right-wing impressions and xenophobia that we can see increasing in Sweden and the rest of Europe today, where more rejections are supposed to work as an intimidation to make less people come here to use their right to apply for asylum. The fact that the Migration Courts consist of a judge and three lay judges chosen by the political parties, are not making me feel confident about our legal security. Before, I thought about Sweden as a country with legal security, but with all the arbitrary assessments in the asylum cases, my trust to Sweden as a country with legal security has ceased. The Migration Courts are supposed to be our control body, to ensure that the Migration Board takes the right decisions and otherwise the Migration Court can correct their deficits. In my opinion, this is not the case



anymore, but instead they have become an extended arm of the Migration Board. If that is the case, it is immensely worrying and a big challenge for Sweden's legal security.

## **8.1 Recommendation for further research**

While carrying out this study, several other questions and possible subjects emerged. It would be interesting to see more research about the situation for returnees in Afghanistan and what happen when people are deported back to conflict settings. How many will stay in Afghanistan, and how many will flee again? What are their living conditions etc. Another study that I would find interesting, is about the detention centres in relation to human rights. Just recently, the Migration Court of Appeal came with a decision that, in short, claims that a person should not be hold in a detention centre more than twelve months. Access to health care while in detention centre is another interesting subject to examine. It would also be interesting with research focusing on the Swedish Migration Board and the personnel's perspective with the discussed issues in this study.

While reading and going through all the decisions used in this study, thoughts and questions regarding the lay judges have crossed my mind several times. The assignment as lay judge is an unpolitical assignment, even though the lay judges are nominated by the political parties. While analysing some of the decisions, I have also looked up which parties the lay judges have been nominated by. Since the Courts are supposed to be our control body in the system it would be extremely disturbing if personal interests among the lay judges affected the cases in Court. Based on this, I think it would be very interesting with a study on how the lay judges appointed by different political parties' reason in asylum cases. Is it possible to see any patterns that some representatives from certain parties are more often for approval or rejection in decisions regarding asylum? Lay judges are obliged to comply with the law and should not be affected by personal political views, but is this possible or is it rather possible to discern patterns that demonstrate that this does not work?

## 9. Bibliography

- Aliens Act (2005). Utlänningslag (2005:716). Retrieved from: [https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005\\_716.pdf](https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf) [Accessed 2019-02-10]
- Amnesty (2017). *Forced back to danger. Asylum-seekers returned from Europe to Afghanistan*. Retrieved from: <https://www.amnesty.org/download/Documents/ASA1168662017ENGLISH.PDF> [Accessed 2019-02-05]
- Amnesty International (2019). *Amnesty Sverige: Kommentar till Migrationsverkets utkast till nytt ställningstagande om Afghanistan*. Retrieved from: <https://www.amnesty.se/om-amnesty/amnesty-international-sverige/uttalanden-och-remissvar/amnesty-sverige-kommentar-till-migrationsverkets-utkast-till-nytt-stallningstagande-om-afghanistan/> [Accessed 2019-03-27]
- Appelqvist, M. (2000). “*Refugee Law and Cause Lawyering*.” *International Journal of Refugee Law* 12 (1): 71–89. doi:10.1093/ijrl/12.1.71.
- Blankspot (2019). *Sverige fortsatt strängast för afghaner bland EU:s största mottagarländer*. Retrieved from: [https://www.blankspot.se/sverige-fortsatt-strangast-for-afghaner-bland-eus-storsta-mottagarlander/?fbclid=IwAR1B4RmS20bk2\\_1fcPURh25xW2rB389eDdP2DnccG1TR8h6WJpZ2COYO69Y](https://www.blankspot.se/sverige-fortsatt-strangast-for-afghaner-bland-eus-storsta-mottagarlander/?fbclid=IwAR1B4RmS20bk2_1fcPURh25xW2rB389eDdP2DnccG1TR8h6WJpZ2COYO69Y) [Accessed 2019-01-28]
- Blommaert, J. (2001). *Investigating narrative inequality: African asylum seekers’ stories in Belgium*. *Discourse and Society*. Vol 12(4): 413-449. Sages Production. London, Thousand Oaks, CA and New Delhi.
- Bryman, A. (2016). *Social research methods*. Oxford: Oxford University Press.
- Burr, V. (2015). *Social constructionism*. Third edition. Routledge. London and New York.
- De Genova, N., and Peutz, N. (2010). *The Deportation Regime. Sovereignty, space and the freedom of movement*. Duke University Press. Durham and London.
- Deloitte (2016). *Report of factual findings on the review of IRRANA program component VTY and HA*. Oslo: Deloitte Advokatfirma AS

Diesen, C. (2012). *Bevis 8. Prövning av migrationsärenden*. Stockholm: Norstedts Juridik

Doornbus, N. (2005). On Being Heard in Asylum Cases – Evidentiary Assessment through Asylum Interviews. In Noll, G. (ed). *Proof, evidentiary assessment and credibility in asylum procedures*. Leiden/Boston: Martinus Nijhoff Publishers

DN (2018). *Dödligaste kriget nu i Afghanistan – går om Syrien*. Retrieved from: <https://www.dn.se/nyheter/varlden/dodligaste-kriget-nu-i-afghanistan-gar-om-syrien/> [Accessed 2019-01-24]

European Asylum Support Office (EASO) (2015). *Practical Guide: Evidence Assessment*. Retrieved from: <https://www.easo.europa.eu/sites/default/files/public/EASO-Practical-Guide-Evidence-Assessment.pdf> [Accessed 2019-02-10]

EUR-Lex (2004). *Council Directive 2004/83/EC*. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0083&from=EN> [Accessed 2019-01-28]

EUR-Lex (2011). *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country 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 (recast)*. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN> [Accessed 2019-03-01]

European Commission (2015). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Agenda on Migration*. Retrieved from: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf) [Accessed 2019-01-24]

European Commission (2019). *Common European Asylum System*. Retrieved from: [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en) [Accessed 2019-03-01]

Farr (2018a). *Afghanistan är inte säkert - stoppa tvångsutvisningarna!* Retrieved from: <https://www.farr.se/sv/aktuellt-a-press/pressmeddelande/1634-afghanistan-aer-inte-saekert-stoppa-tvangsutvisningarna> [Accessed 2019-02-17]

Farr (2018b). *Stora skillnader i Afghanistan-policy*. Retrieved from: <https://www.farr.se/sv/aktuellt-a-press/notiser/1591-stora-skillnader-i-afghanistan-policy> [Accessed 2019-02-14]

Feijen, L. and Frennmark, E. (2011). *Kvalitet i svensk asylprövning: En studie av Migrationsverkets utredning av och beslut om internationellt skydd*. Stockholm: UNHCR/Migrationsverket

Flärd, H. (2007). *The Use, Misuse and Non-use of Country of Origin Information in the Swedish Asylum Process*. Project Report funded by the European Refugee Fund. Project owner: The Swedish Refugee Advice Centre

Formisano, M. (2011). *Country of origin information: Old problems, modern solutions*. *Forced Migration Review*, (38), 40-41. Retrieved from <https://search-proquest-com.ezproxy.ub.gu.se/docview/1037875038?accountid=11162> [Accessed 2019-02-06]

Fricker, M. (2007). *Epistemic injustice: power and the ethics of knowing*. University Press, Oxford, DOI:10.1093/acprof:oso/9780198237907.001.0001

Hollifield, J. F., and Wong, T. K. (2015). The politics of international migration. In Brettell, C. B. and Hollifield, J. F. (Ed.). *Migration Theory: Talking Across Disciplines*. Third Edition. New York: Routledge

Humanitarian response (2018). *Afghanistan: Humanitarian Needs Overview*. Retrieved from: [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/document/s/files/afg\\_2018\\_humanitarian\\_needs\\_overview\\_5.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/document/s/files/afg_2018_humanitarian_needs_overview_5.pdf) [Accessed 2019-01-24]

International Covenant on Civil and Political Rights (ICCPR) (1966). Retrieved from: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [Accessed 2019-02-11]

International Federation of Social Workers (IFSW) (2014). *Global Agenda for Social Work and Social Development: First report – promoting social and economic equalities*. Retrieved from: [https://www.ifsw.org/wp-content/uploads/ifsw-cdn/assets/ifsw\\_23031-6.pdf](https://www.ifsw.org/wp-content/uploads/ifsw-cdn/assets/ifsw_23031-6.pdf) [Accessed 2019-01-24]

IOM (2011). *Key Migration Terms*. Retrieved from: <https://www.iom.int/key-migration-terms> [Accessed 2019-01-24]

Law on temporary limitations to the possibility of being granted a residence permit in Sweden. Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige. Retrieved from: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016752-om-tillfalliga-begransningar-av\\_sfs-2016-752](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016752-om-tillfalliga-begransningar-av_sfs-2016-752) [Accessed 2019-02-16]

Lentin, R. and Moreo, E. (2015). *Migrant deportability: Israel and Ireland as case studies*. *Ethnic and Racial Studies*, 38:6, 894-910, DOI: 10.1080/01419870.2014.948477

Lifos (n.d.). *Om Lifos*. Retrieved from: <https://lifos.migrationsverket.se/om-lifos.html> [Accessed 2019-02-09]

Lundberg, A and Spång, M. (2017). *Deportability Status as Basis for Human Rights Claims: Irregularised Migrants' Right to Health Care in Sweden*. *Nordic Journal of Human Rights*, 35:1, 35-54, DOI: 10.1080/18918131.2017.1285953

Migrationsverket (n.d). *Vad är ett rättsligt ställningstagande?* Retrieved from: <https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Vanliga-fragor-fran-journalister/Fragor-och-svar-om-Afghanistan/Allmant/2017-08-29-Vad-ar-ett-rattsligt-stallningstagande----.html> [Accessed 2019-08-22]

Migrationsverket/Lifos (2015). *Landanalys Afghanistan*. Retrieved from: <https://lifos.migrationsverket.se/dokument?documentSummaryId=35719> [Accessed 2019-03-18]

Migrationsverket (2017). *Stöd till återetablering i hemlandet*. Retrieved from: <https://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Efter-beslut/Om-du-far-avslag-pa-din-ansokan/Stod-till-ateretablering.html> [Accessed 2019-03-28]

Migrationsverket (2018). *Asyl – från ansökan till beslut*. Retrieved from: <https://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Att-ansoka-om-asyl/Asyl--fran-ansokan-till-beslut.html> [Accessed 2019-02-28]

Migrationsverket (2019a). *Historik*. Retrieved from: <https://www.migrationsverket.se/Om-Migrationsverket/Migration-till-Sverige/Historik.html> [Accessed 2019-02-14]

Migrationsverket (2019b). *Rättsligt Ställningstagande SR03/2019. Rättsligt ställningstagande angående prövningen av ansökningar om internationellt skydd m.m. från medborgare i Afghanistan*. Retrieved from: [https://www.migrationsverket.se/download/18.748d859516793fb65f9af6/1548316512204/RC\\_SR0319.pdf](https://www.migrationsverket.se/download/18.748d859516793fb65f9af6/1548316512204/RC_SR0319.pdf) [Accessed 2019-01-24]

Migrationsverket (2019c). *Statistic. Asylum*. Retrieved from: <https://www.migrationsverket.se/Om-Migrationsverket/Statistik/Asyl.html> [Accessed 2019-01-24]

The National Association of Social Workers (NASW) (2019). *Code of Ethics*. Retrieved from: <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English> [Accessed 2019-01-24]

New York Times (2019). *U.S. and Taliban Edge Toward Deal to End America's Longest War*. Retrieved from: <https://www.nytimes.com/2019/01/26/world/asia/afghanistan-taliban-peace-deal.html> [Accessed 2019-02-04]

Noll, G. (ed.) (2005). *Proof, evidentiary assessment and credibility in asylum procedures*. Leiden/Boston: Martinus Nijhoff Publishers

Norwegian Refugee Council (2018). *New report: repeated displacement blights lives of Afghans*. Retrieved from: <https://www.nrc.no/news/2018/january/new-report-repeated-displacement-blights-lives-of-Afghans/> [Accessed 2019-02-04]

Nyström, M., and Dahlberg, K. (2001). *Pre-understanding and openness – a relationship without hope?* Scandinavian Journal of Caring Sciences, 15(4), 339–346.

Ormston, R., Ritchie, J., Lewis, J., and Morell, G. (2014). Generalising from Qualitative Research. In Ritchie, J., and Lewis, J. (Ed.). *Qualitative research practice: A guide for social science students and researchers*. London: Sage Publications

RCI 09/2013. *Rättsligt ställningstagande angående metod för prövning av tillförlitlighet och trovärdighet*. Retrieved from: <https://lifos.migrationsverket.se/dokument?documentSummaryId=30435> [Accessed 2019-03-15]

Regeringen (2016a). *Avtal mellan Sverige och Afghanistan om återtagande*. Retrieved from: <https://www.regeringen.se/artiklar/2016/10/avtal-mellan-sverige-och-afghanistan-om-atertagande/> [Accessed 2019-01-24]

Regeringen (2016b). *Förslag om att tillfälligt begränsa möjligheten att få uppehållstillstånd i Sverige*. Retrieved from: <https://www.regeringen.se/pressmeddelanden/2016/04/forslag-om-att-tillfalligt-begransa-mojligheten-att-fa-uppehallstillstand-i-sverige/> [Accessed 2019-03-01]

Regeringen (2019). Förlängning av lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige (utkast till lagrådsremiss). Retrieved from: <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2019/02/forlangning-av-tillfalliga-lagen/> [Accessed 2019-03-02]

Reporterly (2018). *No safe Haven for Returnees in Afghanistan: MoRR Deputy Minister*. Retrieved from: <http://reporterly.net/live/newsfeed/thursday-december-6/no-safe-haven-for-returnees-in-afghanistan-morr-deputy-minister/?fbclid=IwAR3HHsGe0UeylmD9bQyBEFhwpspBo72nd7bfIYvGtmIt5QbzZX464UAiGc> [Accessed 2019-02-04]

Righard, E. and Montesino, N. (2015). Inledning. In Montesino, N. and Righard, E. (ed). *Socialt arbete och migration*. Malmö: Gleerup

Rousseau, C., Crépeau, F., Foxen, P. and Houle, F. (2002) The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board. *Journal of Refugee Studies*, 15 (1): 43-70.

Rädda Barnen (2018). *Rädda Barnen uppmanar Migrationsverket att stoppa utvisningarna till Afghanistan*. Retrieved from: <https://press.raddabarnen.se/news/raedda-barnen-uppmanar-migrationsverket-att-stoppa-utvisningarna-till-afghanistan-321108> [Accessed 2019-02-17]

Snape, D. and Spencer, L. (2003). 'The foundations of Qualitative Research', in Ritchie, J. and Lewis, J. (eds), *Qualitative Research Practice: A Guide for Social Science Students and Reserachers*. London: Sage Publications Ltd.

SOU 2011:48. *Vård efter behov och på lika villkor – en mänsklig rättighet. Betänkande av Utredningen om vård för papper lösa m.fl.* Retrieved from: <https://www.regeringen.se/contentassets/5eb63a85e7364014a30c2905ad712ea0/vard-efter-behov-och-pa-lika-villkor---en-mansklig-rattighet-sou-201148> [Accessed 2019-02-25]

Spijkerboer, T. (2005). Stereotyping and Acceleration – Gender, Procedural Acceleration and Marginalised Judicial Review in the Dutch Asylum System. In Noll, G. (ed) (2005). *Proof, evidentiary assessment and credibility in asylum procedures*. Leiden/Boston: Martinus Nijhoff Publishers

SR 03/2019. *Rättsligt ställningstagande angående prövningen av ansökningar om internationellt skydd m.m. från medborgare i Afghanistan*. Retrieved from: <https://lifos.migrationsverket.se/dokument?documentSummaryId=42601> [Accessed 2019-03-15]

Sundelin, A. (ed.) (2005). *Afghanistan*. Stockholm: Premiss Förlag



Svenska Afghankommittén (2017). *Återvändaravtalet*. Retrieved from: <https://sak.se/afghanistan/flykt/atervandaravtalet> [Accessed 2019-01-24]

Svenska Röda Korset (2018). *Ställningstagande från Svenska Röda Korset om tvångsutvisningar till Afghanistan*. Retrieved from: <https://www.redcross.se/press-och-opinion/roda-korset-tycker2/asyl/nytt-stallningstagande-fran-svenska-roda-korset-om-tvangsutvisningar-till-afghanistan/> [Accessed 2019-01-28]

SVT (2018). *Sverige nu strängast för afghaner bland EU:s största mottagarländer*. Retrieved from: [https://www.svt.se/nyheter/utrikes/dramatisk-minskning-av-asylarenden-med-afghaner-i-eu?cmpid=del%3Afb%3A20181125%3Adramatisk-minskning-av-asylarenden-med-afghaner-i-eu%3Aanyh%3Alpandfbclid=IwAR064Z9uzD13s1HC6ql2k3BF\\_RQQFWaiZf0baSg3EMV0WPZsOqP3zA\\_KiJo](https://www.svt.se/nyheter/utrikes/dramatisk-minskning-av-asylarenden-med-afghaner-i-eu?cmpid=del%3Afb%3A20181125%3Adramatisk-minskning-av-asylarenden-med-afghaner-i-eu%3Aanyh%3Alpandfbclid=IwAR064Z9uzD13s1HC6ql2k3BF_RQQFWaiZf0baSg3EMV0WPZsOqP3zA_KiJo) [Accessed 2019-01-28]

The Government of the Islamic Republic of Afghanistan. Ministry of Refugees and Repatriation (2013). *National Policy on Internally Displaced Persons*. Retrieved from: [http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English\(1\).pdf](http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English(1).pdf) [Accessed 2019-01-28]

Thorburn Stern, R., and Wikström, H. (2016). *Migrationsrätt : Skyddsbehov Och Trovärdighet : Bedömning I Asylärenden*. 1. Uppl. ed. Stockholm: Liber. Print.

UNAMA (2018). *2018 Quarterly Report*. Retrieved from: [https://unama.unmissions.org/sites/default/files/unama\\_protection\\_of\\_civilians\\_in\\_armed\\_conflict\\_3rd\\_quarter\\_report\\_2018\\_10\\_oct.pdf](https://unama.unmissions.org/sites/default/files/unama_protection_of_civilians_in_armed_conflict_3rd_quarter_report_2018_10_oct.pdf) [Accessed 2019-01-24]

UNAMA (2019). *Civilian deaths from Afghan conflict in 2018 at highest record level – UN report*. Retrieved from: <https://unama.unmissions.org/civilian-deaths-afghan-conflict-2018-highest-recorded-level-%E2%80%93-un-report> [Accessed 2019-03-19]

UNDP (2016). *About Afghanistan*. Retrieved from: <http://www.af.undp.org/content/afghanistan/en/home/countryinfo.html> [Accessed 2019-01-24]

UNHCR. 1951 Refugee Convention and 1967 Protocol. Retrieved from: <https://www.unhcr.org/3b66c2aa10> [Accessed 2019-01-28]

UNHCR (2003). *Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol*



relating to the Status of Refugees. Retrieved from:  
<https://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html> [Accessed 2019-03-21]

UNHCR (2012). *The Internal Flight Alternative Practices. A UNHCR Research Study in Central European Countries*. Retrieved from: <https://www.refworld.org/pdfid/4ffaabdf2.pdf> [Accessed 2019-03-18]

UNHCR (2013). *Beyond Proof. Credibility Assessment in European Asylum System*. Full Report. Brussel/UNHCR

UNHCR (2015). *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*. Retrieved from: <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> [Accessed 2019-01-24]

UNHCR (2018a). *Eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan*. Retrieved from:  
<https://www.refworld.org/pdfid/5b8900109.pdf> [Accessed 2019-01-24]

UNHCR (2018b). *Figures at a Glance*. Retrieved from: <https://www.unhcr.org/figures-at-a-glance.html> [Accessed 2019-01-24]

United Nations (1948). *The Universal Declaration of Human Rights*. Retrieved from:  
<https://www.un.org/en/universal-declaration-human-rights/> [Accessed 2019-04-24]

UNOCHA (2018). *Humanitarian Needs Overview: Afghanistan*. Retrieved from:  
[https://reliefweb.int/sites/reliefweb.int/files/resources/afg\\_2019\\_humanitarian\\_needs\\_overview.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/afg_2019_humanitarian_needs_overview.pdf) [Accessed 2019-01-28]

Wikström, H. (2014). *Gender, Culture and Epistemic Injustice*. *Nordic Journal of Migration Research*, 4(4), 210-218. doi: <https://doi.org/10.2478/njmr-2014-0024>

### **Migration Court of Appeal Cases:**

2007:12

2009:4

2018:6